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International Labour Conference  
76th Session 1989

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Report III  
(Parts 1, 2 and 3)

## Summary of Reports

(Articles 19, 22 and 35 of the Constitution)

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International Labour Office Geneva



International Labour Conference  
76th Session 1989

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Report III  
(Parts 1, 2 and 3)

Third Item on the Agenda:

Information and Reports on the Application  
of Conventions and Recommendations

# **Summary of Reports**

(Articles 19, 22 and 35 of the Constitution)

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International Labour Office Geneva

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The publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the areas or territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

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Part 1

Summary of reports on  
ratified Conventions

(Articles 22 and 35 of the Constitution)



## INTRODUCTION

Article 22 of the Constitution of the International Labour Organisation provides that "each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request". Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organisations of employers and workers.

At its 204th (November 1977) Session, the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under article 22 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which for a number of years had been followed in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports on ratified Conventions received; in addition, photocopies of those reports should be supplied on request to members of delegations.

Requests for consultation or copies of reports may be addressed to the Secretariat of the Committee on the Application of Conventions and Recommendations.

The present summary refers to reports for the period ending 30 June 1988.

The report of the Committee of Experts on the Application of Conventions and Recommendations, which examines the report submitted under article 22 of the Constitution, is communicated separately to the Conference as Report III (Part 4A).



SUMMARY OF REPORTS ON THE APPLICATION OF RATIFIED CONVENTIONS RECEIVED

- A. First reports after ratification of the Convention concerned.
- B. Reports containing information on important changes in the implementation of Conventions, or information supplied in reply to observations or direct requests made by the Committee of Experts.
- C. Reports containing information on the practical effect given to Conventions, or on minor changes in their implementation.
- D. Reports merely repeating or referring to the information previously supplied.

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Afghanistan		13, 95, 100, 111, 139, 140, 141, 142	41, 45	14, 106
Algeria		13, 119, 120	3, 62	127
Angola		1, 26, 91, 98	19, 68, 92	7, 74
Antigua and Barbuda	111	87	11, 98	14, 94, 101, 105, 108, 138
Argentina	124	3, 11, 26, 68, 87, 98, 111	1	30, 58
Australia	142, 150	87, 98, 100, 111, 131	9, 11, 47, 99, 112, 137, 144	7
Norfolk Island		11, 98, 122	47, 112	87
Austria		29, 98, 102, 103, 111, 122, 128	26, 87, 99	11, 144
Bahamas		26, 29, 81, 105	11	7, 97, 98
Bangladesh		29, 87, 98, 105, 107	1	11, 144
Barbados		26, 29, 100, 105, 111, 122, 144	87, 98	7, 11, 97, 102, 128

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Belgium	5	87, 98, 102, 111, 122	26, 62, 89, 91, 97, 121, 144	6, 9, 11, 13, 14, 68, 92, 99, 115, 120, 126
Belize		22, 26, 29, 98, 99		11, 58, 87, 97
Benin		26	143	11, 87, 98
Bolivia		1, 20, 30, 103, 106, 107, 111, 122, 131	87, 129, 136	98, 120
Brazil		5, 26, 53, 91, 98, 99, 100, 103, 107, 111, 117, 122, 131	11, 19, 92, 97, 118, 124	58, 120
Bulgaria		3, 9, 111, 138	11, 14, 26, 52, 68, 87, 106	1, 30, 98, 120
Burkina Faso		87, 98, 111, 131	3, 11, 143	97
Burma		26, 87, 150	17	1, 11
Burundi			1, 26	11
Byelorussian SSR		87, 98, 111, 122	11, 47, 103, 119, 120	52
Cameroon		3, 9, 29, 108, 122	87, 143	11, 97, 98, 131, 146
Canada		87, 111, 122	26, 68	58
Central African Republic		5, 10, 26, 29, 33, 100, 105, 111	3, 11, 18, 19, 52, 81, 98, 99, 119	13, 118
Chad		26, 111	11, 87	98
Chile	19	3, 9, 11, 26, 29, 100, 111, 122	12, 17, 18, 35	7
China		26	11	7
Colombia		2, 3, 9, 26, 99, 100, 105, 106, 111	7, 87, 98	1, 11, 30



Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Comoros		26, 99, 122		11, 13
Costa Rica		87, 101, 102, 111, 122, 131, 137, 147	98, 134	96, 113, 120
Côte d'Ivoire		3, 95, 111, 144	87, 98	11, 26, 52, 99, 110
Cuba		29, 91, 103, 105, 111, 122	1, 9, 11, 87, 92, 110, 120, 131, 137	30, 97, 98
Cyprus	158	87, 114, 122, 128	119, 143, 144	11, 97, 98
Czechoslovakia		111, 122	11, 26, 87	1, 98, 99
Denmark	159	81, 87, 92, 111, 129, 139, 151	9, 53, 62, 98, 120, 144	11, 58, 112, 126
Faeroe Islands		105		29
Greenland			5	11, 19, 29, 87, 105
Dominica	111, 138	16, 26, 29, 87, 95, 105	11	
Ecuador		11, 111, 119, 122, 128, 131, 139, 141, 144	87, 110, 112, 120, 123	97, 98
Egypt		9, 53, 55, 56, 63, 68, 69, 71, 87, 92, 96, 106, 137, 139, 145, 147, 149	1, 98, 131, 134, 144	11, 30, 62
Equatorial Guinea		103		
Ethiopia		87, 111	11, 98	
Fiji		29	11, 84, 98	19, 26, 59, 85
Finland		9, 87, 91, 98, 111, 119, 122, 128, 134, 138, 144	30, 120, 137	11, 92

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
France	125, 148, 152	29, 81, 87, 100, 102, 111, 136, 141, 146, 147	3, 35, 36, 37, 38, 63, 98, 118, 120, 127, 131, 140	11, 27, 78, 134
<u>Overseas Departments:</u>				
French Guiana	111, 129, 131, 149		35, 36, 37, 38	3, 27, 32, 87, 98, 100, 105, 141
Guadeloupe	111, 129, 131, 149		35, 36, 37, 38	3, 11, 27, 32, 87, 98, 100, 105, 120, 141
Martinique	111, 129, 131, 149		35, 36, 37, 38	3, 11, 27, 32, 87, 98, 100, 105, 120, 141
Réunion	111, 129, 131, 149		36, 37, 38	3, 11, 27, 32, 87, 98, 100, 105, 120, 141
Territorial Community of St. Pierre and Miquelon	111, 129, 131, 141, 149	35, 63, 122	11, 24, 36, 37, 38	3, 82, 87, 94, 98, 105, 106, 120
<u>Overseas Territories:</u>				
French Polynesia	111, 127, 129, 131, 141, 142, 145, 146, 147, 149	3, 122	37, 38, 87	9, 11, 58, 98, 120, 126
New Caledonia	111, 127, 129, 131, 141, 142, 145, 146, 147, 149	3, 63, 98, 120, 122, 126	35, 36, 37, 38, 87	9, 11, 58
Gabon	150	111	26, 99	3, 11, 87, 98
German Democratic Republic		87, 111, 122	11, 47, 103, 144	98, 120
Germany, Federal Republic of		3, 29, 102, 111, 122, 128	9, 26, 87, 92, 97, 99, 120, 126	11, 98
Ghana	103, 151	22, 29, 105, 111		87, 115

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Greece	71, 92, 150, 159	9, 11	42, 68, 98	1
Grenada		14, 81, 94, 95, 98, 105		
Guatemala		26, 98, 99, 100, 105, 111, 119	30, 87	58, 97, 110, 112, 120
Guinea		26, 81, 87, 99, 111, 115, 119, 120, 122, 136, 152	11, 98, 139, 143, 148	3, 140, 150
Guinea-Bissau		1, 26, 68, 91, 92	14, 18, 98, 106	
Guyana		136, 137, 141	42, 81, 129	7, 139, 149
Haiti		14, 29, 81, 100, 105, 106, 111	19, 24, 25, 87, 98	5
Honduras		111, 122	87, 98	
Hungary		29, 87, 98, 103, 111, 122, 159	26, 99	7
Iceland		91, 98	144	11, 58
India		1, 29, 111	11	
Indonesia		29, 98	120	
Iran, Islamic Republic of		29, 95, 100, 106, 122		
Iraq	148	1, 11, 30, 98, 105, 111, 122, 131, 132, 137, 150	144	145, 146
Ireland	53	23, 100	12, 19, 74, 81	29, 32, 63, 68, 92
Israel		92, 100, 102, 118, 122		87, 97, 98
Italy	149, 151	74, 103, 119, 122, 136, 147	19, 26, 99, 137, 138, 146	9, 11, 16, 69, 73, 96, 144

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Jamaica	150	105, 111	26, 97	11
Japan	122, 142	102	9, 58, 87, 98, 119, 131	
Jordan		100, 105, 122, 135	98, 118	119, 120, 123
Kenya		98, 105, 129, 142	17, 131, 137, 138, 143	11, 26, 97, 99
Kuwait		1, 29, 30, 105, 136	81, 87	106, 119
Lesotho		11, 87	19, 98	
Libyan Arab Jamahiriya		29, 53, 95, 100, 105, 111	14, 98, 118, 130, 138	122
Luxembourg		102	1, 11, 26, 30, 87, 98, 103	9
Madagascar			87	
Malawi	144, 158	111	26, 97, 98, 99	11
Malaysia		98		7, 11, 119
Peninsular Malaysia				11
Sabah				11, 97
Sarawak				11
Mali		111		11, 26, 77, 87, 98
Malta		87, 98, 111		7, 11, 26, 99
Mauritania		29, 53, 81		11, 62, 97
Mauritius		29, 81, 105		32, 58, 84
Mexico		9, 56, 87, 102, 111, 115, 150, 153, 155		11, 30, 58, 110, 112, 120, 144

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Morocco		111, 122, 147	26, 98, 146	11, 52, 99, 100, 119, 136
Mozambique		111	1, 11	30
Nepal	14	100, 111, 131		
Netherlands		87, 102, 111, 128	68, 92, 97, 126, 131, 137, 144, 146	9, 11, 29
Aruba	10, 69, 74, 81, 94, 95, 105	122	8	14, 33, 101, 106
Netherlands Antilles		58, 69, 105	33, 74	10, 29, 94, 118
New Zealand		11, 49, 97, 122	1, 26, 30, 47, 68, 99, 134	9, 58, 92
Tokelau		100, 111		29, 105
Nicaragua		87, 98		
Nigeria		105	11, 87	26, 97, 98, 111
Norway		9, 53, 68, 69, 84, 87, 92, 97, 98, 102, 128, 138, 143, 154, 155	26, 119, 137, 159	11, 30, 47, 120, 126, 144
Pakistan		87, 98, 111		1, 11
Panama	15	3, 32, 52, 53, 55, 63, 68, 69, 74, 81, 92, 105, 107, 111, 122, 125, 126	11, 19, 26, 58, 87, 98, 112	10, 13, 27, 119, 123
Papua New Guinea			7, 11, 19	
Paraguay		1, 30, 81, 105, 111	26, 87, 98, 99	11, 119, 120
Peru	156, 159	1, 9, 20, 22, 56, 68, 102, 105, 111, 122, 139	11, 26, 35, 58	112

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Philippines		23, 87, 94, 95, 99, 100, 105, 111, 122	98, 99, 110	
Poland		9, 11, 91, 92, 98, 103, 105, 111, 122	12, 18, 19, 24, 25, 35, 42, 87, 99, 115, 124, 137, 149	68, 119, 120
Portugal	147, 149, 155	22, 23, 77, 78, 92, 95, 96, 100, 120, 122, 131, 137, 144, 145, 146, 151	1, 8, 68, 87, 97, 98, 143	7, 11, 19
Qatar		111		
Romania		9, 13, 81, 111, 122, 129, 134, 136	1, 87, 131	3, 11, 98, 137
Rwanda		11, 26		
Saint Lucia		8, 29, 50, 64, 65, 87, 94, 95, 98, 105	5, 19, 26	7, 11, 12, 14, 97
San Marino	159	144	143	
Sao Tome and Principe		81		
Saudi Arabia		1, 30, 111		
Senegal		99, 102, 111, 122		11, 87, 98, 120
Sierra Leone		105, 111	126	26, 32, 58, 87, 98, 99
Singapore		29, 98		7, 11
Solomon Islands	26			11, 84
Somalia		29		17, 19
South Africa		26		85

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
Spain	155	81, 87, 92, 98, 100, 103, 111, 129, 131, 137, 144, 150, 158	1, 9, 11, 30, 44, 97, 119, 120, 146, 154	68, 126
Sri Lanka		106		11, 58, 98, 131
Sudan		26, 81, 100, 111	19, 98	
Suriname		11, 122, 144	87, 112	
Swaziland		144	87	11, 98, 131
Sweden	138, 160	92, 100, 102, 111, 119, 120, 122, 128, 143, 155	9, 47, 87, 98, 137, 144, 146, 147	11
Switzerland		87, 102, 111, 120, 128	11, 26	58, 153
Syrian Arab Republic		111, 129, 131, 139, 144	87, 98, 123	11, 119, 120
Tanzania, United Republic of	134, 140, 142, 144, 149, 152	29, 58, 105, 131	17, 85, 97, 98	11
Tanganyika				11
Zanzibar			97	11
Thailand		105, 122	19	
Togo		26, 87, 98, 111, 144	143	11
Trinidad and Tobago		87, 98, 105, 111, 125	16	19, 97
Tunisia		26, 29, 55, 91, 111, 122, 124, 127	87, 99	11, 58, 98, 112, 119, 120
Turkey		11, 94, 98, 102, 105, 111, 119, 122	26, 99	58
Uganda		29, 81		98
Ukrainian SSR		52, 87, 98, 111, 122	11, 47, 92, 103, 119, 126	120

Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
USSR		52, 87, 98, 111, 122	11, 47, 92, 103, 119, 120, 126	
United Arab Emirates		1, 29		81, 89
United Kingdom	126	68, 69, 87, 98, 142	11, 99, 120, 144	7
Anguilla			26, 85	11, 58, 87, 97, 98, 99, 148
Bermuda	147			11, 58, 87, 98
British Virgin Islands	23			11, 58, 87, 97, 98
Falkland Islands (Malvinas)		29, 105	19	
Gibraltar				11, 58, 87, 98
Guernsey		122, 148		7, 11, 87, 97, 98, 99
Hong Kong		87, 98, 122, 147	3, 11, 26, 92, 97	58
Isle of Man	68	87, 98	5, 10, 74, 81, 92	7, 32, 97
Jersey		99, 140		7, 8, 11, 69, 74, 87, 97, 98
Montserrat		17	97	11, 26, 58, 87, 98
St. Helena				11, 58, 87, 98
United States			53, 58	74
American Samoa			58	
Guam			58	
Puerto Rico			58	



Country	A Conventions Nos.	B Conventions Nos.	C Conventions Nos.	D Conventions Nos.
United States Virgin Islands			58	26
Uruguay		9, 103, 110, 119, 122, 128, 130, 132, 134, 137	1, 11, 30, 32, 87, 97, 98	
Venezuela		3, 22, 26, 95, 100, 111, 144, 150, 156	13, 97, 128	1, 11, 19, 27, 81, 120, 139
Yemen		29, 81, 132, 135	87, 98	111
Yugoslavia		136		
Zaire		26	98, 119	11, 120
Zambia	154	103, 105, 111, 122, 131, 144	11	123, 148



Part 2

Summary of reports on Conventions Nos. 102 and 128  
and Recommendation No. 131

Social Security (Minimum Standards)

Old-Age Benefits

(Article 19 of the Constitution)



## INTRODUCTION

Article 19 of the Constitution of the International Labour Organisation provides that Members shall "report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body" on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the above-mentioned article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organisations of employers and workers.

Pursuant to the above-mentioned provisions, the Governing Body selects each year the instruments on which Members are requested to supply reports. Since 1950 the summaries of these reports have been submitted each year to the Conference.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Conventions and Recommendations.

The reports which are listed below concern the Social Security (Minimum Standards) Convention (No. 102), 1952, and the Invalidity, Old-Age and Survivors' Benefit Convention (No. 128) and Recommendation (No. 131), 1967.

The governments of member States were requested to send their reports to the International Labour Office by 1 July 1988.

The report of the Committee of Experts on the Application of Conventions and Recommendations, which will be submitted to the Conference at its 76th (1989) Session, will include a general survey on the reports on the above-mentioned Conventions and Recommendations (Report III, Part 4B).



REPORTS RECEIVED ON CONVENTIONS Nos. 102 AND 128  
AND RECOMMENDATION No. 131

Countries	Convention No. 102		Convention No. 128		Recommendation No. 131
	Ratified	Art. 19	Ratified	Art. 19	Art. 19
Afghanistan		-		-	-
Algeria		X		X	X
Angola		-		-	-
Antigua and Barbuda		-		-	-
Argentina		X		X	X
Australia		X		X	X
Austria	R		R		X
Bahamas		-		-	-
Bahrain		-		-	-
Bangladesh		X		X	X
Barbados	R		R		X
Belgium	R			X	X
Belize		X		X	X
Benin		X		X	X
Bolivia	R		R		X
Botswana		-		-	-
Brazil		X		X	X
Bulgaria		X		X	X
Burkina Faso		-		-	-
Burma		X		X	X
Burundi		X		X	X
Byelorussian SSR		X		X	X
Cameroon		X		X	X
Canada		X		X	X
Cape Verde		-		-	-
Central African Republic		X		X	X
Chad		X		X	X
Chile		X		X	X
China		X		X	X
Colombia		X		X	X
Comoros		-		-	-
Congo		X		X	X
Costa Rica	R			-	-
Côte d'Ivoire		X		X	X
Cuba		X		X	X
Cyprus		X	R		X
Czechoslovakia		X		X	X
Democratic Yemen		-		-	-
Denmark	R			X	X
Djibouti		-		-	-
Dominica		-		-	-

Countries	Convention No. 102		Convention No. 128		Recommendation No. 131
	Ratified	Art. 19	Ratified	Art. 19	Art. 19
Dominican Republic		-		-	-
Ecuador	R		R		-
Egypt		X		X	X
El Salvador		-		-	-
Equatorial Guinea		X		X	X
Ethiopia		-		-	-
Fiji		-		-	-
Finland		X	R		X
France	R			X	X
Gabon		X		X	X
German Democratic Republic		X		X	X
Germany, Federal Republic of	R		R		X
Ghana		-		-	-
Greece	R			-	-
Grenada		X		X	X
Guatemala		-		-	-
Guinea		-		-	-
Guinea-Bissau		X		X	X
Guyana		X		X	X
Haiti		-		-	-
Honduras		X		X	X
Hungary		X		X	X
Iceland	R			-	-
India		X		X	X
Indonesia		X		X	X
Iran, Islamic Republic of		X		X	X
Iraq		X		X	X
Ireland	R			X	X
Israel	R			X	X
Italy	R			X	X
Jamaica		-		-	-
Japan	R			X	X
Jordan		X		X	X
Democratic Kampuchea		-		-	-
Kenya		X		X	X
Kuwait		X		X	X
Lao People's Democratic Republic		-		-	-
Lebanon		-		-	-
Lesotho		-		-	-



Countries	Convention No. 102	Convention No. 128	Recommendation No. 131	
	Ratified	Art. 19 Ratified	Art. 19	Art. 19
Liberia	-	-	-	-
Libyan Arab Jamahiriya	R	R	-	-
Luxembourg	R		X	X
Madagascar		X	X	X
Malawi	X	-	-	-
Malaysia	-	X	X	X
Mali	X	X	X	X
Malta	X	X	X	X
Mauritania	R	-	-	-
Mauritius	X	X	X	X
Mexico	R	X	X	X
Mongolia	-	-	-	-
Morocco	X	X	X	X
Mozambique	X	X	X	X
Nepal	X	X	X	X
Netherlands	R	R	X	X
New Zealand	X	X	X	X
Nicaragua	X	X	X	X
Niger	R	-	-	-
Nigeria	X	X	X	X
Norway	R	R	X	X
Pakistan	X	X	X	X
Panama	X	X	X	X
Papua New Guinea	-	-	-	-
Paraguay	R	-	-	-
Peru		X	X	X
Philippines		X	X	X
Poland	X	X	X	X
Portugal	X	X	X	X
Qatar	X	X	X	X
Romania	X	X	X	X
Rwanda	X	X	X	X
Saint Lucia	X	X	X	X
San Marino	X			
Sao Tome and Principe	-	-	-	-
Saudi Arabia	X	X	X	X
Senegal	R	X	X	X
Seychelles	-	-	-	-
Sierra Leone	-	-	-	-
Singapore	X	X	X	X
Solomon Islands	-	-	-	-
Somalia	X	X	X	X
Spain	R	X	X	X

Countries	Convention No. 102		Convention No. 128		Recommendation No. 131
	Ratified	Art. 19	Ratified	Art. 19	Art. 19
Sri Lanka		X		X	X
Sudan		-		-	-
Suriname		X		X	X
Swaziland		-		-	-
Sweden	R		R		X
Switzerland	R		R		X
Syrian Arab Republic		-		-	-
Tanzania, United Republic of		-		-	-
Thailand		X		X	X
Togo		X		X	X
Trinidad and Tobago		X		X	X
Tunisia		X		X	X
Turkey	R			X	X
Uganda		-		-	-
Ukrainian SSR		X		X	X
USSR		X		X	X
United Arab Emirates		X		X	X
United Kingdom	R			X	X
United States		X		X	X
Uruguay		X	R		X
Venezuela	R		R		X
Yemen		X		X	X
Yugoslavia	R			X	X
Zaire		-		-	-
Zambia		X		X	X
Zimbabwe		X		X	X

In addition, a total of 29 reports have been received, under article 19 of the Constitution, in respect of the following non-metropolitan territories: United Kingdom (Anguilla, Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Montserrat, St. Helena).

R = Ratified Conventions.

X = Reports requested and received.

- = Reports requested and not received.

Part 3

Summary of information relating to the  
submission to the competent authorities of  
Conventions and Recommendations adopted  
by the International Labour Conference

(Article 19 of the Constitution)



## INTRODUCTION

Article 19 of the Constitution of the International Labour Organisation prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions and Recommendations adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the Conventions and Recommendations to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

No new instruments having been adopted by the Conference at its 73rd Session (1987), the present report contains a summary of additional information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference at its 31st to 72nd Sessions (1948 to 1986), as well as of the instruments adopted at its 74th (Maritime) Session (1987).

The report of the Committee of Experts on the Application of Conventions and Recommendations, which examines the information submitted under article 19 of the Constitution, is communicated separately to the Conference as Report III (Part 4A).



LIST OF INSTRUMENTS ADOPTED BY THE CONFERENCE  
AT ITS 63rd TO 74th (MARITIME) SESSIONS

63rd Session (1977)

Working Environment (Air Pollution, Noise and Vibration)  
Convention (No. 148);

Nursing Personnel Convention (No. 149);

Working Environment (Air Pollution, Noise and Vibration)  
Recommendation (No. 156);

Nursing Personnel Recommendation (No. 157).

64th Session (1978)

Labour Administration Convention (No. 150);

Labour Relations (Public Service) Convention (No. 151);

Labour Administration Recommendation (No. 158);

Labour Relations (Public Service) Recommendation (No. 159).

65th Session (1979)

Occupational Safety and Health (Dock Work) Convention (No. 152);

Hours of Work and Rest Periods (Road Transport) Convention  
(No. 153);

Occupational Safety and Health (Dock Work) Recommendation  
(No. 160);

Hours of Work and Rest Periods (Road Transport) Recommendation  
(No. 161).

66th Session (1980)

Older Workers Recommendation (No. 162).

67th Session (1981)

Collective Bargaining Convention (No. 154);

Occupational Safety and Health Convention (No. 155);

Workers with Family Responsibilities Convention (No. 156);

Collective Bargaining Recommendation (No. 163);

Occupational Safety and Health Recommendation (No. 164);

Workers with Family Responsibilities Recommendation (No. 165).

68th Session (1982)

Maintenance of Social Security Rights Convention (No. 157);

Termination of Employment Convention (No. 158);

Termination of Employment Recommendation (No. 166);

Protocol to the Plantations Convention, 1958 (No. 110).

69th Session (1983)

Vocational Rehabilitation and Employment (Disabled Persons)  
Convention (No. 159);

Maintenance of Social Security Rights Recommendation (No. 167);

Vocational Rehabilitation and Employment (Disabled Persons)  
Recommendation (No. 168).

70th Session (1984)

Employment Policy (Supplementary Provisions) Recommendation  
(No. 169).

71st Session (1985)

Labour Statistics Convention (No. 160);

Occupational Health Services Convention (No. 161);

Labour Statistics Recommendation (No. 170);

Occupational Health Services Recommendation (No. 171).

72nd Session (1986)

Asbestos Convention (No. 162);

Asbestos Recommendation (No. 172).



73rd Session (1987)

The Conference did not adopt any Conventions or Recommendations at this Session.

74th (Maritime) Session (1987)

Seafarers' Welfare Convention (No. 163);

Health Protection and Medical Care (Seafarers) Convention  
(No. 164);

Social Security (Seafarers) (Revised) Convention (No. 165)

Repatriation of Seafarers (Revised) Convention (No. 166)

Seafarers' Welfare Recommendation (No. 173);

Repatriation of Seafarers Recommendation (No. 174).



SUMMARY OF INFORMATION RELATING TO THE SUBMISSION TO  
THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND  
RECOMMENDATIONS ADOPTED BY THE INTERNATIONAL LABOUR  
CONFERENCE AT ITS 74th (MARITIME) SESSION (GENEVA, 1987) AND  
SUPPLEMENTARY INFORMATION ON THE TEXTS ADOPTED AT  
ITS 31st TO 72nd SESSIONS (1948-1986)

Angola. The instruments adopted at the 68th, 69th and 70th Sessions of the Conference, as well as Convention No. 160 and Recommendation No. 170 (71st Session), were submitted to the People's Assembly on 18 November 1988. The ratification of Conventions Nos. 157, 158, 159 and 160 may be envisaged.

Argentina. The instruments adopted at the 72nd Session of the Conference were submitted to Congress on 16 February 1988.

Australia. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 1 December 1988.

Austria. The instruments adopted at the 72nd Session of the Conference have been submitted to the National Assembly. The ratification of Convention No. 162 may be envisaged.

Bahamas. The instruments adopted at the 74th Session of the Conference have been submitted to the competent authorities.

Bahrain. The instruments adopted at the 74th Session of the Conference were submitted to the Council of Ministers on 27 April 1988.

Barbados. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 30 May 1988.

Belgium. The instruments adopted at the 69th Session of the Conference were submitted to Parliament on 6 September 1988. Ratification of Convention No. 159 was proposed. The instruments adopted at the 72nd Session were submitted to Parliament on 13 October 1987.

Benin. The instruments adopted at the 71st and 72nd Sessions of the Conference were submitted to the competent authorities on 2 December 1988.

Brazil. Conventions Nos. 143 and 161, adopted at the 60th and 71st Sessions of the Conference, were submitted to Congress on 25 September 1987. Conventions Nos. 144 and 153, adopted at the 61st and 65th Sessions, were submitted to it on 22 April 1988, and Conventions Nos. 141 and 154, adopted at the 60th and 67th Sessions, on 12 May 1988. Recommendations Nos. 117 to 119, 121 to 123, 127, 129, 130, 136 to 138, 140 to 143, 146, 147 and 171 have also been submitted to Congress.

Bulgaria. The instruments adopted at the 74th Session of the Conference have been submitted to the National Assembly.

Burma. The instruments adopted at the 72nd Session of the Conference were submitted to Parliament on 14 March 1988.

Burundi. The instruments adopted at the 74th Session of the Conference were submitted to the President of the Republic on 12 July 1988.

Byelorussian SSR. The instruments adopted at the 74th Session of the Conference were submitted to the Supreme Soviet in May 1988.

Cameroon. The instruments adopted at the 72nd Session of the Conference were submitted to the National Assembly in July 1988. The ratification of Convention No. 162 has been authorised.

Chad. The instruments adopted at the 71st and 72nd Sessions of the Conference were submitted to the President of the Republic on 25 June 1987.

Chile. The instruments adopted at the 71st Session of the Conference were submitted to the legislative authorities on 18 August 1987.

Colombia. Convention No. 160, adopted at the 71st Session of the Conference, was submitted to Congress in August 1988. Its ratification has been proposed.

Cuba. The instruments adopted at the 74th Session of the Conference were submitted to the Council of Ministers in the period June to October 1988.

Cyprus. The instrument adopted at the 70th Session of the Conference was submitted to the House of Representatives on 15 December 1987.

Egypt. The instruments adopted at the 74th Session of the Conference have been submitted to the People's Assembly.

Gabon. The instruments adopted at the 71st Session of the Conference were submitted to the National Assembly on 25 November 1987.

Federal Republic of Germany. Convention No. 156 and Recommendation No. 165, adopted at the 67th Session of the Conference, as well as the instrument adopted at the 70th Session, were submitted to Parliament on 3 November and 1 December 1988, respectively.

Ghana. The instruments adopted at the 74th Session of the Conference were submitted to the Provisional Council of National Defence on 16 December 1987 and 25 January, 23 February and 14 March 1988.

Greece. The instruments adopted at the 72nd Session of the Conference were submitted to Parliament on 5 May 1988. Ratification of Convention No. 162 was proposed. The instruments adopted at the 74th Session were submitted on 9 September 1988.

Guatemala. Conventions Nos. 160 to 162, adopted at the 71st and 72nd Sessions of the Conference, have been submitted to Congress.

Iceland. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 25 February 1988.

Italy. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 28 June 1988.

Japan. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 20 September 1988.

Jordan. The instruments adopted at the 74th Session of the Conference were submitted to the Council of Ministers.

Luxembourg. The instruments adopted at the 74th Session of the Conference were submitted to the House of Representatives on 12 October 1988.

Malta. The instruments adopted at the 72nd Session of the Conference have been submitted to the competent authorities.

Mozambique. The instruments adopted at the 74th Session of the Conference were submitted to the People's Assembly on 20 October 1988.

Nepal. The instruments adopted at the 68th to 71st Sessions of the Conference, as well as Conventions Nos. 155 and 156 and Recommendations Nos. 163 to 165 (67th Session) and Convention No. 162 (72nd Session) have been submitted to Parliament.

Netherlands. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 20 December 1988.

New Zealand. The instruments adopted at the 72nd Session of the Conference were submitted to the House of Representatives on 29 April 1987.

Niger. The instruments adopted at the 72nd and 74th Sessions of the Conference were submitted to the President of the Supreme Military Council in November 1986 and April 1988, respectively.

Norway. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 9 December 1988.

Poland. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 27 July 1988.

Qatar. The instruments adopted at the 72nd Session of the Conference were submitted to the Council of Ministers on 1 March 1988.

Romania. The instruments adopted at the 70th and 74th Sessions of the Conference were submitted to the Grand National Assembly on 18 December 1985 and 29 June 1988, respectively.

Rwanda. The instruments adopted at the 72nd and 74th Sessions of the Conference were submitted to the President of the Republic on 11 September 1986 and 2 August 1988, respectively.

Saudi Arabia. The instruments adopted at the 74th Session of the Conference have been submitted to the Council of Ministers.

Singapore. The instruments adopted at the 74th Session of the Conference have been submitted to Parliament.

Sri Lanka. The instruments adopted at the 72nd Session of the Conference were submitted to Parliament on 7 April 1988.

Switzerland. The instruments adopted at the 74th Session of the Conference were submitted to Parliament on 24 August 1988. Ratification of Convention No. 163 was proposed.

Syrian Arab Republic. The instruments adopted at the 72nd Session of the Conference have been submitted to the Council of Ministers.

United Republic of Tanzania. The instruments adopted at the 69th to 71st Sessions of the Conference have been submitted to the National Assembly.

Togo. The instruments adopted at the 74th Session of the Conference were submitted to the National Assembly in July 1988.

Trinidad and Tobago. The instruments adopted at the 68th, 69th and 70th Sessions of the Conference were submitted to the Senate on 15 November 1988 and to the House of Representatives on 18 November 1988.

Tunisia. The instruments adopted at the 65th, 70th, 71st and 74th Sessions of the Conference, as well as Conventions Nos. 145 to 147 and Recommendations Nos. 154 and 155 (62nd Session), Convention No. 159 and Recommendation No. 167 (69th Session), have been submitted to the Chamber of Representatives.

Turkey. Conventions Nos. 163 to 166 and Recommendations Nos. 173 and 174, adopted at the 74th Session of the Conference, were submitted to the Grand National Assembly on 12 April 1988.

Ukrainian SSR. The instruments adopted at the 74th Session of the Conference have been submitted to the Supreme Soviet.

USSR. The instruments adopted at the 74th Session of the Conference have been submitted to the Supreme Soviet.

United Arab Emirates. The instruments adopted at the 74th Session of the Conference have been submitted to the competent authorities.

Uruguay. Recommendation No. 168, adopted at the 69th Session of the Conference, Convention No. 160 and Recommendation No. 170 (71st Session) and Convention No. 162 (72nd Session) were submitted to the General Assembly in May 1988. Ratification of Convention No. 162 was proposed.

Venezuela. The instruments adopted at the 70th and 72nd Sessions of the Conference have been submitted to Congress.

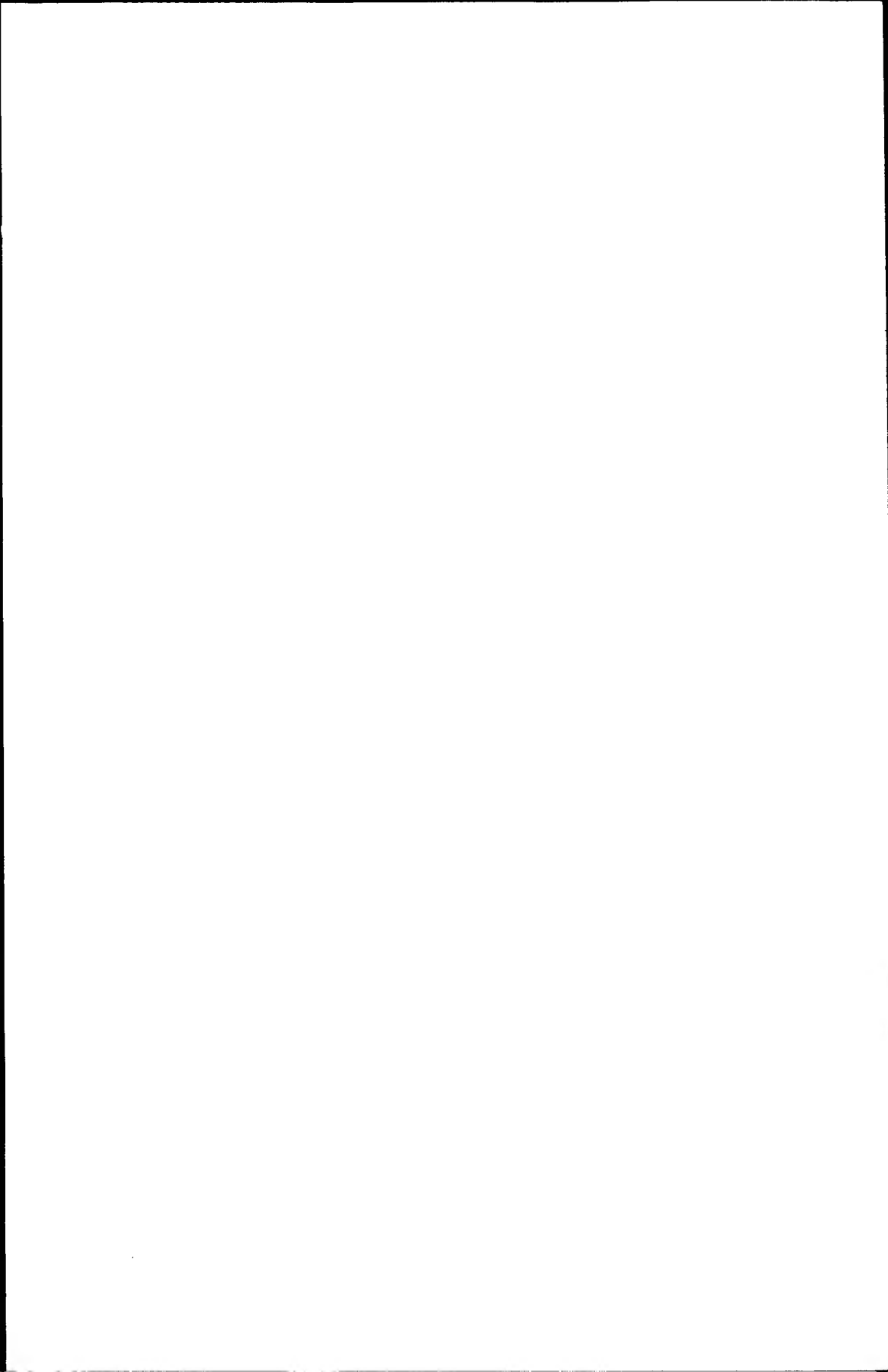
Yemen. Conventions Nos. 160 and 161, adopted at the 71st Session of the Conference, and Convention No. 162 (72nd Session) were submitted to the Council of Ministers on 22 November 1986. Recommendations Nos. 160 to 172 (65th to 72nd Sessions) were submitted on 31 December 1986.

Yugoslavia. The instruments adopted at the 74th Session of the Conference were submitted to the Federal Assembly on 3 October 1988.

Zambia. The instruments adopted at the 68th, 69th and 72nd Sessions of the Conference have been submitted to the National Assembly. Convention No. 159 has been ratified.











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International Labour Conference

76th Session 1989

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Report III  
(Part 4A)

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

General report  
and observations concerning particular countries

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International Labour Conference  
76th Session 1989

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Report III  
(Part 4 A)

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

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

(Articles 19, 22 and 35 of the Constitution)

General report  
and observations concerning particular countries

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The publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the areas or territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

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PART V OF THE CONVENTION (OLD-AGE BENEFITS) AND THE  
INVALIDITY, OLD-AGE AND SURVIVORS' BENEFITS  
CONVENTION, 1967 (NO. 128), AND RECOMMENDATION  
(NO. 131), WITH REGARD TO OLD-AGE BENEFIT

This part of the Report is published in a separate volume as  
Report III (Part 4B).

## INDEX TO COMMENTS MADE BY THE COMMITTEE, BY COUNTRY

Country	Observations made by the Committee (published in the present report) <sup>1</sup>	Direct requests addressed by the Committee to the Governments (not reproduced in the present report) <sup>2</sup>
Afghanistan . . . . .	General Report, para. 80. I A and B, Nos. 13, 95.	Art. 22, general. Art. 22, Nos. 95, 100, 111, 137, 139, 140, 142. Subm.
Albania . . . . .	I A.	
Algeria . . . . .	I B, Nos. 13, 62, 119, 120, 127.	Art. 22, Nos. 99, 120. Subm.
Angola . . . . .	III.	Art. 22, Nos. 19, 26.
Antigua and Barbuda . .	I B, No. 87. III.	Art. 22, No. 98.
Argentina . . . . .	I B, Nos. 3, 87, 98, 111.	Art. 22, Nos. 1, 26, 68, 87, 111, 124. Subm.
Australia . . . . .	I B, No. 100.	Art. 22, Nos. 87, 98, 100, 131, 150. Art. 35, No. 98.
Austria . . . . .	I B, Nos. 29, 98, 103, 111.	Art. 22, Nos. 102, 111, 122, 128. Subm.
Bahamas . . . . .	General Report, para. 88. I B, Nos. 81, 144.	Art. 22, general. Art. 22, Nos. 26, 29, 105. Subm.
Bangladesh . . . . .	I B, Nos. 29, 87, 98, 105, 107.	Art. 22, general. Art. 22, Nos. 29, 87, 105, 111. Subm.
Barbados . . . . .	I B, Nos. 100, 111.	Art. 22, Nos. 29, 87, 98, 102, 105, 111, 122, 128, 144.
Belgium . . . . .	I B, Nos. 87, 98, 122.	Subm.
Belize . . . . .		Art. 22, Nos. 22, 26, 29, 98. Subm.
Benin . . . . .		Art. 22, Nos. 26, 87, 98, 143. Subm.

<sup>1</sup> The roman numerals and letters refer to sections of Part Two of this report and the arabic numerals to the numbers of the Conventions.

<sup>2</sup> The abbreviations used in respect of direct requests are the following:

"Art. 22": application of ratified Conventions in member States.

"Art. 35": application of ratified Conventions in non-metropolitan territories.

"Subm.": submission of Conventions and Recommendations to the competent authorities.

The numbers refer to Conventions.

## REPORT OF THE COMMITTEE OF EXPERTS

Country	Observations made by the Committee (published in the present report)	Direct requests addressed by the Committee to the Governments (not reproduced in the present report)
Bolivia . . . . .	I B, Nos. 87, 103, 106, 107, 122, 129, 131. III.	Art. 22, Nos. 1, 20, 30, 87, 98, 102, 107, 111, 120, 122, 128, 131, 136.
Botswana . . . . .		Subm.
Brazil . . . . .	I B, Nos. 5, 91, 98, 103, 107, 122. III.	Art. 22, Nos. 12, 19, 26, 53, 94, 97, 99, 105, 107, 111, 115, 117, 118, 125, 131.
Bulgaria . . . . .	I B, No. 87.	Art. 22, No. 3.
Burkina Faso . . . . .	I B, Nos. 87, 98, 111.	Art. 22, Nos. 87, 111, 131, 143, 150. Subm.
Burma . . . . .	I B, Nos. 17, 87.	Art. 22, general. Subm.
Byelorussian SSR . . . . .	I B, Nos. 52, 87.	Art. 22, Nos. 98, 122.
Cameroon . . . . .	I B, Nos. 9, 29, 87.	Art. 22, general. Art. 22, Nos. 3, 9, 29, 108, 122, 143. Subm.
Canada . . . . .	I B, Nos. 87, 122.	Art. 22, No. 87. Subm.
Cape Verde . . . . .	General Report, paras. 80, 88. I A. III. '	Art. 22, Nos. 29, 81, 98, 100, 105, 111.
Central African Republic . . . . .	I B, Nos. 18, 19, 29, 33, 52, 81, 87, 105, 119. III.	Art. 22, general. Art. 22, Nos. 26, 29, 87, 105, 118.
Chad . . . . .	I B, Nos. 87, 98.	Art. 22, Nos. 26, 87. Subm.
Chile . . . . .	I B, Nos. 3, 9, 20, 35, 36, 37, 38, 111.	Art. 22, Nos. 14, 26, 29, 30, 37. Subm.
China . . . . .		Art. 22, No. 26. Subm.
Colombia . . . . .	I B, Nos. 3, 9, 22, 29, 87, 98, 106, 111.	Art. 22, Nos. 20, 26, 29, 87, 88, 99, 105, 111. Subm.
Comoros . . . . .		Art. 22, Nos. 26, 99. Subm.
Congo . . . . .	General Report, paras. 80, 88. I A and B, No. 87. III.	

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Country	Observations made by the Committee (published in the present report)	Direct requests addressed by the Committee to the Governments (not reproduced in the present report)
Costa Rica . . . . .	I B, Nos. 87, 98, 102, 122. III.	Art. 22, Nos. 87, 101, 102, 111, 131, 134, 137, 144, 147.
Côte d'Ivoire . . . . .	I B, Nos. 52, 87, 95.	Art. 22, Nos. 3, 98. Subm.
Cuba . . . . .	I B, Nos. 29, 87, 103, 105, 111.	Art. 22, Nos. 29, 91, 105, 110, 111, 122.
Cyprus . . . . .	I B, Nos. 87, 105, 114, 119.	Art. 22, Nos. 143, 158. Subm.
Czechoslovakia . . . . .	I B, No. 87.	Art. 22, No. 122. Subm.
Democratic Yemen . . . . .	General Report, paras. 80, 88. I A. III.	Art. 22, Nos. 29, 59, 105.
Denmark . . . . .	General Report, paras. 80, 88. I B, Nos. 81, 87, 98, 102, 111, 122, 129, 151. II A.	Art. 22, Nos. 62, 92, 102, 111, 139. Art. 35, Nos. 9, 53, 105, 122.
Djibouti . . . . .	General Report, paras. 80, 88. I A. III.	Art. 22, Nos. 1, 9, 16, 19, 29, 37, 38, 53, 63, 69, 73, 81, 91, 96, 100, 105, 120, 122, 125, 126.
Dominica . . . . .	General Report, para. 80.	Art. 22, general. Art. 22, Nos. 16, 26, 29, 87, 95, 105, 138. Subm.
Dominican Republic . . . . .	General Report, paras. 80, 88. I A and B, Nos. 29, 81, 87, 95, 98, 105, 111. III.	Art. 22, Nos. 29, 100, 111, 119.
Ecuador . . . . .	I B, Nos. 87, 98, 105, 111, 120, 139, 141.	Art. 22, Nos. 81, 105, 110, 111, 113, 123, 128, 131, 136, 139, 144. Subm.
Egypt . . . . .	I B, Nos. 87, 98, 106.	Art. 22, general. Art. 22, Nos. 9, 53, 55, 56, 62, 68, 71, 73, 87, 92, 134, 137, 139, 145, 149.
El Salvador . . . . .	General Report, para. 80. I A. III.	
Equatorial Guinea . . . . .		Art. 22, No. 103. Subm.
Ethiopia . . . . .	I B, Nos. 87, 98.	Art. 22, Nos. 98, 111. Subm.

Country	Observations made by the Committee (published in the present report)	Direct requests addressed by the Committee to the Governments (not reproduced in the present report)
Fiji . . . . .	I B, No. 98. III.	Art. 22, general. Art. 22, Nos. 29, 105.
Finland . . . . .	I B, Nos. 87, 98, 122, 128, 138.	Art. 22, Nos. 91, 128, 159.
France . . . . .	I B, Nos. 35, 36, 37, 38, 118, 134, 136. II A and B, Nos. 35, 36, 37, 38, 120.	Art. 22, Nos. 9, 29, 35, 36, 37, 38, 81, 118, 125, 129, 136, 148, 149, 152. Art. 35, Nos. 3, 35, 36, 37, 38, 63, 120, 122, 126, 127, 131, 139, 141, 142, 144, 145, 146. Subm.
Gabon . . . . .	General Report, para. 88. I B, Nos. 87, 98.	Art. 22, general. Art. 22, No. 87. Subm.
German Democratic Republic . . . . .	I B, Nos. 87, 111.	Subm.
Germany, Federal Republic of . . . . .	I B, Nos. 29, 87, 102, 111, 122.	Art. 22, Nos. 3, 29, 111, 128. Subm.
Ghana . . . . .	General Report, paras. 80, 88. I B, Nos. 30, 87, 105, 111, 115, 119, III.	Art. 22, general. Art. 22, Nos. 22, 26, 29, 30, 98, 100, 103, 105, 111, 150, 151.
Greece . . . . .	General Report, para. 88. I B, Nos. 29, 87, 98.	Art. 22, Nos. 9, 11, 29, 42, 71, 102, 122, 144, 150, 159. Subm.
Grenada . . . . .	General Report, paras. 80, 88, 113. I A. III.	Art. 22, general. Art. 22, Nos. 14, 26, 58, 81, 94, 95, 99, 105.
Guatemala . . . . .	I B, Nos. 87, 98, 105, 110.	Art. 22, general. Art. 22, Nos. 26, 98, 99, 110, 111. Subm.
Guinea . . . . .	I B, Nos. 81, 87, 119, 120, 134, 139, 148, 152. III.	Art. 22, Nos. 3, 26, 87, 98, 99, 115, 119, 122, 136, 139, 140, 143, 148, 149, 152.
Guinea-Bissau . . . . .	I B, Nos. 1, 18. III.	Art. 22, general. Art. 22, Nos. 26, 91, 98.
Guyana . . . . .	General Report, paras. 80, 88. I B, Nos. 42, 87.	Art. 22, general. Art. 22, Nos. 81, 111, 129, 131, 136, 137, 139, 144, 149, 150. Subm.
Haiti . . . . .	General Report, para. 113. I B, Nos. 24, 25, 29, 81, 87, 98, 105, III.	Art. 22, Nos. 14, 81, 106.
Honduras . . . . .	I B, No. 87.	Art. 22, No. 98. Subm.



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Ireland . . . . .	General Report, paras. 80, 88. I B, Nos. 23, 81, 105, 122.	Art. 22, general. Art. 22, Nos. 26, 29, 99, 100. Subm.
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Italy . . . . .	General Report, para. 88. I B, Nos. 81, 103, 129, 143, 146.	Art. 22, Nos. 16, 29, 74, 92, 97, 102, 105, 111, 134, 136, 138, 143, 147, 151. Subm.
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Mauritania	General Report, paras. 80, 88. I A and B, Nos. 22, 29, 53, 62, 81, 87, 94. III.	Art. 22, general. Art. 22, Nos. 29, 81, 102, 111, 118, 122.
Mauritius	General Report, paras. 88, 113. I B, Nos. 26, 32, 94, 98, 99, 105. III.	Art. 22, general. Art. 22, Nos. 29, 81, 105.
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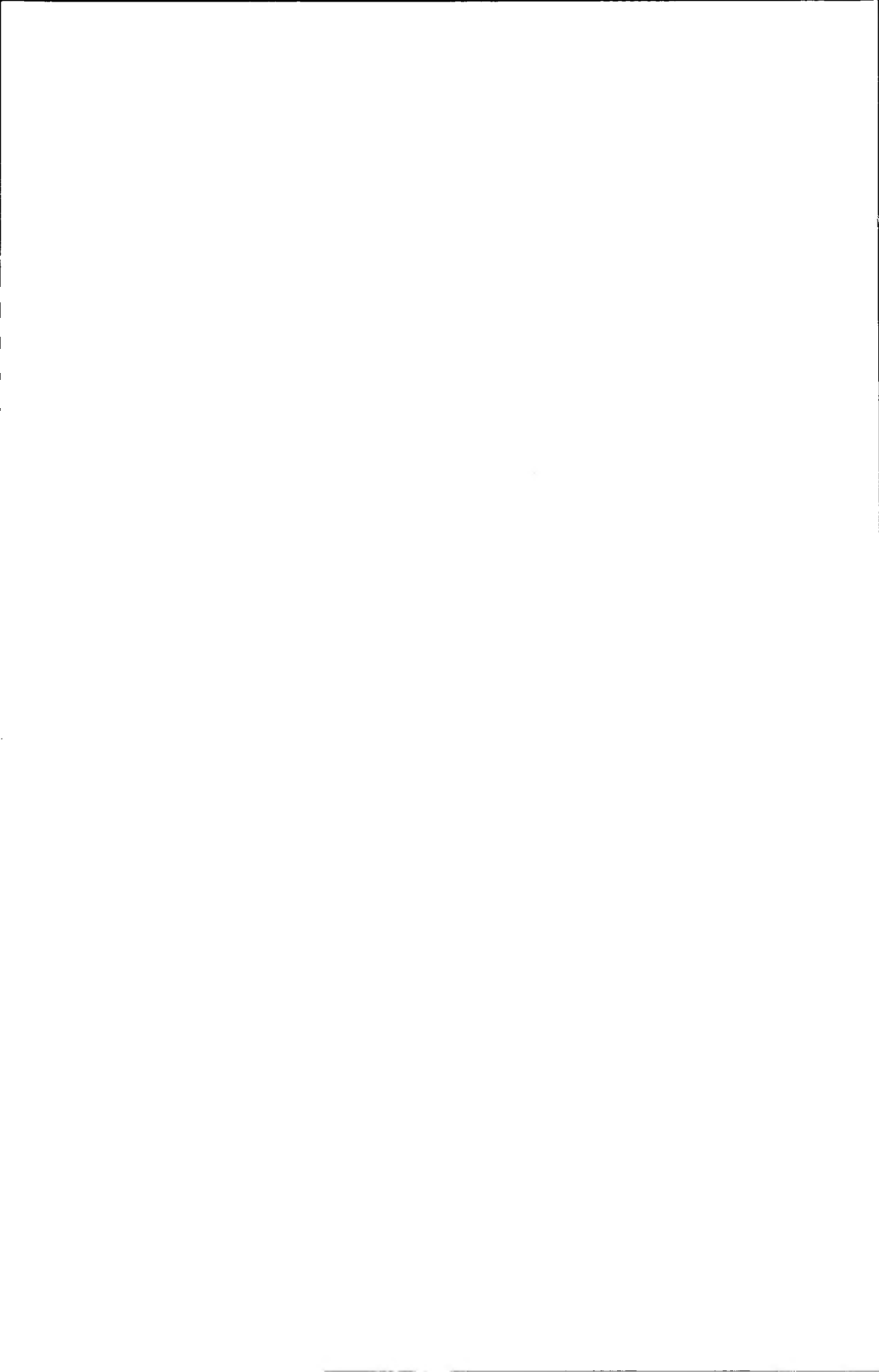
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PART ONE

**GENERAL REPORT**





# GENERAL REPORT

## I. INTRODUCTION

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by States Members of the International Labour Organisation on the action taken with regard to Conventions and Recommendations, held its 59th Session in Geneva from 9 to 22 March 1989. The Committee has the honour to present its report to the Governing Body.

2. The present composition of the Committee is as follows:

Mr. Benjamin AARON (United States),

Professor Emeritus of Law and former Director of the Institute of Industrial Relations, University of California, Los Angeles; former President, National Academy of Arbitrators; former President, Industrial Relations Research Association; former member of the Arbitration Services Advisory Committee of the Federal Mediation and Conciliation Service; member of the Public Review Board of the United Automobile, Aerospace and Agricultural Implement Workers' Union; former President of the International Society of Labour Law and Social Security;

Mr. Roberto AGO (Italy),

Judge of the International Court of Justice; Emeritus Professor of International Law, Faculty of Law, University of Rome; former member and President of the United Nations International Law Commission; President of the Vienna Conference for the Codification of the Law on Treaties (1968-69); former Chairman of the ILO Governing Body; Chairman of the Committee on Freedom of Association of the ILO Governing Body; member of the Institute of International Law; President of the Curatorium of the Academy of International Law at The Hague; member of the Permanent Court of Arbitration;

Mrs. Badria AL-AWADHI (Kuwait),

Lawyer; former Professor of Public International Law, Kuwait University; Professor and former Dean of the Faculty of Law, Kuwait; member of the International Commission of Jurists; member of the Committee of Experts on the Application of Arab Labour Conventions; Deputy Executive Secretary of the Regional Organisation for the Protection of the Marine Environment, Kuwait; former member of UNESCO Jury Committee on Peace in the

Mind of Man; Vice-President of the International Academy of Human Rights (Paris); member of the Group of Experts of the International Red Cross on International Humanitarian Law (Geneva); Vice-President of the International Federation of Women Lawyers; member of the International Council of Environmental Law;

Mr. Prafullachandra Natvarlal BHAGWATI (India),  
Former Chief Justice of India; former Chief Justice of the High Court of Gujarat; former Chairman, Legal Aid Committee and Judicial Reforms Committee, Government of Gujarat; former Chairman, Committee on Juridicare, Government of India; Chairman, Research Committee of the Indian Law Institute; member of the Executive Committee of the Indian Branch of the International Law Association; former Chairman of the Committee appointed by the Government of India for implementing legal aid schemes in the country; member of the International Committee on Human Rights of the International Law Association; member of the Editorial Committee of Reports of the Commonwealth; Chairman of the Editorial Committee for preparation of Encyclopaedia of Social Legislation in India; Chairman of the National Council for Social Audit of Technological Missions of the Government of India; Ombudsman for the national newspaper Times of India;

The Right Honourable Sir William DOUGLAS, PC, KCMG (Barbados),  
Ambassador; former Chief Justice of Barbados; former Chairman, Commonwealth Caribbean Council of Legal Education; former Chairman, Inter-American Juridical Committee; former Judge of the High Court of Jamaica;

Mr. Arnold GUBINSKI (Poland),  
Doctor of Laws; Professor of Law at the University of Warsaw;

Mr. Katswichi IKAWA (Japan),  
Former Director-General of the Treaties Bureau, Ministry of Foreign Affairs; former Ambassador of Japan to Switzerland, Iran and France;

Mr. Semion A. IVANOV (USSR),  
Head of the Labour Law Department at the Institute of State and Law of the Academy of Sciences of the USSR; Doctor of Legal Science, Professor, Scientist Emeritus of the RSFSR; member of the Advisory Council of the USSR Supreme Court; Vice-President of the International Society of Labour Law and Social Security; President of the Soviet Section of Labour Law and Social Security; former Professor of the International Faculty for the Teaching of Comparative Law (Strasbourg); member of the USSR Government delegation to the International Labour Conference from 1956 to 1976;

Mr. Bernd Baron von MAYDELL (Federal Republic of Germany),  
Professor of Civil Law, Labour Law and Social Security Law; Dean of the Faculty of Law and Economics of the University of Bonn;

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former Professor of Social Security Law at the Free University of Berlin (1975-81); Director of the Institute of Labour Law and Social Security at the University of Bonn;

Mr. Kéba MBAYE (Senegal),

Judge of the International Court of Justice; First Honorary President of the Supreme Court of Senegal; member of the Institute of International Law; Arbitrator of the International Centre for the Settlement of Disputes concerning Investments (ICSID); former President of the International Commission of Jurists; former President of the United Nations Commission on Human Rights; member of the Royal Academy of Overseas Science of Belgium; President, International Academy of Human Rights;

Mr. Benjamin Obi NWABUEZE (Nigeria),

LLD (London); Senior Advocate of Nigeria; 1980 Laureate of the Nigerian National Merit Award; former Professor of Law at the University of Nigeria; former Professor and Dean of the Faculty of Law at the University of Zambia; former member, Governing Council, Nigerian Institute of International Affairs; former member, Governing Council, Nigerian Institute of Advanced Legal Studies; member, Council of Legal Education;

Mr. Edilbert RAZAFINDRALAMBO (Madagascar),

First Honorary President of the Supreme Court of Madagascar; former President of the High Court of Justice; former Professor of Law at the University at Antananarivo; former Arbitrator of the ICSID and of the International Civil Aviation Organisation; substitute member of the Administrative Tribunal of the ILO; member of the International Council for Commercial Arbitration; member of the Court of Arbitration of the International Chamber of Commerce; member of the United Nations International Law Commission;

Mr. José María RUDA (Argentina),

President of the International Court of Justice; member of the Institute of International Law; former representative of Argentina to the United Nations; former Under-Secretary of Foreign Affairs; former member and President of the United Nations International Law Commission; member of the Permanent Court of Arbitration;

Mr. Arnaldo Lopes SUSSEKIND (Brazil),

Former Judge of the Supreme Labour Tribunal; former Principal Law Officer of the Labour Courts Law Office; member of the Latin American Academy of Labour Law and Social Security Law and of the Brazilian Academy of Law; former Minister of Labour and Social Insurance; former Government representative of Brazil in the ILO Governing Body;

Mr. Antti Johannes SUVIRANTA (Finland),

President of the Supreme Administrative Court of Finland; former President of the Finnish Labour Court; former Professor of

Labour Law at Helsinki University; former member of the Executive Committee of the International Society for Labour Law and Social Security; member of the Finnish Academy of Science and Letters; President of the International Association of Supreme Administrative Jurisdictions; Chairman of the Finnish section of the International Association of Legal Sciences;

Mr. Boon Chiang TAN (Singapore),  
BBM, PPA, LLB, Dip. Arts (London), Barrister-at-Law and Solicitor, Singapore; former President of the Industrial Arbitration Court of Singapore; former member of the Court and Council of the University of Singapore; former President, Copyright Tribunal; member, Income Tax Board of Review; Valuation Review Board; Hotels Licensing Board; Tenants' Compensation Board; former Vice-President (Asia) of the International Society of Labour Law and Social Security;

Mr. Fernando URIBE RESTREPO (Colombia),  
Judge of the Court of Justice of the Cartagena Accord; former President of the Supreme Court of Colombia; former Professor of International Labour Law at the National University of Colombia; former Professor of Labour Law, Universities Externado de Colombia and Pontificia Javeriana; former Professor of Philosophy of Law at the Bolivarian University of Medellín;

Mr. Jean Maurice VERDIER (France),  
Professor of Labour Law at the University of Paris X; Honorary President of the University of Paris X; Honorary Dean of the Faculty of Law and Economics; Director of the Institute for Research on Undertakings and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); former Professor of the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; President of the French Association of Labour and Social Security Law;

Mr. Budislav VUKAS (Yugoslavia),  
Professor of Public International Law and Director of the Institute of International and Comparative Law of the University of Zagreb Faculty of Law; member of the Permanent Court of Arbitration;

Sir John WOOD (United Kingdom),  
CBE, LL.M.; Barrister; Edward Bramley Professor of Law at the University of Sheffield; Chairman of the Central Arbitration Committee since 1976.

3. The Committee elected Mr. J.M. RUDA as Chairman and Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

4. The Committee noted the departure of Mr. Francis Blanchard, the outgoing Director-General of the ILO. It wishes to take this opportunity to stress the special interest he has always taken in its

work, and to express its deep gratitude to him for doing so. The new Director-General, Mr. Michel Hansenne, in keeping with tradition, attended the opening meeting of this session.

5. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

- (i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;
- (ii) the information and reports concerning Conventions and Recommendations, communicated by Members in accordance with article 19 of the Constitution;
- (iii) the information and reports on measures taken by Members in accordance with article 35 of the Constitution.

6. The Committee, after an examination and evaluation of the above-mentioned reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and other instruments and their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 74 to 103 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 74 to 103 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 104 to 116 below). Part Three, which is published in a separate volume (Report III (Part 4B)) reviews the reports supplied by governments under article 19 of the Constitution on the Social Security (Minimum Standards) Convention, 1952 (No. 102), with reference to Part V thereof (Old-age benefit), and the Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131), 1967, to the extent that they cover old-age benefits. (See paragraphs 117 to 121 below.)

7. In carrying out its task, which consists in indicating the extent to which the situation in each State appears to be in conformity with the terms of the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. One such method is the spirit of mutual respect, co-operation and responsibility which has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standard-setting obligations.

8. Accordingly, the Committee noted with great interest the important debate prompted by the consideration, at the June 1988 Session of the Conference, of the Report submitted by the

Director-General on "Human rights - a common responsibility", on the occasion of the 40th anniversary of the Universal Declaration of Human Rights. Both the Conference and the Committee on the Application of Standards stressed the vital contribution which the ILO had made towards the realisation of human rights through its action to define those rights and to have them applied. The Committee shares the Conference Committee's conviction that, in order to promote human rights, the ILO must continue to set standards adapted to developments in the world and endeavour to improve the application of the procedures by which it ensures respect for such standards.

9. The Committee also noted that the Office had played an active part in the many events organised throughout the world to commemorate the 40th anniversary of the Universal Declaration of Human Rights, thereby promoting awareness of the very special responsibility that ILO must assume within the international community, by virtue of its mandate, its tripartite structure and its long history, in upholding all the human rights which fall within its competence and whose enjoyment is still hampered by so many obstacles in the world today.

10. This year, as the International Labour Organisation celebrates the 70th Anniversary of its inception, the Committee, for its part, is determined to continue to perform the duties entrusted to it to the best of its ability. In doing so, the Committee is fully aware of the circumstances in which it must perform its duties; indeed, the considerations set out in the preamble of the Constitution of the ILO in 1919 are still as topical as ever, namely, that universal and lasting peace can be established only if it is based upon social justice; that conditions exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and that the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations. The Committee is confident that the ILO will meet the challenges confronting it and, in particular, that it will continue to ensure that the most vulnerable and the most destitute receive the attention they deserve, both within and among nations.

## II. GENERAL

### Membership of the Organisation

11. Since the Committee's last session the number of member States of the ILO has remained at 150.

### New standards adopted by the Conference in 1988

12. The Committee has noted that at its 75th Session (June 1988), the International Labour Conference adopted the Safety and Health in Construction Convention (No. 167) and Recommendation (No. 175), 1988, and the Employment Promotion and Protection against Unemployment Convention (No. 168) and Recommendation, 1988 (No. 176).

Obligations binding member States

13. The Labour Statistics Convention, 1985 (No. 160) came into force on 24 April 1988. The Asbestos Convention, 1986 (No. 162) will come into force on 16 June 1989.

14. In 1988, 90 ratifications by 27 member States were registered. The total number of ratifications at 31 December 1988 was 5,401.

15. In 1988, the Director-General registered the denunciation of the Underground Work (Women) Convention, 1935 (No. 45), by Australia, Ireland, Luxembourg and the United Kingdom. He also registered the denunciation by Luxembourg of the Protection against Accidents (Dockers) Convention, 1929 (No. 28), and by the Netherlands of the Employment Injury Benefits Convention, 1964 (No. 121) (schedule I amended in 1980). This brings the total number of denunciations not accompanied by the ratification of a revised Convention to 54.

16. In their communications addressed to the Director-General of the ILO, the governments of Australia, Ireland, Luxembourg and the United Kingdom explained their denunciation of Convention No. 45 by stating that the Convention is not suited to present technological and social conditions and provides for unjustified discrimination against women. The Government of Australia, in particular, stated that, as a party to the United Nations Convention on the Elimination of All Forms of Discrimination against Women, it was bound to review its protective legislation periodically, and that it had decided to denounce Convention No. 45 on that account. With regard to the denunciation of Convention No. 121 by the Government of the Netherlands, the latter stated that its denunciation had become inevitable, because of increasing divergence between that instrument and Dutch legislation, which was primarily due to the fact that the principle of occupational risk underlying the Convention had been replaced by that of social risk in the Netherlands.

17. In 1988, four new declarations, including three without modifications, were registered concerning the application of Conventions to non-metropolitan territories by the Netherlands and the United Kingdom. The number of declarations on 31 December 1988 stood at 2,003 without modifications and 70 with modifications. The number of non-metropolitan territories was 31.

Constitutional and other procedures

18. The Committee was informed of the following decisions taken by the Governing Body in cases involving recourse to the constitutional procedures of complaint and representation and other procedures.

19. At its 240th Session (May-June 1988), the Governing Body noted that the complaint of the Government of Tunisia under article 26 of the Constitution on the observation, by the Libyan Arab Jamahiriya, of the Protection of Wages Convention, 1949 (No. 95), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118), had been withdrawn after a settlement between the parties

had been reached through the good offices of the Office. As a result, the Governing Body declared the matter closed.

20. At its 240th, 241st and 242nd Sessions (May-June and November 1988 and February-March 1989), the Governing Body examined the complaint concerning the observance, by Nicaragua, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) presented by several Employer delegates to the 73rd Session (1987) of the Conference under article 26 of the Constitution. At its most recent session (February-March 1989), the Governing Body, acting on a recommendation of the Committee on Freedom of Association, instructed the Director-General to take the appropriate preparatory measures so that the Governing Body may have before it, at its next session, proposals concerning the composition of a commission of inquiry and the financial arrangements necessary for the work of this commission in the event that the Committee and the Governing Body consider to be unsatisfactory such information as may be supplied by the Government in reply to the Committee's recent requests and the Governing Body consequently decides to establish such a commission.

21. At its 240th Session (May-June 1988) the Governing Body decided to suspend the procedure concerning the representation made by the General Federation of Egyptian Trade Unions under article 24 of the Constitution of the ILO, alleging the non-observance by the Libyan Arab Jamahiriya of the Protection of Wages Convention, 1949 (No. 95) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), pending the results of ongoing consultations, under the auspices of the ILO, between the interested parties.

22. The representation submitted under article 24 of the Constitution by the Trade Union Confederation of Workers' Commissions alleging non-observance by Spain of the Minimum Wage Fixing Convention, 1970 (No. 131) will be examined by the Governing Body at a future session.

23. The Governing Body also has before it a representation submitted in 1987 under article 24 of the Constitution by the Ontario Secondary School Teachers' Federation, alleging non-observance by the USSR of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122). Consideration of this representation has been postponed by the Governing Body pending further developments, some of which have already been brought to the attention of the Committee.

24. By a communication dated 11 May 1988, the Congress of South African Trade Unions (COSATU) submitted to the International Labour Office a complaint against the Republic of South Africa concerning violation of freedom of association. The Republic of South Africa is bound neither by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In accordance with the procedure for the examination of complaints concerning violations of trade union rights, established in 1950 by agreement between the United Nations and the ILO, before the Governing Body refers to the Fact-Finding and Conciliation Commission on Freedom of Association a



complaint lodged against a Member of the United Nations which is not a Member of the ILO, such a complaint has to be transmitted to the Economic and Social Council of the United Nations (ECOSOC) for examination. In the circumstances, the Governing Body decided at its 240th Session (May-June 1988) to refer the complaint to ECOSOC for examination, noting that ECOSOC will decide what measures are to be taken in the matter. At the request of ECOSOC, the Secretary-General of the United Nations requested the Government of South Africa to consent to the referral of the complaint to the Fact-Finding and Conciliation Commission of the ILO. By a communication dated 27 February 1989, addressed to the Secretary-General of the United Nations, the Government of South Africa stated that it would be premature to refer the complaint to the Fact-Finding and Conciliation Commission.

25. Furthermore, the Committee noted that the Committee on Freedom of Association of the Governing Body, in several of the cases it had examined, had recommended that the Committee's attention should be drawn to certain aspects of the conclusions adopted. This relates in particular to Turkey (Cases Nos. 997, 999 and 1029), Paraguay (Case No. 1341), Pakistan (Case No. 1383), the United Kingdom (Case No. 1391), the Dominican Republic (Case No. 1393), Haiti (Case No. 1396), Burkina Faso (Case No. 1405), Denmark (Cases Nos. 1418, 1443 and 1470), Canada (British Columbia) (Case No. 1430), Indonesia (Case No. 1431), Colombia (Cases Nos. 1434 and 1465), the Philippines (Case No. 1444), Norway (Case No. 1445), Peru (Case No. 1450), Iceland (Case No. 1458) and Guatemala (Case No. 1459).

26. In its 257th, 260th and 263rd Reports, the Committee on Freedom of Association submitted interim conclusions to the Governing Body concerning Turkey, in respect of which a representation had been submitted under article 24 of the Constitution by the General Confederation of Norwegian Trade Unions, concerning the non-application of Conventions Nos. 11 and 98, as well as numerous complaints submitted by several international trade union organisations (Cases Nos. 997, 999 and 1029).

### Seventh African Regional Conference

27. The Seventh African Regional Conference of the ILO was held in Harare from 29 November to 7 December 1988. In addition to the discussion of the Report of the Director-General, which was devoted to recent developments in labour and social matters in South Africa and Namibia and to women's work in Africa, the agenda of the conference included two items, namely: (i) rural and urban training in Africa, and (ii) co-operatives.

28. The Conference adopted seven resolutions, concerning: the promotion of the co-operative movement in Africa; southern Africa and apartheid; economic development and social progress in Africa; the promotion of women workers' activities within the ILO Plan of Action; the protection of the working and general environment in the African region; respect for human rights and fundamental freedoms; and the financing of delegations to the International Labour Conference.

29. In its resolution on economic development and social progress in Africa, the Conference requests the Director-General of the ILO to strengthen the link between technical co-operation in the region and international labour standards. In its resolution concerning respect for human rights and fundamental freedoms, the Conference recalls the part played by the ILO in defence of workers' rights, through its supervisory machinery; in particular, it invites the governments of the region to ratify and apply the Conventions relating to basic human rights issues (freedom of association, forced labour and equality of opportunity and treatment), and the Director-General of the ILO to make every effort to ensure respect for human rights and trade union rights in Africa, including, in particular, the programmes of assistance to employers' and workers' organisations and the training programmes relating to international labour standards.

Functions in regard to other international and  
regional instruments

International Covenant on Economic,  
Social and Cultural Rights

30. In accordance with the procedure approved by the Governing Body at its 236th Session (May 1987), the International Labour Office, by a communication dated 18 November 1988, conveyed to the Secretary-General of the United Nations, for transmission to the Committee on Economic, Social and Cultural Rights, information concerning the situation in 13 States whose reports were communicated to the Office by the United Nations. Seven of these reports (Afghanistan, Canada, Jamaica, Netherlands, Panama, Rwanda, Trinidad and Tobago) concerned the implementation of Articles 6 to 9 of the Covenant, which deal with the right to work, the right to just and favourable conditions of work, freedom of association, and the right to social security. Ten other reports (Cameroon, Cyprus, France, Jamaica, Netherlands, Panama, Poland, Trinidad and Tobago, Tunisia, United Kingdom) concerned the implementation of Article 10 of the Covenant, as regards protection of maternity, and the protection of children and young persons in employment and work.

31. The Committee notes with interest that the Committee on Economic, Social and Cultural Rights, at its third session (Geneva, 6-24 February 1989), recommended, inter alia, that its co-operation with the specialised agencies should be strengthened with a view to defining better the various aspects of the rights set forth in the Covenant and the extent of their application.

32. The Committee also notes with interest that a number of recommendations aimed at strengthening co-operation with the specialised agencies were also made by the Meeting of Chairpersons of Human Rights Treaty Bodies held at Geneva from 10 to 14 October 1988.

European Code of Social Security and  
Protocol thereto

33. In accordance with the established supervisory procedure, 14 reports on the European Code of Social Security and the Protocol thereto, which had been submitted by 13 States having ratified these instruments, were sent to the Office by the Secretary-General of the Council of Europe, including the first report from France. The Committee has examined all these reports, except that of France which arrived late, as well as additional information, which enabled it to observe that the majority of the States parties to the Code and the Protocol continue to apply them in full or nearly in full. At the sitting of the Committee in which it examined the report on the application of the European Code of Social Security and the Protocol thereto, the Council of Europe was represented by Mr. S.G. Nagel, Head of the Social Security Section of the Economic and Social Affairs Directorate. The conclusions of the Committee regarding these reports will be sent to the Council of Europe. The Committee also noted that a representative of the ILO participated as technical adviser in the meeting of the Steering Committee for Social Security of the Council of Europe, held at Strasbourg in December 1988. As in previous years, the Steering Committee approved the conclusions of the Committee of Experts, thus expressing its confidence in the ILO's supervisory procedures.

Convention on the Elimination of All  
Forms of Discrimination against Women

34. Under Article 22 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, the specialised agencies are entitled to be represented at the consideration of the implementation of such provisions of the Convention as fall within the scope of their activities, and the Committee on the Elimination of Discrimination against Women (CEDAW), which is responsible for examining reports of States parties to the Convention on its implementation, may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities. The Committee of Experts has been informed that the International Labour Office has submitted to the Eighth Session of the CEDAW (February-March 1989) a report on the application of the Articles of the Convention in areas which are within the scope of its activities, following a request by the CEDAW, and that a representative of the ILO attended the Eighth Session of the CEDAW. The Committee notes with interest that, at this session, the CEDAW adopted a General Recommendation on equal remuneration for work of equal value, in which it encourages the States parties to the United Nations Convention that have not yet ratified the Equal Remuneration Convention, 1951 (No. 100) to do so and to consider the establishment of job evaluation systems based on gender-neutral criteria, and of mechanisms to ensure the implementation of the principle of equal remuneration.

Collaboration with other international organisations

35. In the context of the collaboration established with other international organisations on questions concerning the supervision of the application of international instruments relating to subjects of common interest, copies of the reports received under article 22 of the Constitution were forwarded to the United Nations and to other specialised agencies and intergovernmental organisations with which the ILO has entered into special arrangements for this purpose.

36. Thus, in accordance with established practice, copies of the report received on the Indigenous and Tribal Populations Convention, 1957 (No. 107) were forwarded for comments to the United Nations, the United Nations Food and Agriculture Organisation (FAO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the World Health Organisation (WHO) and the Inter-American Indian Institute of the Organisation of American States. Also, a copy of a report on the Nursing Personnel Convention, 1977 (No. 149) was forwarded to the WHO, and copies of reports on the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) were sent to the WHO, UNESCO and the United Nations. A copy of a report on the Human Resources Development Convention, 1975 (No. 142) was forwarded to UNESCO. Also, copies of reports on the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) and on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) were forwarded to the International Maritime Organisation (IMO). Representatives of these organisations were invited to attend the sittings of the Committee of Experts at which the Conventions in question were discussed.

37. In the context of collaboration with the Council of Europe, an ILO representative attended, in an advisory capacity and in accordance with article 26 of the European Social Charter, the 84th, 85th, 86th, 87th, 88th and 89th Sessions of the Committee of Independent Experts set up to supervise the application of the Charter, held in Strasbourg in April, May, July and October 1988 and January 1989.

38. The Committee was informed that the Additional Protocol to the European Social Charter was signed in Strasbourg, France, on 5 May 1988, by the following nine States: Cyprus, Federal Republic of Germany, Greece, Iceland, Italy, Luxembourg, Spain, Sweden and Turkey. The object of the Additional Protocol is to expand the rights already recognised by the Social Charter by adding the following four rights: the right to equal opportunity and treatment in the area of employment and occupation, without discrimination based on sex; the right to information and consultation within the undertaking; the right to take part in the determination and improvement of working conditions and the work environment; and the right of older persons to social protection. At the request of the Council of Europe, the International Labour Office collaborated in the formulation of the Additional Protocol.

39. The Committee noted with interest the publication of the Council of Europe (Strasbourg, 1989) concerning the symposium held at the University of Granada (Spain) on the occasion of the 25th anniversary of the signing of the European Social Charter (26-27 October 1987). In particular, it noted that during the

symposium much attention had been devoted to the ILO's standards and supervisory procedures and bodies.

Questions concerning the application  
of Conventions

Application of Conventions to  
offshore industrial installations

40. Between 1981 and 1987, the Committee considered the applicability of international labour Conventions to offshore industrial installations used in the exploration and extraction of mineral and petroleum resources at sea, and invited governments to submit information on the extent to which, and the manner in which, the Conventions they had ratified were applied to work in such installations. It also welcomed employers' and workers' organisations' comments on these matters.

41. The Committee already noted in its 1987 report that a total of 61 governments had supplied replies (some of them on several occasions) and that the Committee had also received two comments from employers' organisations and two from workers' organisations. It went on to note with interest that a preliminary study was being undertaken with a view to determining the main problems which should be examined in this very complex field, and proposed to examine these questions further after the preliminary study had been completed.

42. The Committee has now learned that for this purpose the Office commissioned a preliminary report from a specialist consultant with a view to defining the issues to be retained for further research; this report was completed in the course of 1988. The report identifies a number of areas in which further research and analysis are necessary.

43. The first results from the dual nature of the installations used in offshore operations. In so far as they can be considered as ships, subject to the regime of the high seas, it is the law of the flag State that applies and relevant Conventions will be applicable in so far as ratified by that State. All offshore installations operating within the limits of national jurisdiction are under the sovereignty or exclusive jurisdiction of the coastal State. Therefore, it is the coastal State's legislation, and the Conventions ratified by it, that are applicable.

44. This does not necessarily mean, however, that the law of the coastal State will be applied to all aspects of labour relations on board offshore installations. The tendency is for these to come under the jurisdiction of the flag State, first, because they relate to internal organisation on board, which is generally left to the flag State and, secondly, because they are not an integral part of the mining regime which is in the exclusive competence of the coastal State. Nevertheless, there are certain aspects of working conditions over which the coastal State will exercise jurisdiction and control in so far as they have an impact on matters such as safety, health and seaworthiness. The fact that the coastal State, where labour conditions relevant to these matters are concerned, may make a dual

reference to the legislation of (and the Conventions ratified by) both the flag State and the coastal State, may give rise to conflicts of law but, on the other hand, ensures greater protection for the workers.

45. The consultant's report stresses the importance, for an adequate guarantee of working conditions on board offshore installations, of a system of inspection, and refers to the dual responsibility for inspection: as far as shipping aspects are concerned, by the maritime authorities of the flag State and - as regards exploitation activities - by the mining or other competent authority of the coastal State which may, as indicated above, extend its competence to labour conditions in so far as they affect safety and health.

46. A second duality relates to the personnel engaged in offshore activities irrespective of the nature of the structure - ship or mining installation - on which they work. Thus, mining or diving personnel engaged on mobile installations classified as ships may, under the legislation of the flag State, be assimilated to the crew for some or all purposes, or they may be subject to separate regulations. On the other hand, there may be seafarers working from fixed platforms alongside the mining personnel. A thorough analysis of such situations seems necessary to determine the extent of applicability of the maritime labour Conventions ratified by the flag State.

47. The consultant's report also examines the applicability of Conventions to offshore activities. In addition to the basic human rights Conventions which are of universal application, it identifies a number of other Conventions whose application offshore is of major significance, in particular the Labour Inspection Convention, 1947 (No. 81) and the principal occupational safety and health Conventions. It raises the problem of determining which Conventions are applicable in fields, such as social security, for which separate maritime Conventions have been adopted, and identifies a number of other issues calling for further examination such as the relevance and applicability of some of the promotional Conventions.

48. The Committee feels that it would be premature at this stage for it to comment on the various points raised in the information just noted above as a result of the consultant's preliminary report to the Office. The Committee wishes, however, to thank both the Office and the consultant for their contribution to a fuller appreciation of the subject-matter.

49. The Committee expresses the hope that in due course a comparative study of the law and practice of a selected number of countries (perhaps chosen among coastal States having relatively major operations offshore) may be carried out. As a first step, perhaps the scope of that study could bear essentially on the currently more common type of operations offshore, i.e. those relating to petroleum. The said study could take into account the information previously collected by the Committee, the preliminary report of the consultant, any other information available to the Office as well as the findings of further specific research. However, the Committee is aware that a study of this kind could be made only if and when resources for it were available.

Application of Conventions in export  
processing zones or enterprises

50. As the Committee indicated in its 1987 report, it is continuing its consideration of this question, where appropriate, within the framework of its regular supervision of the application of ratified Conventions, namely, in the observations and direct requests addressed to the countries concerned.

Application of the Employment Policy  
Convention, 1964 (No. 122)

51. This year, the Committee has examined the application of the Convention in 50 countries. As usual, it has made observations and direct requests addressed to individual countries which have ratified the Convention, in some cases dealing with positive measures taken and developments or difficulties noted in the implementation of the Convention's aims, in others asking for further information on the basis of the report form.

52. In fulfilling its supervisory function, which, because of the nature and scope of the Convention, is a complicated one, the Committee has been helped by governments' reports, and in the majority of cases, including some from developing countries (e.g. Tunisia), it much appreciates the detail and documentation provided. In some cases - still, perhaps, relatively few - the reports are supplemented by observations from employers' (Finland, Turkey) or workers' (Austria, Costa Rica, Spain, United Kingdom) organisations; such observations give the Committee a valuable insight into the practical application of the policies being pursued, coming as they do from well-informed and directly involved bodies. As in previous years, the Committee has also had the benefit of the essential support of the ILO's Employment and Development Department and, where appropriate, the regional office responsible for employment promotion in Latin America and the Caribbean (PREALC). The Committee has noted with interest the greater number of governments which in response to the Committee's earlier request have included in their reports information on technical co-operation in employment which is planned (e.g. Cameroon, Guinea, Zambia in Africa; Bolivia, Brazil, Costa Rica in Latin America; Thailand in Asia), requested (Islamic Republic of Iran) or in progress (Hungary). Despite the difficulties involved, the Committee looks favourably on an approach which takes account of the inherent relations between standards, the supervision of their application, and technical co-operation programmes.

53. In the case of the industrialised market economy countries (IMEC), governments' reports examined this year have in many cases shown a continuation of the trend towards rising employment and falling levels of unemployment noted last year (e.g. Austria, Canada, Denmark, Finland, Federal Republic of Germany, New Zealand, United Kingdom). Some of these countries (especially Austria, Finland, New Zealand) have consistently maintained a lower-than-average level of unemployment over the last decade or so, when overall levels in the IMEC countries have been high by historical standards. In the Committee's view, it is clear that the most successful countries in this respect are ones which

have pursued active employment policies along the lines called for in Article 1 of the Convention, by the methods advocated in Articles 2 and 3. Most of the IMEC countries have supplied detailed employment and unemployment statistics - vital to an understanding of the situation and measures which should be taken - showing a persistence of special difficulties among women, the young and older (especially long-term) unemployed. Measures have been taken (particularly training schemes) by most countries (e.g. Federal Republic of Germany, Ireland, United Kingdom) to deal with the younger unemployed, thus removing them from the unemployment statistics; and in some countries (e.g. Austria, Denmark) early retirement has similarly removed older workers from the statistics. In this context, the Committee recalls its general survey on working time in 1984; it has now noted both the connection made by some governments (e.g. Belgium) between employment aims and the reduction of working time per week or per year, and the tendency towards a reduction of the length of the working life of the population. At the same time, the Committee continues to entertain fears as to certain "flexible" forms of work contract - in reality, part-time or temporary jobs largely concentrated on women in the service sector - which, whilst in some respects facilitating operations for the employer (and thus enabling short-term employment generation), may deprive workers of the full employment they would wish for and which is the aim of Article 1 of the Convention.

54. There appears, from an examination of the reports of several developing countries in Latin America and the Caribbean, and despite contrasts from one country to another and the difficulties arising from weak investment and growth in 1986-87, to have been a more favourable employment situation. The rate of open unemployment has decreased in urban areas in some countries (e.g. Brazil, Costa Rica), whereas in others (e.g. Panama) it has remained high, and in still others (e.g. Bolivia) it has continued to increase. Development plans aim in particular to balance employment objectives against the reduction of inflation, to reduce the public sector, and to encourage employment in the private sector. There has been rapid growth in the private, informal sector, which has absorbed part of the unemployed or underemployed workforce, including workers who have fallen victim to public sector retrenchment (e.g. Bolivia). Several governments (e.g. Bolivia, Brazil, Costa Rica) have provided information on programmes to integrate the most vulnerable members of the population into the labour market or promote employment in regions hitherto relatively neglected in terms of national development (e.g. the "work front" projects in the Nordeste of Brazil). The Committee has remarked that some emergency employment-creation programmes obtained better results when consultations took place with interested persons (e.g. the Social Priorities Programme in Brazil). It notes the difficulties referred to by one country (Bolivia) in consulting the informal sector: it would like to think that greater attention will be given to the measures to be taken to give full effect to Article 3 of the Convention in respect of consultations with persons occupied in the informal and the rural sectors in particular. The same applies to developing countries in Africa and Asia, from which a number of reports were examined but for which the Committee has less information as to the practical application of the Convention. It nevertheless



notes that in difficult circumstances some countries still made employment promotion one of the main aims of national development strategy (e.g. Tunisia, Zambia); others have relied on the private sector to generate employment (e.g. Morocco, Senegal).

55. Generally speaking, the international economic environment - and particularly the massive debt problem - makes it extremely difficult for developing countries such as those in Africa or Latin America to formulate and pursue a policy for employment. The Committee has been expressing its concern about this for several years. In its previous report it noted the conclusions of the High-Level Meeting on Employment and Structural Adjustment (November 1987) which followed up two resolutions of the Conference of the ILO of 1984 and 1986. It now notes that the Workers' members of the Committee on the Application of Standards at the 75th Session of the Conference (June 1988) stressed the importance of the conclusions of that meeting and especially supported those dealing with the need for better international co-ordination between economic, financial and monetary policies and the role of the ILO in ensuring that structural adjustment policies do not conflict with the ILO's aims, most notably the aim of full employment. The Committee has noted with interest the information supplied to the Employment Committee of the Governing Body (241st Session, November 1988) as to the follow-up to the High-Level Meeting, and that this has become one of the priorities of the ILO's Programme and Budget for 1990-91. As for the Committee's own role in this particular matter, the Committee notes that in June 1988 certain Government members of the Committee on the Application of Standards of the Conference invited the Committee of Experts to continue its examination of the problems of debt and international trade. This year the Committee has, in an observation addressed to a Latin American country (Costa Rica), particularly noted the comments of a national workers' organisation alleging that the stabilisation and structural adjustment programmes prepared with the help of the international financial institutions had affected social policy measures and the conditions and standards of living; the Committee has nevertheless been able to note that the open unemployment rate in that country dropped, thanks to the implementation of an active employment policy in the terms of the Convention. In another case (an African country, Zambia), the Committee took note of information as to the Government's decision to abandon the adjustment programme prepared in agreement with the IMF, on account of its negative social effects and effects on the economy, unemployment and underemployment. Further, the report of one Government (Venezuela) (which has been noted but which could not be examined this year because of its late arrival) contains a statement that the measures imposed by the international financial institutions are diametrically opposed to the aims of the Convention: the country has recently experienced events which have brought out the seriousness of social tensions which arise from the debt problem and the policies implemented to deal with it. In this context, the Committee notes the resolution (No. 1989/15) adopted by the Human Rights Commission of the United Nations at its 45th Session on 2 March 1989, which decided that a further question as to foreign debt, economic adjustment policies and their effects on the full enjoyment of human rights, in particular the implementation of the Declaration on the Right to Development, should be included on the

agenda of its next session under the item "Problems related to the right to enjoy an adequate standard of living and the right to development".

56. This year the Committee has given particular attention to the examination of reports from the governments of socialist countries with planned economies. Abundant information has been provided on new employment policies formulated and implemented in the process of restructuring the economy. New systems for managing economic mechanisms have been devised with the aim of intensifying growth of the national income through increased labour productivity. These are based on the reform of state enterprises, for example in the case of the USSR by the Law of 30 June 1987 aimed at increasing the autonomy and responsibility of enterprises and enabling them to be closed down when they are not self-financing or viable. This new approach has already made itself felt on the labour market. For instance, in the USSR the Government's report indicates that 1 million workers have been reassigned or transferred in the first half of 1988; it states that reductions in overstaffing expected by the year 2000 in the material production sector could affect some 16 million workers. Various plant closures have occurred or are planned in other countries (e.g. Czechoslovakia, Hungary, Poland). The Committee has been able to appreciate the quantitative aspects of the problems, although qualitative ones are no less important as changes come in the sectoral structure and the occupational and geographical distribution of employment. In this context, it notes with interest the devotion of governments to the aim of full employment as a means of continuing to apply constitutional guarantees of the right to work. Governments' reports supply information on the policies applied to marry this overall objective to actual "effective" employment at enterprise level. Efforts will be made to recycle manpower, redefine the functions and responsibilities of the employment services, adopt employment-creation programmes in selected sectors and regions, and encourage the development of individual activities. Measures to introduce flexibility into employment (part-time work, home work, rearrangement of working time) are also envisaged. Social guarantees and compensation or indemnities are allowed for. The Committee has noted the active role of the trade unions both in this and in training and retraining, and more generally the application of new measures. The Committee would be glad if the governments of the socialist countries with planned economies would continue supplying information on the development of current reforms and employment policy measures applied to achieve the basic aims of the Convention (Article 1, paragraph 2(a), (b) and (c)).

57. The overall picture sketched here confirms the opinion of several members of the Conference Committee in 1988 that employment problems concern all countries, whatever their level of development or economic or employment system. Every country has to deal with problems of economic restructuring, structural adjustment, employment promotion and the skills of the workforce in one way or another. This global dimension of the problem highlights the suggestions in Part IX of Recommendation No. 169 of 1984 (relating to international technical co-operation and employment), and more generally the stress placed on the principle of solidarity in the Director-General's recent report on

human rights. The Committee for its part is more convinced than ever of the need for exchange of information among countries which have ratified the Convention: the need to study different experience and difficulties, and to evaluate the strategies and policies adopted. Given the general scope of the Convention, attention may be drawn also to the usefulness of information on the application of other standards, such as those dealing with employment services and the development of human resources, or those adopted at the last session of the Conference on employment promotion and social security, which established the links already presaged in the Employment Policy Recommendation, 1964 (No. 122). The principal means at the ILO's disposal - standards and technical co-operation - should be used together by emphasising their complementarity in order to reach the goals of the Convention, namely full, productive and freely chosen employment. Doubts may have been voiced from time to time in some countries as to the relevance of this goal or whether it should be a priority, but the discussions at the 75th Session of the Conference should help dispel any such doubts. The Conference Committee shared the Director-General's conviction, expressed in the report on human rights referred to, that the notion is not old-fashioned but something which is and should remain a vital aim of the national policy of all States; in so doing, it reassured the present Committee of the role it has seen for itself in the supervision of the application of the Convention. It is now more than ever necessary to recall and reaffirm the aim of the Convention and the need to pursue efforts to promote it. In fact several reports this year have tended to emphasise the improvement of overall employment creation and the lowering or stabilisation of unemployment. Nevertheless, it is equally clear that the practices of exclusion, marginalisation, segregation and discrimination are still rife and the necessary weight among the priorities of economic and social policies is not always given to the Convention. Comparable practices may hinder the full application of Article 3 of the Convention concerning the consultation of large numbers of workers (the unemployed, those with no security of employment, the self-employed) who are "persons affected" by the measures to be taken but are neither represented in nor party to the decisions. The Committee would also like to recall the need for extensive social dialogue, which in the sense of Article 3 implies not only consultation but also co-operation, especially in regard to structural adjustment policies which make severe demands on the workers.

### III. PROCEDURES OF DIRECT CONTACTS AND OTHER FORMS OF ASSISTANCE TO GOVERNMENTS

#### Direct contacts and assistance regarding standards

58. In 1988, direct contacts missions concerning freedom of association took place in Colombia, Côte d'Ivoire, Haiti and Nicaragua. Direct contacts took place in Bangladesh concerning the Indigenous and Tribal Populations Convention, 1957 (No. 107) and Guatemala concerning the Abolition of Forced Labour Convention, 1957

(No. 105). A direct contacts mission was undertaken in the Dominican Republic and Haiti with a view to the implementation of the recommendations made in 1983 by the Commission of Inquiry concerning Haitian workers in the sugar plantations of the Dominican Republic.

59. The regional advisers on standards, whose task consists essentially of assisting governments to fulfil their obligations under the ILO Constitution and ratified Conventions, visited the following countries: Africa: Angola, Cameroon, Congo, Kenya, Somalia, Zaire; America: Bolivia, Brazil, Costa Rica, Dominican Republic, El Salvador, Grenada, Guatemala, Honduras, Paraguay, Peru, Saint Lucia; Asia and the Pacific: Indonesia, Philippines, Sri Lanka.

60. The Committee welcomed the continuation of the programme of courses and seminars designed to familiarise the officials of national labour administrations and workers' and employers' representatives with the obligations of member States and with ILO procedures relating to Conventions and Recommendations.

61. During 1988, 19 officials, two employers and four observers, from the following 23 countries, undertook training (normally of two-weeks' duration) in the International Labour Standards Department: Angola, Brazil, Bulgaria, Burkina Faso, Burma, Côte d'Ivoire, Federal Republic of Germany, Guatemala, Guinea Bissau, Iraq, Kenya, Lesotho, Netherlands, Nicaragua, Rwanda, Somalia, Sudan, Swaziland, Tanzania, Tunisia, Uganda, Uruguay and Venezuela.

62. In 1988, two seminars on international labour standards were held for government officials directly responsible for questions related to international labour standards and, in particular, on the fulfilment by States of the obligations deriving from the ILO Constitution and ratified Conventions. The first, intended for the Caribbean countries, in which officials from 18 States and non-metropolitan territories participated, was held in Antigua; the second, intended for the countries of Asia and the Pacific, in which officials from 18 States and one non-metropolitan territory participated, was held in Yogyakarta (Indonesia). Furthermore, the regional advisers on standards participated in the work of a number of seminars organised by other ILO departments in various regions of the world.

63. Tripartite national seminars on international labour standards were held in the following countries: Dominican Republic, Egypt, Indonesia, Somalia and Sri Lanka. Furthermore, seminars on trade union rights in the public service were organised in Japan and Sweden, and on the Rural Workers' Organisations Convention, 1975 (No. 141), in Indonesia. Two national seminars intended for trade unionists were held, respectively, in Greece, on the Workers' Representatives Convention, 1971 (No. 135), and in Portugal, on human rights in general and on freedom of association in particular. Finally, a seminar on international labour standards intended for employers was held in Madagascar.

#### Standard-setting activities and technical co-operation

64. The Committee was informed of the new measures envisaged within the context of the Programme and Budget for 1990-91 in order to

strengthen the links between international labour standards and the ILO's technical co-operation activities. The Committee welcomes these measures and hopes that they will contribute to a better application in practice of ILO standards. The Committee continues to draw the attention of governments to the value of requesting ILO technical assistance in cases where it considers that the application of a ratified Convention is encountering difficulties which could be overcome with such assistance.

#### IV. ROLE OF EMPLOYERS' AND WORKERS' ORGANISATIONS

65. At each session, the Committee draws the attention of governments to the role that employers' and workers' organisations are called upon to play in the application of Conventions and Recommendations and to the fact that numerous Conventions require consultation with employers' and workers' organisations, or their collaboration in a variety of matters.

66. The Committee has once again noted with satisfaction that almost all governments have indicated in the reports supplied under article 22 of the Constitution the representative organisations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the ILO.<sup>1</sup> Almost all governments have also indicated the organisations to which they have communicated copies of the information supplied to the ILO on the submission to the competent authorities of the instruments adopted by the Conference<sup>2</sup> and the reports due under article 19 of the Constitution.<sup>3</sup>

67. In accordance with the established practice, the ILO sent to the representative organisations of employers and workers a letter concerning the various opportunities open to them of contributing to the implementation of Conventions and Recommendations, accompanied by relevant documentary material, and a list of the reports due from their respective governments and copies of the Committee's comments to which governments were invited to reply in their reports.

#### Observations by employers' and workers' organisations

68. Since its last session, the Committee has received 154 observations, 41 of which were communicated by employers' organisations and 113 by workers' organisations. This important figure shows the interest of employers' and workers' organisations in the implementation of ILO standards and reflects the constant efforts

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<sup>1</sup> Direct requests have been addressed to the following countries which have not provided such indications: Hungary, Indonesia and Thailand.

<sup>2</sup> Direct requests have been addressed to the following countries: Gabon, Ghana, Guatemala, Qatar and Tunisia.

<sup>3</sup> A direct request has been addressed to Indonesia.

made by the supervisory bodies and the Office to give interested organisations complete information on their role in this area.

69. The majority of observations received (146), relate to the application of ratified Conventions.<sup>1</sup> Eight observations relate to the reports provided by governments under article 19 of the Constitution, relating to the Social Security (Minimum Standards)

<sup>1</sup> Austria: Austrian Congress of Chambers of Labour on Conventions Nos. 102, 103 and 122; "Organisation representing the employees" on Conventions Nos. 111 and 128; Bangladesh: Bangladesh Employers' Association on Conventions Nos. 29, 87, 105 and 111; Chile: Confederation of Copper Workers on Convention No. 14; National Confederation of Food, Gastronomy, Hotel and Allied Workers' Trade Union Federations (GTGACH) on Conventions Nos. 37 and 111; National Federation of Telephone and Telecommunications Workers' Union, National Telephone Union, Administrative and Specialised Workers' Union (No. 9) of the Chilean Telephone Company on Convention No. 30; National Workers' Union of the Labour Security Institute, National Workers' Union of the Chilean Security Association, National Workers' Union of the Security Mutual of the Chilean Chamber of Construction, Trade Union of Workers, Engineers, specialists and other Workers of the Mining Company "El Indio" on Convention No. 37; Colombia: United Central Workers' Organisation (CUT) on Conventions Nos. 2, 87, 88, 98 and 111; Cyprus: Democratic Labour Federation of Cyprus (DEOK) on Convention No. 105; Denmark: Danish Federation of Trade Unions on Convention No. 111; Dominican Republic: General Workers' Central (CGT) on Conventions Nos. 29, 87, 98 and 105; Workers' Central "Clasistas" on Conventions Nos. 87 and 98; Workers' Central "Mayoritaria" (CTM) on Convention No. 105; Ecuador: Ecuador Central of Working Class Organisations (CEDOC) on Conventions Nos. 29, 81, 141 and 144; Finland: Central Organisation of Finnish Trade Unions (SAK) on Conventions Nos. 30, 87, 98, 111, 122 and 128; Commission for Local Authority Employers (KT) on Conventions Nos. 122 and 144; Confederation of Salaried Employees (TVK) on Conventions Nos. 98, 111 and 122; Employers' Confederation of Service Industries (LTK) on Conventions Nos. 111, 119 and 122; Finnish Employers' Confederation (STK) on Conventions Nos. 98, 111, 119, 122 and 128; Finnish Ship Officers' Union on Convention No. 91; France: National Federation of Maritime Trade Unions on Conventions Nos. 22, 56, 145, 146 and 147; National Union of Labour Directors in the Ministry of Agriculture on Convention No. 129; Social Affairs Union/Federation of Public Service on Convention No. 81; Gabon: Employers' Confederation of Gabon on Conventions Nos. 26, 87 and 111; Trade Union Confederation of Gabon on Conventions Nos. 87 and 98; Federal Republic of Germany: General Confederation of Trade Unions (DGB) on Conventions Nos. 87 and 111; Greece: Panhellenic Association of Women Telephone Operators on Convention No. 111; Guatemala: Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) on Conventions Nos. 26 and 99; India: "Bharatiya Mazdoor Sangh" on Conventions Nos. 1, 26 and 144; Italy: Confederation of Agriculture and Trade Union Association of Petrochemical Undertakings in the Public Service (ASAP) on Convention

(footnote continued on next page)

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Convention, 1952 (No. 102), and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) and Recommendation, 1967 (No. 131).<sup>1</sup>

(footnote continued from previous page)

No. 122; Confederation of Commerce on Convention No. 103; Petroleum Undertakings' Union on Convention No. 136; Japan: General Council of Japanese Trade Unions (SOHYO) on Convention No. 87; Netherlands: Confederation of the Netherlands Trade Union Movement (FNV), Central for Middle and Upper-Class Personnel (MHP) on Convention No. 87; Dutch Musicians Union (NTB) on Convention No. 96; Federation of Christian Trade Unions (CNV) on Conventions Nos. 87, 131 and 144; Netherlands Council of Employers' Federations (RCO) on Conventions Nos. 9, 29, 103, 122, 137 and 144; Norway: Norwegian Shipping and Offshore Federation on Conventions Nos. 53 and 69; Pakistan: Pakistan National Federation of Trade Unions on Conventions Nos. 87, 98 and 111; Society of Maritime Chief Engineers on Convention No. 22; Peru: Fishermen's Union of Puerto Supe on Conventions Nos. 68 and 71; Portugal: Confederation of Portuguese Industries (CIP) on Conventions Nos. 122 and 131; General Confederation of Portuguese Workers (CGTP-IN) on Convention No. 155; National Federation of Public Service Trade Unions on Convention No. 151; Romania: General Confederation of Labour - "Force Ouvrière" (France) on Convention No. 111; Spain: Democratic Confederation of Labour (Morocco) on Convention No. 97; Professional Union of Uniformed Police (SPPU) on Convention No. 155; Trade Union Confederation of Workers' Commissions on Conventions Nos. 87, 98, 111, 122, 131, 144 and 158; Sweden: Swedish Trade Union Confederation (LO) on Convention No. 160; Swedish Transport Workers' Union on Convention No. 137; Turkey: Confederation of Turkish Trade Unions (TURK-IS) on Conventions Nos. 98 and 111; Turkish Confederation of Employers' Associations (TISK) on Conventions Nos. 11, 98, 99, 102, 105, 111 and 122; United Kingdom: Trades Union Congress (TUC) on Conventions Nos. 87, 142 and 144; Transport and General Workers' Union, National Union of Seamen, National Union of Marine, Aviation and Shipping Transport Officers on Conventions Nos. 68, 69 and 92; Uruguay: Inter-Union Assembly of Workers-National Convention of Workers (PINT-CNT) on Conventions Nos. 26, 99 and 131.

In addition, observations have been received from the Trade Union International of Chemical, Oil and Allied Workers on the application in Côte d'Ivoire of Convention No. 95; from the International Federation of Plantation, Agricultural and Allied Workers on the application in India of Convention No. 107; from the World Federation of Trade Unions on the application of Convention No. 111 in the Federal Republic of Germany; and from the World Confederation of Organisations of the Teaching Profession on the application of Convention No. 87 in Panama.

<sup>1</sup> Austria: Austrian Congress of Chambers of Workers; Finland: Finnish Employers' Confederation (STK), Employers Confederation of Service Industries (LTK), Central Organisation of Finnish Trade Unions (SAK) and Confederation of Salaried Employees (TVK); India: "Bharatiya Mazdoor Sangh"; Sri Lanka: Employers' Federation of Ceylon; Turkey: Turkish Confederation of Employers' Associations.

70. The Committee notes that, of the observations received this year, 75 were transmitted directly to the ILO, which, in accordance with established practice, referred them to the governments concerned for comment. In 79 cases the governments transmitted the observations with their reports, sometimes adding their own comments. Part Two of this Report contains the Committee's comments on cases where the observation raised an issue concerning the application of ratified Conventions.

71. The Committee also examined a number of other observations by employers' and workers' organisations whose examination had been postponed from the last session, because the observations of the organisations or the replies of the governments had arrived just before or just after the session. It had to postpone the examination of a number of observations to its next session, when they were received too close to or even during the Committee's meeting, so as to allow sufficient time for the governments concerned to make comments and for the Committee to consider the matters involved.

72. The Committee notes that in most cases the occupational organisations had endeavoured to gather and present precise facts on the application in practice of ratified Conventions. It notes that the matters dealt with in its observations have touched on a very wide array of Conventions relating to the following subjects: the right to organise and the right to collective bargaining, employment policy, forced labour, protection of wages, discrimination, maritime work, migrant workers, labour inspection, weekly rest, tripartite consultations on international labour standards and so forth.

73. The Committee notes with interest that the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) has now received 45 ratifications. The Committee hopes that, in accordance with the favourable ratification prospects noted in the General Survey on the Convention in 1982,<sup>1</sup> many more countries will be able to ratify it.

#### V. REPORTS ON RATIFIED CONVENTIONS (Articles 22 and 35 of the Constitution)

##### Supply of reports

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

75. In accordance with the procedure for reporting that has been in force since 1977, detailed reports from all ratifying States, covering the period ending 30 June 1988, were due to be examined this

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<sup>1</sup> International Labour Conference, 68th Session, 1982, Report III (Part 4B), para. 202.



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year in respect of 44 Conventions.<sup>1</sup> In addition, detailed reports were also requested from certain governments on other Conventions, in accordance with the criteria for more frequent reporting approved by the Governing Body and set out in paragraph 38 of the Committee's 1977 Report.

### Reports requested and received

76. A total of 1,638 detailed reports were requested from governments on the application of Conventions ratified by member States (article 22 of the Constitution). At the end of the present session of the Committee, 1,224 of these reports had been received by the Office. This figure corresponds to 74.7 per cent of the reports requested, compared with 78.4 per cent last year. The Committee regrets that, as indicated in paragraph 88 below, a number of reports received are incomplete and do not enable it to reach conclusions regarding the application of the Conventions concerned. A table showing reports received and reports overdue, classified by country and by Convention, is to be found in Part Two (section I, Appendix I). Another table (section I, Appendix II) shows, for each year in which the Committee has met since 1933, the number and percentage of reports which were received by the prescribed date, by the date of the meeting of the Committee and by the date of the session of the International Labour Conference.

77. In addition, 378 reports were requested on Conventions which have been declared applicable with or without modifications to non-metropolitan territories (articles 22 and 35 of the Constitution). Of these, 270 reports, or 80.5 per cent, had been received by the end of the Committee's session. A list of the reports received and those which are overdue, classified by territory and by Convention, may be found in the Appendix to section II of Part Two of this Report.

78. Apart from the above-mentioned reports, 35 governments also supplied general reports on the Conventions for which detailed reports were not due for the period under review: Antigua and Barbuda, Bahrain, Barbados, Belgium, Burkina Faso, Burma, Burundi, Canada, Chad, Chile, Colombia, Cyprus, Equatorial Guinea, Ethiopia, Finland, Gabon, Ireland, Kenya, Mongolia, Mozambique, New Zealand, Philippines, Poland, Rwanda, Saudi Arabia, Singapore, South Africa, Sri Lanka, Suriname, Switzerland, Tunisia, Turkey, United States, Venezuela.

79. In those cases in which the reports were not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for their full examination, and in which this material was not otherwise available, the Office, as requested by the Committee, wrote to the governments concerned asking them to supply the necessary texts in order to enable the Committee to fulfil its task.

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<sup>1</sup> Conventions Nos. 1, 3, 7, 9, 11, 15, 20, 26, 30, 35, 36, 37, 38, 39, 40, 43, 47, 49, 58, 67, 68, 84, 87, 91, 92, 97, 98, 99, 102, 103, 110, 111, 112, 119, 120, 122, 126, 128, 131, 137, 143, 144, 146, 153.

Compliance with reporting obligations

80. Most of the governments from which reports were due on the application of ratified Conventions have supplied all or most of the reports requested, as can be seen from Appendix I to Part Two, section I. However, 30 governments have not complied with their obligation to supply reports on ratified Conventions. Thus, all or the majority of the reports due this year have not been received from the following countries: Afghanistan, Denmark (Faeroe Islands), Democratic Yemen, Dominica, Dominican Republic, El Salvador, Ghana, Grenada, Guyana, Ireland, Jamaica, Democratic Kampuchea, Lao People's Democratic Republic, Lebanon, Liberia, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mongolia, Netherlands (Netherlands Antilles, Aruba), New Zealand (Cook Islands, Niue Island), Nicaragua, Niger, Papua New Guinea, Seychelles, Sierra Leone, Yugoslavia. No reports have been received for the past two years from the following countries: Cape Verde, Congo, Djibouti.

81. The Committee urges the governments of these countries, and also of those which have sent only some of the reports due, to make every effort to supply the reports requested on ratified Conventions. Where no reports have been sent for a number of years, it seems likely that some particular problem of an administrative or technical nature is preventing the government concerned from fulfilling its constitutional obligations, and it may be that in cases of this kind assistance from the Office, in particular the help of the regional advisers on standards, could enable the government to overcome its difficulties.

Late reports

82. The Committee is once again bound to emphasise the importance of communicating reports in due time. Reports are requested on ratified Conventions by 15 October each year at the latest. Due consideration is given, when fixing this date, to the time required to translate the reports, where necessary, to conduct research into legislation and other necessary documents, and to examine reports and legislation, etc. The supervisory procedure can function correctly only if reports are communicated in due time. This is particularly true in the case of first reports or reports on Conventions where there are serious or continuing discrepancies, which the Committee has to examine in greater depth.

83. The Committee observes that the great majority of reports are thus received between the time-limit fixed and the date on which the Committee meets: by 15 October 1988 the proportion of reports received was nine per cent. This percentage is the lowest recorded (with the exception of the year 1981) since the Committee started publishing statistics in this regard, 40 years ago. The situation is all the more disturbing as it is often the first reports and those relating to Conventions on which the Committee has made comments that are received the latest. In the circumstances, the Committee has been bound in recent years to postpone to its following session the examination of an increasing number of reports, since they could not be examined with the necessary care owing to lack of time. It has

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thus had to examine a number of reports at its present session that had been held over from 1988.

84. The Committee can only express once again its great concern over this state of affairs, despite the relief that the four-year system of reporting and the various measures of assistance provided by the Office are intended to introduce. The Committee trusts that governments will in future endeavour to observe the time-limits layed down for the sending of their reports so that it may carry out its supervisory function adequately.

### Supply of first reports

85. A total of 95 first reports on the application of ratified Conventions were received by the time the Committee's session opened. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received from the following States since 1987: Iraq (Conventions Nos. 147, 152); Niger (Conventions Nos. 154, 156, 158); and since 1986, Jamaica (Convention No. 149); Yugoslavia (Convention No. 158). Particular importance attaches to the first reports on the basis of which the Committee makes its initial assessment of the observance of ratified Conventions. The Committee therefore requests the governments concerned to make a special effort to supply these reports.

### Replies to comments of the supervisory bodies

86. Governments are requested to reply in their reports to the observations and direct requests of the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the International Labour Office has written to all the governments who failed to provide such replies, requesting them to supply the necessary information. Of the 20 governments contacted in this way, only nine have sent the information requested.

87. The Committee notes with concern that there are still a large number of cases in which there has been no reply to its comments, these cases can be grouped as follows:

- (a) those where no report or reply has been received on any of the reports requested from the governments;
- (b) those where the reports received contain no reply to most of the Committee's comments (observations and/or direct requests) and/or have failed to reply to letters sent by the ILO.

88. This represents a total of 177 cases,<sup>1</sup> in comparison with 224 last year and 185 the previous year. The Committee is concerned by the very high number of these cases. It is bound to repeat the observations or direct requests already made on the Conventions in question.

89. The failure of the governments concerned to fulfil their obligations hinders the work of the Committee of Experts and that of the Conference Committee, and the Committee of Experts cannot over-emphasise the special importance of ensuring the dispatch of the reports and the replies to its comments.

#### Examination of reports

90. In examining the reports received on ratified Conventions and on Conventions that have been declared applicable to non-metropolitan territories, the Committee has followed its usual practice of assigning to each of its members the initial responsibility for a group of Conventions. Reports received early enough have been sent to the members concerned in advance of the session and each member has submitted to the whole Committee his preliminary findings on the instruments concerned for discussion and approval.

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<sup>1</sup> Bahamas: Conventions Nos. 105, 144; Cape Verde: Conventions Nos. 29, 81, 98, 100, 105, 111; Congo: Conventions Nos. 87, 119; Democratic Yemen: Conventions Nos. 29, 59, 105; Denmark: (Greenland: Convention No. 122; Faeroe Islands: Conventions Nos. 9, 53); Djibouti: Conventions Nos. 1, 9, 16, 19, 29, 36, 37, 38, 53, 63, 69, 73, 81, 91, 96, 100, 105, 120, 122, 125, 126; Dominican Republic: Conventions Nos. 81, 87, 95, 98, 100, 105, 111, 119; Gabon: Conventions Nos. 87, 98; Ghana: Conventions Nos. 26, 30, 98, 100, 119; Greece: Conventions Nos. 29, 87, 102, 103, 122; Grenada: Conventions Nos. 26, 58, 99; Guyana: Conventions Nos. 87, 111, 131, 136, 139, 144, 149, 150; Ireland: Conventions Nos. 26, 29, 99, 105, 122; Italy: Conventions Nos. 27, 29, 92, 97, 102, 105, 111, 120, 129, 134, 143; Jamaica: Conventions Nos. 8, 29, 87, 98, 122; Lao People's Democratic Republic: Conventions Nos. 13, 29, 88; Lebanon: Conventions Nos. 1, 15, 17, 19, 30, 52, 59, 77, 78, 81, 88, 89, 90, 95, 98, 100, 106, 111, 115, 120, 122, 127, 131; Libyan Arab Jamahiriya: Conventions Nos. 1, 98, 102, 103, 111, 122, 128, 131; Madagascar: Conventions Nos. 26, 111, 119, 120, 122, 124; Mauritania: Conventions Nos. 22, 87, 94, 111, 118, 122; Mauritius: Conventions Nos. 26, 94, 98, 99; Mongolia: Conventions Nos. 87, 122; Netherlands (Netherlands Antilles: Conventions Nos. 58, 122); New Zealand (Niue Island: Convention No. 105); Nicaragua: Conventions Nos. 1, 3, 9, 30, 77, 78, 87, 98, 110, 111, 122, 144, 146; Niger: Conventions Nos. 102, 111, 119; Papua New Guinea: Conventions Nos. 27, 29, 98, 105, 122; Seychelles: Conventions Nos. 58, 87, 99, 105; Sierra Leone: Conventions Nos. 29, 59, 100, 105, 111, 119, 125, 126, 144; Yugoslavia: Conventions Nos. 74, 111, 126, 138.

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### Observations and direct requests

91. In the majority of cases, the Committee has found that no comment is called for regarding the way in which a ratified Convention has been implemented. In other cases, however, the Committee has found it necessary to draw the attention of the governments concerned to the need to take further action to give effect to certain provisions of Conventions or to supply additional information on given points. As in previous years, its comments have been drawn up in the form either of "observations", which are reproduced in the Report of the Committee, or of "direct requests", which are communicated to the governments concerned.

92. As previously, the Committee has indicated by footnotes the cases in which, because of the nature of the problems met in the application of the Conventions concerned, it has seemed appropriate to ask the governments to supply a detailed report earlier than would otherwise have been the case. Under the system of spacing out reports over a four-year period, which applies to most Conventions, such early reports have been requested after an interval of either one or two years, according to circumstances. In some instances, the Committee has also requested the government to supply full particulars to the Conference at its next session in June 1989.

93. The observations of the Committee appear in Part Two (sections I and II) of the present report, together with a list, under each Convention, of any direct requests. An index of all observations and direct requests - classified by country - will be found at the beginning of this report.

### Cases of progress

94. In accordance with its usual practice, the Committee has drawn up a list of the cases in which it has been able to express its satisfaction at certain measures taken by governments to make the necessary changes in their law or practice following comments by the Committee on the degree of conformity between national law or practice and the provisions of a ratified Convention. Details concerning the cases in question are to be found in Part Two of this report and cover 46 instances in which measures of this kind have been taken in 29 States and 3 non-metropolitan territories. The full list is as follows:

<u>States</u>	<u>Conventions Nos.</u>
Algeria	119, 120
Argentina	87, 111
Bangladesh	107
Barbados	111
Belgium	98
Burkina Faso	87, 111
Central African Republic	33
Costa Rica	102
Cuba	29
Denmark	129
Ecuador	120, 139

<u>States</u>	<u>Conventions Nos.</u>
Finland	98, 128, 138
France	136
Guatemala	98
Guinea	87, 119, 120, 148, 152
Guinea-Bissau	1
Iraq	1, 30
Malta	98
Mexico	102
Norway	138
Panama	69
Philippines	105
Portugal	120, 148
St. Lucia	105
Spain	111
Tunisia	127
Turkey	94
Uruguay	134
USSR	52, 87

Non-metropolitan territories

<u>France</u>	
Territorial Community of St. Pierre and Miquelon	35, 36
<u>Netherlands</u>	
Netherlands Antilles	105
<u>United Kingdom</u>	
Montserrat	17

95. Thus, the total number of cases in which the Committee has been led to express its satisfaction with the progress achieved following comments made by it has risen to almost 1,800 since the Committee began listing them in its reports in 1964. In addition, there have been many cases in which the Committee has been able to note with interest various measures that have also been taken following its comments with a view to ensuring a fuller application of ratified Conventions. All these cases provide an indication of the efforts made by governments to ensure that their national law and practice are in conformity with the provisions of the ILO Conventions they have ratified.

96. These cases do not, however, as the Committee regularly points out, exhaust the instances in which Conventions and Recommendations have a measurable influence on the law and practice of member States. For example, the Committee again has noted a number of cases this year in which it is clear from the first report on the application of a Convention that new legislative or other measures were adopted shortly before or after ratification.

Practical application

97. As in previous years, the Committee has been concerned with assessing, on the basis of the information available, the extent to which the national legislation giving effect to ratified Conventions is applied in practice. A number of questions designed to elicit information on this point are included in the report forms approved by the Governing Body for the Conventions, and the replies of governments to these questions constitute an appreciable, though uneven, source of information on practical application available to the Committee. The Committee has also taken into account other authoritative sources of information. These consist of the annual reports of labour inspection services, statistical year-books published in the States or by the ILO, observations of employers' and workers' organisations, compilations of judicial or administrative decisions, reports on direct contacts, reports of technical co-operation projects and missions, and other official publications such as manuals, studies and economic and social development plans.

98. The Committee notes that this year some 63 per cent of the reports supplied on Conventions for which information on practical application was specifically requested contained such data. The Committee welcomes the fact that this percentage is significantly higher than in previous years. The Committee hopes that governments will continue to endeavour to include the requested information in their future reports.

99. The following countries have provided information on practical application in more than half the reports concerned: Angola, Australia, Austria, Belgium, Belize, Brazil, Burkina Faso, Canada, Chile, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Finland, France, German Democratic Republic, Federal Republic of Germany, Guatemala, Guinea Bissau, Hungary, Israel, Italy, Japan, Luxembourg, Malawi, Malta, Mexico, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Turkey, Ukrainian SSR, USSR, United Kingdom, Uruguay, Zambia.

100. The Committee wishes particularly to thank governments that have given information on practical application in their reports, as this information has greatly helped it in assessing more accurately the extent to which ratified Conventions are actually applied in these countries.

101. As in previous years, the Committee has addressed direct requests to certain countries which have not replied to the questions in the report forms on practical application. The Committee notes that the countries in question are all developing countries and that certain of them have referred specifically to difficulties of a financial and/or administrative nature which are preventing them from compiling the statistical and other information requested. The Committee is of the opinion that these are also cases in which technical assistance from the International Labour Office could assist these countries in overcoming the difficulties in question.

102. The Committee also notes with interest the judicial and administrative decisions on questions of principle relating to the application of ratified Conventions to which certain countries have

referred in their reports. Thirty-four reports contain information of this kind and throw additional light on the problems raised in these cases by the practical application of the Conventions in question.

103. The Committee wishes to recall that, under the provisions of many international labour Conventions, measures must be taken to ensure their observance by means of administrative, civil or penal sanctions. In the case of various other Conventions, similar measures may prove necessary in order to make their provisions effective and thus to meet the obligations assumed upon ratification under article 19 of the ILO Constitution. The Committee has noted that the legislative provisions governing these matters are often inadequate, because the sanctions laid down do not have a sufficiently dissuasive effect. The Committee therefore draws attention to the importance of establishing effective sanctions and of adapting monetary penalties, particularly in countries with high rates of inflation, in order to ensure that they exert an effective preventive influence against acts contrary to the guarantees laid down by international labour Conventions. The Committee requests governments to indicate in their reports the measures taken to examine the need to adapt monetary penalties from time to time in the light of inflation.

#### VI. SUBMISSION OF CONVENTIONS AND RECOMMENDATIONS TO THE COMPETENT AUTHORITIES (Article 19 of the Constitution)

104. In accordance with its terms of reference, the Committee this year examined the following information<sup>1</sup> supplied by the governments of member States, pursuant to article 19 of the Constitution of the International Labour Organisation:

- (a) information on the steps taken to submit to the competent authorities within the time-limit of 12 or 18 months, as provided for in the Constitution, the following instruments adopted at the 74th (Maritime) Session of the Conference (1987): the Seafarers' Welfare Convention (No. 163) and Recommendation (No. 173); the Health Protection and Medical Care (Seafarers) Convention (No. 164); the Social Security (Seafarers) Convention (Revised) (No. 165); the Repatriation of Seafarers Convention (Revised) (No. 166) and Recommendation (No. 174);
- (b) additional information on the steps taken to submit to the competent authorities the instruments adopted by the Conference from its 31st (1948) to its 72nd Session (1986) (Conventions Nos. 87 to 162 and Recommendations Nos. 83 to 172);
- (c) replies to the observations and direct requests made by the Committee in 1988.

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<sup>1</sup> ILO: Summary of information on the submission to the competent authorities of Conventions and Recommendations adopted by the International Labour Conference, Report III (Part 3), International Labour Conference, 76th Session, Geneva (1989).



### 74th (Maritime) Session

105. The Committee notes with interest that the governments of the following member States have indicated that they have submitted to the authorities considered by them to be competent the instruments adopted by the Conference at its 74th (Maritime) Session: Bahamas, Bahrain, Barbados, Bulgaria, Burundi, Byelorussian SSR, Cuba, Denmark, Egypt, Finland, Ghana, Greece, Iceland, Italy, Japan, Jordan, Luxembourg, Mexico, Mozambique, Netherlands, Niger, Norway, Poland, Romania, Rwanda, Saudi Arabia, Switzerland, Togo, Tunisia, Ukrainian SSR, USSR, United Arab Emirates, Yugoslavia.

### 31st to 72nd Sessions

106. The Committee notes with interest that considerable efforts have been made by several countries to submit instruments adopted by the Conference since its 31st Session to the competent authorities, particularly in the following cases: Angola (68th to 71st Sessions), Brazil (instruments adopted at various sessions between the 46th and 71st), Ghana (66th to 69th, 71st and 72nd Sessions), Nepal (68th to 71st Sessions).

107. The table in Appendix I to section III of Part Two of the report of the Committee shows the position of each member State as it emerges from the information supplied by the governments, with regard to the discharge of the obligation to submit the Conventions and Recommendations adopted by the Conference to the competent authorities. Appendix II shows the overall position in this respect for the instruments adopted from 31st to the 74th Sessions of the Conference.

### General aspects

108. The Committee notes with concern, however, that many countries are late - sometimes very late - in submitting the instruments adopted by the Conference. In other cases, submission does not appear to have been accompanied by proposals on the action to be taken concerning the instruments being considered.

109. The Committee wishes to stress that the submission to the competent authorities of the instruments adopted by the Conference is a fundamental obligation which constitutes the indispensable first step in implementing international labour standards. In order that national authorities may be kept up to date on the standards adopted at the international level which may require action in each State so as to give effect to them at the national level, submission should be made as early as possible and in any case within the time-limits set by article 19 of the ILO Constitution. Governments, however, remain entirely free to propose any action which they may judge appropriate in respect of Conventions and Recommendations. The principal aim of the submission is to encourage a rapid and responsible decision by each country on the Conventions and Recommendations adopted by the Conference.

Comments of the Committee and replies from governments

110. In section III of Part Two of this report, the Committee makes individual observations on the points that it considers should be brought to the special attention of governments. Requests with a view to obtaining supplementary information on other points have also been addressed directly to a number of countries, which are listed at the end of that section.

111. The Committee regrets to note that a number of governments have again failed to provide replies to its comments, even after reminders have been sent by the Office in accordance with the request made to it by the Committee. The Committee again expresses the hope that governments will endeavour in future to supply all the required information and documents.

112. The Committee wishes once more to point out the importance of the communication by governments of the information and documents called for in points II and III of the questionnaire in the Memorandum adopted by the Governing Body. Some countries do not communicate the information and documents in question. The Committee trusts that the governments concerned will take suitable measures to comply with the Memorandum on submission to the competent authorities.

Special problems

113. The situation in several countries is still a matter of concern to the Committee. The Committee thus notes with regret that, in the following cases in particular, no information has been supplied showing that the Conventions and Recommendations adopted by the Conference during at least the last seven sessions under consideration (67th to 74th) have in fact been submitted to the competent authorities: Grenada, Haiti, Islamic Republic of Iran, Mauritius, Papua New Guinea, Philippines, Saint Lucia, Seychelles, Sierra Leone, Suriname.

Submission of certain instruments to the appropriate  
authorities of the European Communities

114. The Committee was informed at its 51st Session that the countries of the European Communities had submitted to the appropriate authorities of the Communities the Hours of Work and Rest Periods (Road Transport) Convention (No. 153) and Recommendation (No. 161), 1979, since this field is governed by regulations of the Communities. Since then, consultations have begun with the social partners in the countries concerned, at the suggestion of the Commission of the European Communities, on the advisability of ratifying and accepting these instruments. At its previous sessions, the Committee was informed of the results of some of these consultations and of the fact that in some cases these results have already been brought to the attention of the Commission of the European Communities. In a number of other cases such consultation has not yet taken place. More recent information in this respect concerns the adoption by the Council of a

new Regulation on the harmonisation of certain social legislation relating to road transport. The question of the ratification of the Convention is therefore undergoing re-examination in view of the fact that the new Regulation differs considerably from the proposals of the Commission of the European Communities, particularly with regard to breaks and daily rest periods. The information available suggests that the situation has remained unchanged. The Committee hopes that the governments concerned will provide information on the implementation of this procedure and any decisions which may have been made on this subject.

115. The Committee was informed at its 58th Session that a new instrument has also been submitted by Italy to the appropriate authorities of the Communities; this is the Asbestos Convention, 1986 (No. 162), which the Italian Government has also submitted to the national Parliament. The Government indicated that it considered this procedure necessary since, for the purposes of introducing these standards into Italian legislation, it must take into account the obligations resulting from the application of community directives concerning asbestos at the workplace and the sale of asbestos.

116. The Committee notes the concern expressed by the Workers' members of the Conference Committee in 1988 at the fact that the division of competence between the European Communities and their member States has delayed the submission of Convention No. 162 and the ratification of Convention No. 153. In that connection, the Committee noted that the question of relations between rights and obligations under the Constitution of the ILO, on the one hand, and rights and obligations under treaties establishing regional groups, on the other, was discussed by the Governing Body in 1981 on the basis of a document submitted by the Office. As regards particularly the obligation of submission to the competent authorities, the Committee wishes to stress that, although the appropriate bodies of the European Communities may in some cases be considered as the authorities within whose competence the matters covered by a Convention or Recommendation lie, submission to those bodies does not fulfil all the obligations of the member States concerned under the provisions of article 19 of the Constitution of the ILO and the constitutional practice of the Organisation as laid down in the Memorandum on submission, by virtue of which they are bound, within the prescribed time limits, to submit the instruments to their national legislative bodies and inform the Director-General of the ILO of the measures taken to submit those instruments to the competent authorities and of the decisions taken by those authorities; to communicate to the representative organisations of employers and workers a copy of the information concerning submission (article 23, paragraph 2, of the Constitution); and, in respect of countries having ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), to consult the most representative national organisations of employers and workers on the proposals to be made to the competent authority in connection with the submission of Conventions and Recommendations. The Committee expresses the hope that the consultations under way between the secretariat of the European Communities and the Office will produce results ensuring respect for the constitutional provisions of the ILO concerning the submission of instruments dealing

with matters in respect of which exclusive competence has been transferred to the Communities, as well as the full application of the relevant provisions of Convention No. 144.

VII. INSTRUMENTS CHOSEN FOR REPORTS UNDER  
ARTICLE 19 OF THE CONSTITUTION

117. In accordance with the decision taken by the Governing Body, governments were requested to supply reports under article 19, paragraphs 5 and 7, of the ILO Constitution, on the Social Security (Minimum Standards) Convention, 1952 (No. 102), for Part V of the Convention (Old-Age Benefit), and the Invalidity, Old-Age and Survivors' Benefits Convention (No. 128) and Recommendation (No. 131), 1967, with regard to old-age benefit.

118. Of a total of 402 reports requested, 268 have been received.<sup>1</sup> This represents 63.3 per cent of the reports requested.

119. More particularly, the Committee notes with regret that Jamaica, Democratic Kampuchea, Lebanon, Paraguay, Sao Tomé and Principe and Uganda have not, for the past five years, supplied any of the reports on unratified Conventions and Recommendations requested under article 19 of the ILO Constitution.

120. The Committee can only urge governments once again to provide the reports requested, so that its General Surveys can be as comprehensive as possible.

General Survey

121. Part Three of this Report (issued separately as Report III (Part 4 B)) contains the General Survey of the Committee on questions covered by the instruments in question. This survey, in accordance with the practice followed in previous years, has been prepared on the basis of a preliminary examination by a working party comprising three members of the Committee, appointed by it.

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<sup>1</sup> ILO: Summary of reports (articles 19, 22 and 35 of the Constitution), Report III (Parts 1, 2 and 3), International Labour Conference, 76th Session, 1989.

## GENERAL REPORT

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

Geneva, 22 March 1989.

(Signed)

J.M. Ruda,  
Chairman.

R. Razafindralambo,  
Reporter.



**PART TWO**

**OBSERVATIONS CONCERNING PARTICULAR  
COUNTRIES**





## **OBSERVATIONS CONCERNING PARTICULAR COUNTRIES**

### **I. Observations concerning Annual Reports on Ratified Conventions (Article 22 of the Constitution)**

#### **A. GENERAL OBSERVATIONS**

##### Afghanistan

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports due on the application of ratified Conventions.

##### Albania

The Committee notes with regret that the reports due have not been received. It must recall once again that under article 1, paragraph 5, of the Constitution of the ILO, States continue to be bound, even after their withdrawal from the Organisation, to ensure the observance of ratified Conventions for the period provided for in such Conventions and to report on their application.

In the absence of any information from the Government, the Committee is unable to ascertain to what extent effect is now given to the Conventions by which Albania remains bound (Nos. 5, 6, 10, 11, 16, 21, 29, 52, 58, 59, 77, 79, 87, 98, 100 and 112).

##### Cape Verde

The Committee notes with regret that, for the second consecutive year, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

##### Congo

The Committee notes with regret that, for the second consecutive year, the reports due have not been received. It trusts that the

Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Democratic Yemen

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Djibouti

The Committee notes with regret that, for the second consecutive year, the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Dominican Republic

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

El Salvador

The Committee notes with regret that the report due has not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Grenada

The Committee notes with regret that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Iraq

The Committee notes with regret that the first reports on Conventions Nos. 147 and 152 due since 1987, have not been received. It trusts that the Government will not fail to provide these reports in the very near future and that it will not fail in future to supply the first reports at the prescribed date.

Jamaica

The Committee notes with regret that most of the reports due including the first report on Convention No. 149, due since 1986, have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports due on the application of ratified Conventions.

Jordan

For a number of years the Committee has been making comments on the need to take measures to give full effect to certain provisions of Conventions Nos. 119, 120 and 124, and the Government has stated that these comments will be taken into account in the draft of the new Labour Code. The Committee notes from the Government's most recent reports that the procedure for the adoption of the new Labour Code does not appear to have made progress. It can only express the hope that the draft Labour Code will be adopted in the near future, or that the Government will take other appropriate measures to give effect to the provisions of these Conventions, and that the next report on each of these Conventions will indicate the measures taken for this purpose.

[The Government is asked to report in detail on each of these Conventions for the period ending 30 June 1990.]

Democratic Kampuchea

In the absence of any report, the Committee has again not been able to examine the current position as regards the application of ratified Conventions.

Lao People's Democratic Republic

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Lebanon

The Committee refers to the comments that it has made in previous years concerning the application of ratified Conventions. It hopes that appropriate measures can be taken to ensure the full application of these Conventions as soon as national circumstances make it possible and that the Government will supply with its reports information on any developments in this respect.

Liberia

The Committee notes with interest that the Government has requested direct contacts with the ILO with a view to discussing the problems raised over a number of years by the Committee of Experts and the Conference Committee on the Application of Standards in relation to the application by Liberia of obligations under the ILO Constitution relating to Conventions and Recommendations. The Government looks forward to the direct contacts mission contributing in particular to the adoption of the new Labour Code, which, it is considered, will resolve many outstanding questions. The Committee notes that the Government has agreed to the direct contacts mission taking place in May 1989. It hopes the mission will produce the desired results.

In the meantime, in accordance with the established practice, the Committee is suspending its detailed examination of the questions at issue.

Libyan Arab Jamahiriya

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Madagascar

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Mauritania

The Committee notes that the majority of the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports due on the application of ratified Conventions.

Mongolia

The Committee notes that most of the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports due on the application of ratified Conventions.

Niger

The Committee notes that the majority of the reports due including the first reports on Conventions Nos. 154, 156 and 158 due since 1987, have not been received. It trusts that the Government will not fail to take the necessary measures to discharge its obligation to supply in future the reports due on the application of ratified Conventions.

Seychelles

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Sierra Leone

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

Somalia

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

South Africa

1. The Committee refers to its general observations made since 1982 concerning reports received on the Conventions by which South Africa has remained bound although it withdrew from the ILO in 1964, namely Nos. 2, 19, 26, 42, 45, 63 and 89. The Government has supplied further reports on all the Conventions in question and the Committee has examined them in the light of the updated Declaration concerning Action against Apartheid in South Africa and Namibia and the Programme of Action against Apartheid annexed to it, adopted by the International Labour Conference in 1988, which invites the Governing Body and the Director-General to use existing ILO procedures to attain the objectives assigned to the ILO under its Programme for the Elimination of Apartheid.

2. With respect to the application of ratified Conventions in all parts of the country, including the areas of Transkei, Bophuthatswana, Venda and Ciskei (the so-called "independent homelands" or "bantustans") and those regarded as self-governing, the Committee notes that, where the Government has included any information on them

in its reports, it has referred to them as separate from the rest of the country. As the Committee has pointed out previously, all of these areas were covered by the ratifications of each of these Conventions, which still apply to them.

3. The Committee recalls the indications in the Special Report of the Director-General to the 71st Session of the Conference (1985) on the Application of the Declaration concerning the Policy of Apartheid in South Africa, that whilst racial connotations have been removed from certain labour laws and regulations, control over the Black labour force and its trade unions is now applied through security legislation, influx control and the "homelands" system. It also recalls the statement in that report that constitutional alienation which prevents access to social and economic improvement, and control through the division of the Black population, backed by security legislation, are just as incompatible with international labour standards as were the overt racial features of the old legislation. The practical application of these standards is the measure of their fulfilment rather than superficial change and official assurances. The corresponding Report for the 73rd Session of the Conference (1987), notes that there have been attempts to mislead by introducing change in legislation but not in practice, for example in connection with labour standards and Black mobility in South Africa. It observes that international labour standards can only function in practice alongside other basic rights, when apartheid is ended and political power is shared by all population groups.

4. In these circumstances, the Committee insists once again, that the Government should give full effect to the obligations undertaken when the Conventions were ratified; that in all future reports on ratified Conventions, it should indicate the position throughout the entire national territory as defined in paragraph 2 above; and that it should provide full information on all other implications of the policy of apartheid relevant to the application of these Conventions, both in the so-called "homelands" and in other areas of the country.

#### Yugoslavia

The Committee notes that the majority of the reports due, including the first report on Convention No. 158 due since 1986, have not been received. It trusts that the Government will not fail to take the necessary measures to discharge its obligation to supply in future all the reports due on the application of ratified Conventions.

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In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Bahamas, Bangladesh, Burma, Cameroon, Central African Republic, Dominica, Egypt, Fiji, Gabon, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, Hungary, Indonesia, Ireland, Jamaica, Kuwait, Libyan Arab Jamahiriya, Mauritania, Mauritius, Morocco, Nepal, Nicaragua, Papua New Guinea, Paraguay, Philippines, Qatar, Saint Lucia, Senegal, Sierra Leone,

Somalia, United Republic of Tanzania, Thailand, Trinidad and Tobago, Tunisia, Venezuela.

## B. INDIVIDUAL OBSERVATIONS

### Convention No. 1: Hours of Work (Industry), 1919

#### Guinea-Bissau (ratification: 1977)

Further to its previous comments, the Committee notes with satisfaction the adoption of General Labour Act No. 2, of 5 April 1986, which gives effect to the provisions of Articles 3, 6 and 8(c) of the Convention concerning cases of temporary exceptions to normal hours of work, the maximum of additional hours and the keeping of records by employers.

#### India (ratification: 1921)

The Committee notes the information provided by the Government in its latest report, in reply to its earlier observation. In particular, it takes note of the circular dated 26 April 1985 addressed to the general managers of the railways, requesting them to ensure that running staff are not made to work beyond a reasonable limit.

The Committee considers that this circular, couched in general and imprecise terms, falls short of the requirements of Article 6 of the Convention. It recalls that, under that provision, regulations made by public authorities must determine the exceptions permitted to normal limits and the maximum of additional hours that may be allowed; the said regulations must be made only after consultation with the organisations of employers and workers concerned. The Committee hopes that the Government will, without delay, adopt such measures as may be required to give effect to those provisions of the Convention and that it will inform the ILO thereof forthwith.

Lastly, the Committee notes the observations made by the "Bharatiya Mazdoor Sangh" organisation, concerning the special provisions contained in Article 10 and inviting the Government to consider denouncing the Convention or taking an initiative aimed at revising it.

#### Iraq (ratification: 1965)

Article 6, paragraph 1(b), of the Convention. Further to its previous comments, the Committee notes with satisfaction that the new Labour Code, No. 71 of 1987, no longer provides for temporary exceptions to normal working hours in cases in which the work is required for development needs or in order to increase production.

Article 6, paragraph 2. The Committee notes that section 63 II(b) of the new Labour Code maintains the possibility of carrying out up to

four hours of additional work per day in preparatory and supplementary work in industry or in order to meet extraordinary work demands; it notes that this provision no longer even refers to the temporary nature of the exception as did the former legislation. Such a possibility might imply considerably too many weekly or annual working hours which, in the Committee's opinion, could be in direct contradiction to the spirit in which this Convention was drafted (see in this connection the Committee's 1967 general survey on this instrument, International Labour Conference, 51st Session, 1967, Report III (Part IV), third part, paragraph 239).

The Committee would be grateful if the Government would take the appropriate measures to establish a reasonable limit, in conformity with the Convention's objectives, on the maximum number of supplementary hours which may be worked, for instance on a yearly basis.

Article 8, paragraph 1(a) and (b). The Committee notes that the new Labour Code contains no provisions on posting notices of working hours and rest periods. It requests the Government to take the measures necessary to give effect to these provisions of the Convention.

#### Kuwait (ratification: 1961)

The Committee notes the information communicated by the Government in its last report. It notes with regret that no measures have yet been taken to give effect to the following provisions of the Convention, which have been the subject of comments for many years.

#### 1. Private sector

Articles 1 and 2 of the Convention. In its previous reports the Government had mentioned draft labour legislation which would cover temporary workers and workers in small undertakings. These workers are not covered by the 1964 Labour Act which is now in force. The Committee requests the Government to communicate information on the present state of this draft.

Articles 6(1(b) and 2) of the Convention. The Government has repeated its previous position according to which the fixing of a limit of two hours of supplementary work per day to meet extraordinary increases in workload is sufficient to give effect to these provisions of the Convention. The national legislation also limits to two hours per day recourse to supplementary hours in case of serious accidents which are imminent or which have taken place, to repair the damage caused by such accidents, or to avoid certain losses. While the Convention does not provide for limits to be set for such cases, which are contemplated in its Article 3, it does provide for instance under Article 6, paragraph 1(b), for recourse to supplementary hours so that establishments may deal with exceptional cases of pressure of work, and paragraph 2 of that Article requires that the maximum number of additional hours be fixed. The limit of two hours per day fixed by the Government might imply considerably too many weekly or annual working hours which, in the Committee's opinion, could be in direct contradiction to the spirit in which this Convention was drafted (see



in this connection the Committee's 1967 general survey on this instrument, International Labour Conference, 51st Session, 1967, Report III (Part IV), third part, paragraph 239). The Committee would therefore be grateful if the Government would take the measures necessary to fix a reasonable monthly or annual limit in this case, in conformity with the Convention's objectives.

## 2. Public sector

Article 6, paragraph 1(b). As the Committee has already pointed out in previous comments, Ministerial Order No. 34 of 1977 with respect to overtime in the public sector does not determine with sufficient precision the conditions and limits on the authorisation of exceptions to normal working hours. It recalls that such exceptions must remain within limits which are in conformity with the Convention's objectives. The Committee therefore again requests the Government to take the necessary measures to determine the conditions under which recourse to overtime is permitted, and to fix a reasonable annual or monthly limit on the number of additional hours which may be authorised.

### Nicaragua (ratification: 1934)

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

The Committee has noted the information provided by the Government in its report, which, in particular, indicates that a preliminary draft revision of the legislation was under consideration on the basis of the comments of the Committee.

The Committee trusts that the draft will be adopted in the near future and that it will lay down, after consultation with the employers' and workers' organisations concerned, the circumstances in which additional hours may be worked and the maximum number of additional hours authorised, in conformity with Article 6, paragraphs 1(b) and 2 of this Convention, as well as with Article 7, paragraphs 2(c), (d) and 3 and Article 8 of Hours of Work (Commerce and Offices) Convention, 1930 (No. 30).

The Committee requests the Government to provide in its next report detailed information on any developments in relation to this question.

### Paraguay (ratification: 1964)

Further to its previous comments, the Committee notes from the information communicated by the Government in its report that section 205 of the Labour Code, which permits the extension of the normal length of the working day to 12 hours in certain cases, has still not been repealed.

The Committee recalls that it has been making comments on this question since 1969, and notes that no progress has been made in spite of direct contacts in 1977 and 1981. The Committee therefore urges

the Government to take the measures necessary to assure that the national legislation is in conformity with the relevant provisions of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1990.]

Peru (ratification: 1945)

The Committee refers to its previous observation in which it noted the reservations or disagreements of employers' and workers' organisations concerning the draft presidential decree which would guarantee that working hours beyond eight hours per day and 48 hours per week would be authorised only under the conditions and within the limits provided for in Articles 3 to 6 of the Convention.

The Committee notes from the Government's report that this situation remains unchanged, but that the Government hopes to bring the legislation into conformity with the Convention either by carrying out further consultations with employers' and workers' organisations, or when the draft new labour legislation is adopted in the near future. The Government has stated in this connection that technical assistance from the ILO could prove very fruitful.

The Committee trusts that the Government will be able in the near future to take measures to ensure that the national law and practice are in conformity with the provisions of the Convention as concerns the regulation of additional working hours. A positive reply by the International Labour Office to the Government's request for technical assistance could bring a solution to these problems closer.

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In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Bolivia, Djibouti, Libyan Arab Jamahiriya, Saudi Arabia, United Arab Emirates.

**Convention No. 3: Maternity Protection, 1919**

Argentina (ratification: 1933)

Article 3(c) of the Convention (paid benefits). The Committee takes note of the information supplied by the Government in reply to its earlier comments.

It notes, in particular, that no measures have been taken so far with a view to introduce modifications to the national legislation in order to repeal provisions on any qualification period for entitlement to the paid benefits due to a woman during maternity leave, provided for in Article 3, paragraphs (a) and (b), of the Convention. The Committee also takes due note of the Government's opinion expressed in the report, according to which such qualification period is deemed necessary for the purpose to avoid a possible misuse of the system.

With reference to its previous comments the Committee would like to draw the Government's attention once again to the point that Article 3(c) of the Convention does not stipulate any qualification period or conditions for entitlement to the paid benefits due to a woman during maternity leave. It can but reiterate its hope that the Government will reconsider its position and will adopt in the near future the measures necessary to ensure full application of this provision of the Convention, which has been the subject of the Committee's comments for a number of years, and asks the Government to furnish information on any progress made in this connection in its next report.

Chile (ratification: 1925)

Article 3, (c) of the Convention. In its previous comments, the Committee noted, with regard to medical attendance during confinement, that beneficiaries whose income exceeds a certain amount must contribute 25 per cent of the cost of such attendance (sections 29 and 30 of Act No. 18469 of 23 November 1985), contrary to this provision of the Convention.

The Committee has taken due note of the Government's reply to the effect that beneficiaries falling under groups C and D which cover persons with greater economic resources, receive 75 per cent of medical attendance during confinement free of charge, and contribute only the remaining 25 per cent (section 30 of Act No. 18469). It also takes note of the Government's opinion that medical attendance during confinement is not covered by Convention No. 3 "as the Committee of Experts erroneously states".

The Committee wishes to refer to its General Survey of 1965 on Maternity Protection where it points out that "the Convention of 1919 provides, in Article 3(c), for free attendance by a doctor or certified midwife; ... this provision requires completely free medical attendance and excludes any possibility of making a woman covered by the Convention pay any part of the medical expenses in connection with her confinement" (paragraph 152 and footnote 5).

The Committee therefore requests the Government to adopt appropriate measures to give full effect to this provision of the Convention.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Colombia (ratification: 1933)

1. Article 3, (a), (b) and (c) of the Convention. With reference to its previous comments, the Committee takes note of the information supplied by the Government to the Conference Committee in June 1988. It also takes note of the Government's reply contained in the report for the period 1986-88. The Committee notes in particular that, in the talks between the Government and the trade union organisations concerning the petitions presented by the latter to the President of

the Republic, there have been discussions on the need to extend the length of maternity leave for all categories of women workers. The Government adds that, since these talks will lead to a series of mutually agreed conclusions, in all likelihood a joint decision will be communicated to the ILO concerning more effective application of Convention No. 3.

The Committee must observe that no measures have yet been taken to bring section 236 of the Labour Code and section 33 of Decree No. 1848 of 1969 (applicable to workers of the public sector) in conformity with Article 3, paragraphs (a), (b) and (c) of the Convention. This legislation provides for maternity leave of eight weeks in all, whereas Article 3(a) and (b) provide that a woman may not be permitted to work during a period of six weeks after confinement and must have the right to leave her work on production of a medical certificate stating that her confinement will probably take place within six weeks. Moreover, it follows from Article 3(c) that prenatal leave should be extended when confinement takes place after the estimated date. Given the importance of this question which has been the subject of its comments for a number of years, the Committee trusts that the Government will be able to adopt the necessary measures in the near future to amend section 236 of the Labour Code and section 33 of Decree No. 1848 of 1969 in the manner already indicated. It also hopes that the Government will make every effort to amend section 16(b), of Decree No. 770 of 1975, relating to health and maternity insurance so as to align the length of maternity benefits with that of leave.

2. The Committee also requests the Government to provide information on any new territorial extension of the social security scheme.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Venezuela (ratification: 1944)

The Committee takes note of the Government's replies to its previous comments and wishes to point out the following:

With regard to Articles 1 and 3(c) of the Convention (coverage of the social security scheme) and Article 3(d) (rest periods for nursing mothers who are public servants or public employees), the Committee notes that the Government's report supplies no new information on the progress made with regard to the points raised in its previous comments. In this connection, the Committee wishes to point out yet again that certain categories of workers coming under the Convention are not yet covered by maternity insurance, since the social security scheme is not applicable to all workers or all regions of the national territory. The Committee again expresses the hope that this scheme will be extended shortly so that women employed in public or private industrial or commercial undertakings (including public servants or public employees), fully enjoy the protection provided for by the Convention.

With particular reference to Article 3(d), the Committee can only repeat its previous request in the hope that the Government will be

able to adopt the necessary measures in the near future to guarantee that the above-mentioned women workers are entitled to interrupt their work for at least half an hour twice a day to nurse their infants. The Committee requests the Government to provide information in its next report on progress made in this respect.

With regard to Article 4 (prohibition of dismissal of women who are public servants or employees), the Committee notes that the Government transmitted the text of its observation on this point to the National Congress in the hope that this might lead to the adoption of legislative measures in line with the Convention. The Committee trusts that the Government will be able to adopt the necessary measures to include in the national legislation a provision making it unlawful for employers to give notice of dismissal to this category of women workers who are absent on maternity leave or remain absent for a longer period as a result of late confinement or illness arising out of pregnancy or confinement, or to give this notice at such a time that it would expire during such absence.

[The Government is asked to report in detail for the period ending 30 June 1990.]

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In addition, requests regarding certain points are being addressed directly to the following States: Bulgaria, Cameroon, Côte d'Ivoire, Federal Republic of Germany, Guinea, Nicaragua.

### **Convention No. 5: Minimum Age (Industry), 1919**

#### Brazil (ratification: 1934)

In its previous comments, the Committee noted allegations to the effect that a large number of children between 6 and 14 years of age are employed in violation of the relevant legislation in various industries in Brazil, and in particular in the State of Sao Paulo, and it requested the Government to supply full particulars on the measures that have been taken or are envisaged to ensure that the national legislation which gives effect to the Convention, is fully observed in practice.

The Committee notes the information supplied by the Government to the Conference Committee in 1988 and in its last report. It notes with interest that, following the complaints denouncing the work of young persons between 6 and 14 years old in Brazilian industry, the labour inspectorate is expanding its services to ensure the application of provisions on the work of minors and it notes the information supplied on the number of minors covered by inspection in 1987 and the number of minors in the informal sector of the labour market. The Committee would be grateful if the Government would supply detailed information in its next report on the activities of the labour inspectorate in the field covered by the Convention and if it would indicate, in particular, the number and nature of the violations of the provisions regarding minimum age which have been noted, and the sanctions imposed.

The Committee also notes that article 7, XXXIII, of the Federal Constitution of 5 October 1988 forbids night work and dangerous and unhealthy work for young persons under 18 years old and forbids any work for those under 14 years old, except as apprentices. The Committee notes that the Convention does not authorise the work of children under 14 years of age in industrial establishments as apprentices, and that the only exceptions that it admits to the minimum age of 14 years in industry concerns establishments in which only members of the family are employed, and work in technical schools. It recalls that before the coming into force of the new Federal Constitution, the employment of children of less than 14 years of age in industrial establishments, even as apprentices, was forbidden by section 403 of the Consolidation of Labour Laws, as set out in Legislative Decree No. 66, 280 of 27 February 1970 and by section 431 of the Consolidation of Labour Laws. The Committee notes from the last report that section 403 of the Consolidation of Labour Laws is being amended in the light of article 7, XXXIII, of the new Constitution. It trusts that the Government will ensure that the Convention remains fully implemented by the national legislation and that it will indicate in its next report the measures that have been taken in this respect.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, a request regarding certain points is being addressed directly to Saint Lucia.

### **Convention No. 8: Unemployment Indemnity (Shipwreck), 1920**

Jamaica (ratification: 1963)

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

In reply to the Committee's previous comments concerning section 157 of the United Kingdom Merchant Shipping Act 1894 (applicable to Jamaica), which, unlike the Convention, provides that "in all cases of wreck or loss of the ship, proof that the seaman has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim to wages", the Government states that the final draft of the Jamaican Bill on Merchant Shipping has now been circulated by the Chief Parliamentary Counsel to the relevant bodies for comments before being submitted to Parliament. The Committee hopes that this Bill will become law shortly and that the Government will supply the text of the new Act.

\* \* \*

In addition, a request regarding certain points is being addressed directly to Portugal.

Information supplied by Saint Lucia in answer to a direct request has been noted by the Committee.

### Convention No. 9: Placing of Seamen, 1920

#### Cameroon (ratification: 1970)

The Committee notes that, as the Government's report gives no further particulars in reply to the earlier direct requests, the Committee must return to the question in a new direct request. It hopes that the Government will without fail take the necessary steps and supply the information requested.

#### Chile (ratification: 1935)

The Committee notes the Government's detailed report, and the replies to the matters raised in its previous comments regarding the observations submitted by the National Confederation of Federations of Trade Unions of Seafarers, Portworkers and Fishermen of Chile (CONGEMAR).

1. Article 4 of the Convention. In its previous comments, the Committee noted that the Government organises and maintains a general system of free employment agencies in accordance with Article 4, paragraph 1(b). The Government states in its report that this system is not exclusively designed for seamen, and applies to all other workers in the country. Indeed, all workers may freely have access to it, without distinction or discrimination of any kind. Furthermore, the Government states that municipal employment agencies are managed by people with broad experience in placing workers in appropriate employment for their qualifications.

The Committee points out that Article 4, paragraph 1, requires the Government to organise and maintain an efficient and adequate system of employment offices "for seamen". The work of the employment offices must be administered by "persons having practical maritime experience" (Article 4, paragraph 2). The Committee would therefore be grateful if the Government would indicate the additional measures that are envisaged to give full effect to the above provisions of the Convention, and supply the information required under the report form approved by the Governing Body, concerning the number of applications for employment received from seamen, the number of vacancies notified for seamen and the number of seamen placed in employment.

2. Article 5. The Committee notes with interest that regional committees, composed of representatives of employers and workers and set up under the terms of Legislative Decree No. 1446, of 1976, and the Regulations issued thereunder, are ready to receive any help that can be given by people who are interested in the welfare of seamen. The Committee trusts that the Government will supply details of cases

in which people interested in the welfare of seamen have given their assistance to these regional committees.

3. Article 10, paragraph 1. The Committee notes that there are no special and exclusive statistics for the category of seamen. The Government states that this category of workers is included in general statistics. The Committee trusts that the Government will endeavour to give effect to this provision and will be able to supply the statistics, or other information, which it has at its disposal, regarding the unemployment of seamen and the work of its employment offices for seamen.

[The Government is asked to report in detail for the period ending 30 June 1990.]

Colombia (ratification: 1933)

1. The Committee notes the Government's report. It regrets to note that the report does not reply to the comments that it has been making for many years on the implementation of the following provisions of the Convention:

Article 2 of the Convention. The Committee has expressed on numerous occasions its concerns regarding the operation of the fee-paying placement services in ports. In its observation in 1984, it referred in particular to Decree No. 1433, of 1983, which permits the continued operation of temporary employment agencies and fee-paying placement agencies. The Committee once again expresses the hope that the Government will adopt the necessary measures in the near future to give full effect to this provision which prohibits the fee-paying placement, or placement by a commercial enterprise for pecuniary gain, of seafarers and provides for legal punishment for any violation.

Articles 4 and 10. Under the terms of Article 4, an efficient and adequate system of employment offices for finding employment for seafarers without charge must be organised. In previous reports, the Government stated that the National Employment Service (SENALDE) would be responsible for the placement of seafarers. The Committee once again expresses the hope that the Government will supply the information required in the report form approved by the Governing Body on the organisation of a system of employment offices without charge, so as to give full effect to the above Articles. See also the Committee's comments regarding Convention No. 88.

Article 5. The Committee once again trusts that measures will also be taken for the holding of consultations with shipowners' and seafarers' representatives in the conditions set out in this Article and that the Government will supply full particulars in this connection.

2. The Committee recalls that in previous reports the Government referred to a draft labour law for seafarers that was prepared in 1983 with the assistance of an ILO expert. The Committee hopes that this draft will be re-examined, or, if appropriate, other suitable measures will be examined to bring national legislation into conformity with the Convention and to give full effect to the above provisions.

[The Government is asked to report in detail for the period ending 30 June 1989.]



Mexico (ratification: 1939)

With reference to the comments that it has been making for a number of years, the Committee notes the detailed information supplied by the Government in its report concerning, in particular, the organisation of the placement of seafarers through collective labour agreements between shipowners and seafarers' trade unions.

1. The Committee points out that Article 4, paragraph 1 of the Convention requires the State to ensure the organisation and maintenance of an efficient and adequate system of employment offices for finding employment for seafarers without charge. In this connection, the Committee requests the Government to indicate the measures that have been adopted to ensure the placement of seafarers in accordance with the requirements of the Convention, particularly for workers who are not members of a seafarers' representative association and in the case of seafarers' associations which have not concluded collective agreements with a shipowners' association.

The Committee would also be grateful if the Government would indicate the way in which an efficient and adequate system of employment offices for finding employment for seafarers without charge is ensured by the central authority (paragraph 1(a)). Please also indicate, where appropriate, the measures that have been taken to co-ordinate the various placement agencies on the national level (paragraph 3) and to supply the statistical data on the functioning of non-fee-paying placement agencies as required by the report form approved by the Governing Body.

2. Article 5. The Committee notes the collective labour contract concluded between Petróleos Mexicanos and the Revolutionary Union of Petroleum Workers, which was transmitted by the Government with its last report. The Committee requests the Government to supply information on other committees that are set up and where they have been established and to supply details concerning the consultation procedure and the composition of these committees.

[The Government is asked to report in detail for the period ending 30 June 1990.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Cameroon, Djibouti, Egypt, Greece, Nicaragua, Panama, Poland, Uruguay.

**Convention No. 11: Right of Association (Agriculture), 1921**Poland (ratification: 1924)

With reference to its previous observations on the Act concerning farmers' socio-occupational organisations and its imposition of a single central organisation for agricultural workers, the Committee notes with interest the information provided in the Government's

report on recent developments in this field. It refers the Government to the comments it is making under Convention No. 87 on this point.

Rwanda (ratification: 1962)

With reference to its previous observations concerning developments in the adoption of a new Labour Code which would repeal current section 186 (excluding agricultural workers from the scope of the Code), the Committee notes with regret that the draft has still not been adopted.

The Committee considers that, since the right of association is generally recognised to all workers by virtue of the 1978 Constitution "under the terms defined by law" (Article 19), it would be useful for the Government to provide information as to how agricultural workers are assured the same rights of association and combination as industrial workers in practice. In particular, the Committee would request information as to the number of agricultural workers' organisations and copies of any other texts (legislation, awards or collective agreements) which govern their establishment and functioning.

It also requests the Government to inform it of the adoption of the Bill to revise the Labour Code to which the Government has referred - after an initial draft failed to receive approval in 1977 - since 1978.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Greece, Lesotho.

Information supplied by Ecuador in answer to a direct request has been noted by the Committee.

**Convention No. 12: Workmen's Compensation (Agriculture), 1921**

A request regarding certain points is being addressed directly to Brazil.

**Convention No. 13: White Lead (Painting), 1921**

Afghanistan (ratification: 1939)

With reference to its previous observation, the Committee notes that a new Labour Code has been adopted and that draft regulations concerning the use of white lead in painting are presently under review in the light of the Convention. The Committee hopes that it will be possible to issue these regulations in the near future and that they will prohibit the use of white lead in the internal painting of buildings in accordance with Article 1 of the Convention and

regulate its use in accordance with Article 2, Article 3 (prohibiting employment of males under 18 years of age in any painting work involving the use of white lead), Article 5 (preventive and protective measures) and Article 7 (compilation of statistics as to morbidity and mortality rates with regard to lead poisoning).

Algeria (ratification: 1962)

With reference to its previous observations, the Committee notes that various Acts have been adopted recently in the field of occupational health and safety and occupational medicine, but that they do not contain specific provisions which give effect to the Convention. The Committee notes the statement contained in the last report that the implementing regulations which are being prepared will fully take account of the Convention. The Committee hopes that the necessary regulations will soon be adopted and that a copy will be supplied with the next report.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Lao People's Democratic Republic, Panama.

Information supplied by Romania in answer to a direct request has been noted by the Committee.

**Convention No. 14: Weekly Rest (Industry), 1921**

Requests regarding certain points are being addressed directly to the following States: Chile, Grenada, Haiti.

Information supplied by Saint Lucia in answer to a direct request has been noted by the Committee.

**Convention No. 15: Minimum Age (Trimmers and Stokers), 1921**

Information supplied by Panama in answer to a direct request has been noted by the Committee.

**Convention No. 16: Medical Examination of Young Persons (Sea), 1921**

Requests regarding certain points are being addressed directly to the following States: Djibouti, Dominica, Italy.

Information supplied by Panama in answer to a direct request has been noted by the Committee.

**Convention No. 17: Workmen's Compensation (Accidents), 1925**Burma (ratification: 1956)

The Committee takes note of the information supplied by the Government in its report, to the effect that the Workmen's Compensation Act of 1923 has been revised and that Articles 5 and 10 of the Convention are taken into account. The draft revision has been passed by the Cabinet and has been duly submitted to the competent authority. Given that it has taken since 1967 for the 1923 Act to be amended and brought into line with the above provisions of the Convention, the Committee trusts that the new draft will be adopted shortly and will provide:

- (a) in accordance with Article 5 of the Convention, that the compensation payable to the injured workman or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum if the competent authority is satisfied that this will be properly utilised;
- (b) in conformity with Article 10, that no maximum amount shall be fixed for the supply and normal renewal of such artificial limbs and surgical appliances as are recognised to be necessary.

The Committee requests the Government to report any progress made in the adoption of the above draft.

Kenya (ratification: 1964)

The Committee takes note of the information supplied by the Government in its report. It notes in particular the adoption of Act No. 22 of 1987 which came into force on 31 December 1987 and which amends the Workmen's Compensation Act of 1962 (Cap. 236). It also notes with interest that the new Act extends the scope and raises the amount of the benefits payable to the various workmen and their dependants. However, it observes that the Bill on Social Security has not yet been adopted and that the National Social Security Fund Act has therefore not yet been transformed into a pension scheme.

Article 5 of the Convention. Referring to the Committee's previous comments, the Government indicates that the legislation in force provides that compensation for permanent incapacity or death can be paid quarterly, although it can also be paid in a lump sum. Furthermore, in order to ensure competent handling, compensation is only paid through certain officers such as the Labour Officer, District Commissioners and Resident Magistrates, all of whom can decide on the method of payment of the compensation. The Bill to transform the National Social Security Fund into a pension scheme has not been adopted owing to the reservations voiced by the Workers' representatives. The next stage is for negotiations to open between the Government, and the workers' and employers' representatives, with a view to establishing the conditions under which the Fund can be converted into a pension scheme. The legislation governing the Fund has been amended and the Fund has acquired autonomous status effective from January 1988, with the appointment of a tripartite Board of

Trustees. The Committee hopes that the Fund will shortly be transformed into a pension scheme and that full effect will be given to this provision of the Convention, under which the compensation payable in the case of permanent incapacity or death shall be paid in the form of periodical payments; provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilised.

Articles 9 and 10. The Committee notes the increase in the maximum amounts payable in respect of medical treatment and the supply and renewal of medical appliances. It also notes that the Government is examining the possibility of removing maximums altogether. The Committee therefore hopes that the Government will adopt the necessary measures to give full effect to these provisions of the Convention which fix no maximum limits for the provision of such benefits.

Article 11. The Government indicates that the Committee's previous comments will be taken into account when the new legislation is drafted. The Committee takes note of this statement and hopes that the legislation referred to will be adopted shortly and that a new compensation scheme for industrial accidents will be introduced at an early date, ensuring in all circumstances, in the event of the insolvency of the employer or insurer, the payment of compensation to workmen who suffer personal injury due to industrial accidents or to their dependants.

The Committee requests the Government to provide information on any progress made in this respect.

United Republic of Tanzania (ratification: 1962)

Article 5 of the Convention. In reply to the Committee's previous comments, the Government indicates in its report that consultations are taking place between the various social security institutions in the country with a view to giving effect to the recommendations put forward by the ILO Regional Adviser on Social Security. In this connection, the Government is considering the idea of preparing a "Consolidated Social Security Legislation" which will take into account the provisions of this Article of the Convention. The Committee notes this information and expresses the hope that the "Consolidated Social Security Legislation" will soon be prepared and that the Workmen's Compensation Ordinance, Chapter 263, will consequently be amended so as to ensure, in accordance with this Article of the Convention, that the compensation payable to the injured workman, or his dependants, where permanent incapacity or death results from the injury, shall be paid in the form of periodical payments, provided that it may be wholly or partially paid in a lump sum, if the competent authority is satisfied that it will be properly utilised. The Committee requests the Government to provide information on any progress made in this respect.

**Convention No. 18: Workmen's Compensation (Occupational Diseases), 1925**Central African Republic (ratification: 1960)

The Committee takes note of the information supplied by the Government in its report. It notes with regret that the draft Decree drawn up as a result of the 1978 direct contacts has not yet been adopted, but that it is currently before the Council of Ministers. The Committee is therefore bound to reiterate the hope that the above draft will be adopted shortly and that the list of occupational diseases, appended to Order No. 59-60 of 1959, will be brought into conformity with Article 2 of the Convention by the deletion of the limitative element in the list of pathological symptoms which may be caused by lead poisoning and mercury poisoning and by the addition, among the kinds of work which may lead to anthrax infection, the operations of "loading and unloading or transport of merchandise" in general.

The Committee requests the Government to provide detailed information on any developments in this respect in its next report.

Guinea-Bissau (ratification: 1977)

In reply to the Committee's previous comments, the Government indicates in its report that it will endeavour to complete the legislation so that it concludes a list of occupational diseases as provided in Article 2 of the Convention. The Government intends to take appropriate action, as soon as possible, with regard to the Committee's concern which it shares. The Committee notes the Government's statement with interest. Given the importance of this matter, it hopes that, as the Government itself has indicated, the void created by the legislation currently in force will be filled by the adoption in the near future of a list of occupational diseases including, at least, those enumerated in the schedule appended to Article 2 of the Convention, which shall be recognised as occupational diseases when they are contracted in the circumstances specified in the above schedule.

**Convention No. 19: Equality of Treatment (Accident Compensation), 1925**Central African Republic (ratification: 1964)

The Committee takes note of the Government's report. However, it notes with regret that no new information has been supplied on the points that the Committee has been raising for a number of years. It must therefore repeat its earlier comments which read as follows:

Article 1, paragraph 2, of the Convention. In its previous comments the Committee noted with interest that in order to apply the Convention in full, a draft Decree had been submitted to the Council of Ministers to guarantee survivors' benefit to the dependants (survivors) of a worker who was a national of another

State bound by the Convention, who were resident outside the Central African Republic at the time of the worker's death and who continued to be so resident, if it is proved that they were actually dependant on the worker at the time of his death.

The Committee again requests the Government to state whether the draft Decree has been adopted and, if so, to send a copy of the text.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Portugal (ratification: 1929)

The Committee takes note of the information provided by the Government to the Conference Committee in 1988.

1. In its previous comments, the Committee drew the Government's attention to the fact that Act No. 21/27 of 3 August 1965 on industrial accidents was not fully in conformity with the Convention. In the first place, section III of this Act does not treat Portuguese workers and foreign workers employed in Portugal on the same basis unless the legislation of the country in question grants equal treatment to Portuguese workers, whereas, according to Article 1 of the Convention, equality of treatment shall be granted to the nationals of any other Member which has ratified the Convention regardless of whether the legislation of that other country, in fact, grants equality of treatment pursuant to the Convention. Secondly, paragraph 3 of section III of the Act in so far as it does not cover foreign workers who are employed on behalf of a foreign undertaking and whose right to compensation is recognised under the legislation of their own country, is not fully in conformity with Article 2 which does not authorise such exclusion unless the employment of the foreign workers concerned is of a temporary or intermittent nature and such exclusion is provided for in a special agreement between the Members concerned.

2. With regard to Article 1 of the Convention, the Government indicates that it has re-examined the 1976 Constitution of the Republic of Portugal and has consulted the official Portuguese bodies competent on the subject of compensation for employment injuries. The Government indicates that the Constitution contains an explicit provision under which in Portugal, foreign workers can receive no less favourable treatment than that received by national workers. As regards the consultations with the competent bodies, the Government indicates that the General Labour Inspectorate has not found any exclusion of foreign workers employed in Portugal from the general scheme of protection provided for by Act No. 21/27 of 1965 and the Regulations issued under it. Furthermore, the National Insurance Institute has confirmed that staff lists have to contain the names of all persons in the employers' service, irrespective of nationality. The Committee takes note of the above information. It notes with interest that, in practice, all workers, whether nationals or foreigners, enjoy the same social protection in case of employment injury. The Committee therefore considers that the Government should have no difficulty in giving full effect to this provision of the Convention, by expressly removing the condition of reciprocity contained in section III of Act No. 21/27 of 1965.

3. With regard to the observation made concerning Article 2 of the Convention, the Government indicates that the apparent lack of conformity with this provision of the Convention is illusory. In fact, a foreign enterprise which does not "become national" by establishing an associated enterprise in accordance with Portuguese law, or by establishing a representative or an agency, may only engage in activities in Portugal on a temporary basis to execute a concrete and specified type of work. If it "becomes national" it is subject to the same duties and rights as other national enterprises. If not, the conditions under which it operates are temporary in character and lack a continuous nature. Therefore, the compensation scheme for employment injury provided in paragraph 3 of section III for the foreign workers which the enterprise takes into the country with it, is in conformity with Article 2 of the Convention. As a matter of fact, the guarantee of compensation for all foreigners, except for those having entitlements under the law of their own country, produces the same effect as guaranteeing the compensation to be paid, whether or not there is a special agreement applying the legislation of the country in which the enterprise is established. The Committee takes note of this information and in particular of the statement made by the representative of the Portuguese Government to the Conference Committee to the effect that, though the law in his country permits abrogation by implication, and the 1976 Constitution, which takes precedence over ordinary law, abrogates all earlier law which was contrary to its provisions and principles, and the provisions of Act No. 21/27 of 1965 on industrial accidents must therefore be taken to have been abrogated by the Constitution, modifications to bring national law into compliance with ratified Conventions should be made explicitly and not by implication.

Finally, the Committee notes that, although legislative modifications are within the competence of Parliament and are outside the jurisdiction of the Government, it cannot be ruled out that when accident compensation is integrated into a unified social security system, the provisions will be modified to make them compatible with the Convention as well as with the obligations deriving from membership of the European Community. The Committee therefore reiterates the hope that the above-mentioned integration will take place in the near future and that, at that time, full effect will be given to the Convention. To this end, the Committee again requests the Government to indicate whether the consultations provided for in paragraph 2, section 72 of Act No. 28/84, in particular with workers' and employers' organisations, have taken place, as an essential step towards the above-mentioned integration.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Angola, Brazil, Djibouti, Saint Lucia, Sudan.

Information supplied by Lesotho in answer to a direct request has been noted by the Committee.



**Convention No. 20: Night Work (Bakeries), 1925**

Chile (ratification: 1933)

The Committee refers to its previous observation concerning the communications received from the Bakeries Workers' Union Regions VI and VII alleging that there are no regulatory measures to establish and regulate the prohibition of night work in the bakeries sector, in accordance with the Convention.

The Committee notes the discussion in the Committee on the Application of Standards at the 75th Session of the International Labour Conference in June 1988, and in particular, the statement by the Government representative.

Recognising that a number of regulations which gave effect to the Convention had been repealed by the promulgation of the new Labour Code of 1987, the Government representative informed the Conference that the Government had examined attentively the Committee's comments and had undertaken consultations with employers' and workers' organisations in order to formulate the relevant regulations.

The Committee trusts that the Government will supply information in the near future on the outcome of these consultations and on the adoption of appropriate measures to give effect to the Convention, in accordance with the provisions of Article 1, paragraph 1, and Article 2 of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Bolivia, Colombia, Peru.

**Convention No. 22: Seamen's Articles of Agreement, 1926**

Colombia (ratification: 1933)

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

With reference to its previous observation, the Committee takes note of the information supplied by the Government in its report to the effect that the Bill on the work of seafarers, which was prepared in 1983 with the collaboration of an ILO expert, will be examined once again by the Ministry of Labour and Social Security, due to a recent change of Government. The Committee trusts that the above Bill, which is intended to give effect to the present Convention, can be adopted in the near future.

Mauritania (ratification: 1963)

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

With reference to its previous observation, the Committee notes the Government's statement in its report to the effect that all the steps are being taken towards the adoption of the draft Ordinance prepared in 1979 to bring the legislation into conformity with Article 9, paragraph 1, of the Convention (the possibility for the seaman of terminating an agreement for an indefinite period in any port where the vessel loads or unloads), Article 12 (determining the circumstances in which the seaman may demand his immediate discharge) and Article 14, paragraph 2 (the right of the seaman to a certificate). The Committee trusts that the Government will be able to report the adoption of the above draft in the very near future and transmit its text.

Peru (ratification: 1962)

Further to its previous comments, the Committee notes the information provided by the Government in its report concerning Article 7 of the Convention.

Article 5, paragraph 2 of the Convention. The Committee notes that the report does not refer to this provision and trusts that the Government will indicate in its next report the measures adopted to ensure that the document given to the seafarer containing a record of his employment on board the vessel, contains no statement as to the quality of his work or as to his wages.

Article 6, paragraph 3(8) and (11). The Government has indicated in its report that national legislation provides for a list of provisions and for annual leave with pay for seafarers. The Committee hopes therefore that the necessary measures will be taken so that these matters appear in the articles of agreement as provided for in these provisions of the Convention, and that the Government will provide a copy in its next report of a contract modified in this way.

Article 9, paragraphs 1 and 2. The Committee notes that under sections B-040.111, B-040.113 and B.040-115 of the Regulations on Harbour-Masters and Maritime, River and Lake Activity, it does not appear to be provided that a seafarer who has concluded an agreement for an indefinite period may disembark in any port where the vessel loads or unloads, after an agreed notice period, as required by the Convention. Section B-040.113 provides in particular that an agreement for a definite or an indefinite period implies an obligation on the seafarer to make round trips of crossings or of coastal voyages to any national or foreign port as decided by the shipowner. The Committee hopes that the Government will indicate in its next report the measures which are contemplated to establish a clear distinction in this regard between agreements concluded for a definite and for an indefinite period.

Venezuela (ratification: 1944)

Article 9, paragraph 1 of the Convention. With reference to its previous observation, the Committee takes note of the information communicated by the Government to the effect that the Labour Bill is currently before the National Congress. The Committee hopes that the above Bill will be adopted in the near future and will be in conformity with this provision of the Convention.

The Committee further hopes that on adopting the corresponding regulations giving effect to the future Act, the Government will take into account the provisions of Article 8 of the Convention (measures to enable a seaman to obtain clear information on board as to the conditions of employment), Article 13, paragraph 1 (possibility for a seaman to claim his discharge to obtain a post of a higher grade) and Article 14, paragraph 2 (right of a seaman to obtain from the master a certificate as to the quality of his work).

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Belize, Ghana, Portugal.

**Convention No. 23: Repatriation of Seamen, 1926**Ireland (ratification: 1930)

Article 3, paragraphs 1 and 4, of the Convention. The Committee refers to its previous comments concerning section 32 of the Merchant Shipping Act, 1906, which does not cover the right to repatriation of (a) a seaman who leaves the ship in a Commonwealth country nor (b) a foreign seaman who joins the ship in a foreign port and leaves it in another foreign port. The Committee recalls that the first of these exceptions conflicts with Article 3, paragraph 1, and the second, when applied to a foreign seaman who joins a ship in his own country, conflicts with paragraph 4 of the same Article.

The Committee notes that the Government refers once again to the current revision of the merchant shipping legislation, which will also involve the amendment of section 32 of the 1906 Act. The Committee trusts that the necessary measures will be taken in the near future.

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In addition, requests regarding certain points are being addressed directly to the following States: Philippines, Portugal.

**Convention No. 24: Sickness Insurance (Industry), 1927**Haiti (ratification: 1955)

The Committee takes note of the information supplied by the Government in its report, to the effect that the sickness insurance scheme is not yet in force although it is provided for in the legislation. The scheme has now been fully set up but much remains to be done to overcome the structural and economic restrictions referred to in the reports of the technical assistance missions carried out by the ILO, in 1980 and 1984. The Committee none the less notes that the Government hopes that, in the near future, it will be possible for the Occupational Accidents, Sickness and Maternity Insurance Office (OFATMA) to cover sickness insurance for workers in industry and agriculture. It also notes with interest that an ILO technical co-operation mission is under way. Plans for the implementation of the guide-lines recommended by the ILO include the complete reorganisation of the Haitian social security system, giving priority in particular to maternity insurance, the ways and means of covering the agricultural sector and occupational diseases. With regard to sickness insurance itself, apart from systematic screening and prevention which have been carried out for several years, improved protection and its extension to the agricultural sector can only be implemented gradually by a number of methods currently under study. The Committee can therefore only reiterate the hope that, with the technical assistance of the ILO, the Government will be able to institute gradually a general sickness insurance scheme complying with the Convention. It requests the Government to indicate any progress made in this respect.

**Convention No. 25: Sickness Insurance (Agriculture), 1927**Haiti (ratification: 1955)

See under Convention No. 24.

**Convention No. 26: Minimum Wage-Fixing Machinery, 1928**Mauritius (ratification: 1969)

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

With reference to the comments of the Mauritius Labour Congress (MLC) on the application of the Convention, the Committee noted with interest the information supplied by the Government to the Conference Committee in 1985. It noted in particular that before the reconstitution of the National Remuneration Board, the Minister invited the five principal federations including the MLC

for consultations in accordance with the law but the MLC decided not to come to the joint meeting with other workers' organisations on that particular day and met the Minister on the following day. It also notes that the composition of the Board now includes one workers' representative and one employers' representative, who were those persons proposed by one trade union federation and by the employers' federation.

In this connection, the Committee noted that the Government is considering measures to give statutory effect to the Convention's requirements as regards equal representation of employers' and workers' organisations on the Board. The Committee hoped that the Government will be able to indicate what progress has been achieved with a view to bringing the legislation into conformity with the Convention on this point.

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

#### Rwanda (ratification: 1962)

Article 4 of the Convention. With reference to its previous comments, the Committee notes that the draft revision of the Labour Code contains provisions respecting sanctions that would be applicable in the event of the non-observance of established minimum wage rates. The Committee trusts that the Government will make every effort to ensure that these amendments are adopted in the near future in order to give effect to this provision of the Convention. The Committee requests the Government to supply information on the measures that have been taken in this respect.

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

#### South Africa (ratification: 1932)

1. The Committee notes that under the Temporary Removal of Restrictions on Economic Activities Act of 1986, the State President may, by proclamation, suspend, or grant exemption from, the provisions of any enactment having force of law (but excluding an Act of Parliament) if he is of the opinion that circumstances exist under which the application of such law, or compliance with any condition, limitation or obligation relating to the carrying on or exercising of an undertaking, industry, trade or occupation unduly impedes the economic progress of the persons engaged in the carrying on or exercising of that undertaking, industry, trade or occupation, or competition in the fields in question, or the creation of job opportunities.

The Committee requests the Government to indicate any measures taken or contemplated to ensure that the application of the provisions of the Convention is not affected by proclamation made under the Act of 1986.

2. In its previous observation, the Committee noted comments from the International Metalworkers' Federation transmitting a

memorandum from the Metal and Allied Workers' Union of South Africa, according to which wages below the minimum fixed were being paid in part of the metalworking industry, in particular at the Transvaal Alloys (Pty) Ltd. The Committee noted that, from the Government's reply to these comments, it appeared that the workers in the metalworking industry were not covered by generally applicable minimum wages rates, since minimum wages were fixed on an undertaking basis by in-house collective agreements; the Government considered that the minimum wage-fixing system contemplated in the Convention was not applicable to this sector, or at least was not applicable to all parts of it. The Committee requested the Government to indicate the consultations carried out with the employers' and workers' organisations in the trade or part of the trade concerned, as required in Article 2 of the Convention.

The Committee notes from the Government's report that the Labour Relations Act provides for the registration of employers' organisations and trade unions which may establish industrial councils on which the parties are equally represented; such councils are registered under the Act for a particular industry and area. In the metalworking industry, the minimum wages being paid in certain sectors are contained in separate collective agreements entered into between some of the trade unions and employers' organisations or individual employers. The Government states that the Wage Act of 1957 is complementary to the Labour Relations Act of 1956 and is primarily designed for the prescription of minimum wages for industries and trades in which employers and employees are not sufficiently organised to permit their negotiating collective agreements. Consequently, minimum wages cannot be fixed in terms of the Wage Act for workers to whom collective agreements apply. The various employers' organisations and trade unions which are parties to the industrial council for the metal industry have, after consultations between themselves, opted for the regulation of minimum wages in that industry by collective agreements.

The Committee takes note of this information.

The Committee notes the information provided in the Special Report of the Director-General on the Application of the Declaration concerning the Policy of Apartheid in South Africa (ILC, 75th Session, 1988) according to which the Metal and Allied Workers' Union, which merged with other unions to form the National Union of Metalworkers of South Africa (NUMSA), rejected an agreement reached with the employers in July 1987 by certain smaller unions within the industrial council for the metal industry. The Minister of Manpower extended the life of the industrial council agreement of the previous year by virtue of provisions of the Labour Relations Act authorising such extension when requested by both parties and prohibiting strikes during the currency of an agreement.

The Committee requests the Government to indicate the representative employers' and workers' organisations concerned in the metalworking industry which have been associated in the operation of the industrial council machinery for the metal industry and whether they have been so associated in equal numbers and on equal terms. It also requests the Government to communicate copies of any collective agreements fixing minimum wages currently in force in this industry.

3. The Committee notes that the Government's report contains no information on the application of the Convention in the areas of Transkei, Bophuthatswana, Venda and Ciskei to which the Convention also applies. It requests the Government to provide full information on the application of the Convention in these areas.

Uruguay (ratification: 1933)

See under Convention No. 131.

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In addition, requests regarding certain points are being addressed directly to the following States: Angola, Argentina, Bahamas, Belize, Benin, Brazil, Central African Republic, Chad, Chile, China, Colombia, Comoros, Dominica, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Ireland, Madagascar, Rwanda, Solomon Islands, South Africa, Sudan, Togo, Tunisia, Turkey, Venezuela, Zaire.

Information supplied by Barbados and Burma in answer to a direct request has been noted by the Committee.

**Convention No. 29: Forced Labour, 1930**

Austria (ratification: 1960)

The Committee notes the information supplied by the Government in its report as well as the comments of the Austrian Congress of Chambers of Workers on the application of the Convention.

Article 2, paragraph 2(c), of the Convention. In comments made for a number of years, the Committee noted that some of the work done by prisoners was performed in workshops operated by private undertakings inside prisons under arrangement with the prison authorities, who place prison labour at the disposal of the private undertakings and remain responsible for their supervision with regard to security while private employees of the undertakings involved direct the work of the prisoners with the approval of the prison authorities.

The Committee recalled that Article 2, paragraph 2(c), of the Convention not only requires prison work to be carried out under the supervision and control of a public authority but also prohibits the prisoner from being hired to or placed at the disposal of private companies, and that these provisions of the Convention apply also to workshops which may be operated by private undertakings inside prisons. Accordingly, the use of the labour of convicted persons in such workshops would fall outside the scope of the Convention only where it is based on conditions of employment comparable to those of free workers, namely, where it is subject to the consent of the prisoners concerned and to safeguards in respect of remuneration and social security.

The Committee notes the Government's indication in its latest report that technical and commercial management functions are exercised by the undertakings whose employees are likely to have a certain supervisory capacity to ensure that work procedures are correctly carried out, but who have no controlling or disciplinary authority over the prisoners, such authority being reserved exclusively to prison authorities.

The Committee also notes the comments by the Austrian Congress of Chambers of Workers that given the employment situation in prisons, prisoners are likely to consent to working in a workshop run by a private undertaking but a decision made in these circumstances is not really a free one, and it is accordingly essential that working conditions be commensurate with generally accepted norms. The Congress of Chambers of Workers indicates that it is argued in favour of the extremely low wages of prisoners that these are determined by using a so-called "netto-system". Under this system it is considered that deductions, in particular for food, clothing, accommodation and social security, are made from an assumed, equitable wage, as would also apply to a gross wage outside prison. These deductions are actually made from the assumed wage, however no contributions are paid into the social and unemployment insurance. The Congress of Chambers of Workers advocates that prisoners should be included in social and unemployment insurance schemes while serving their prison sentence, as a significant contribution to their social integration and rehabilitation after release, as well as to the observance of the Convention.

The Committee takes due note of the information and comments supplied. The Committee points out that Article 2, paragraph 2(c), of the Convention specifically forbids that persons from whom work is exacted as a consequence of a conviction in a court of law be placed at the disposal of private individuals, companies or associations; only work performed in conditions of a free employment relationship can be held compatible with this prohibition. As the Committee pointed out in paragraphs 97 to 99 of its 1979 General Survey on the Abolition of Forced Labour, guarantees as to the payment of normal wages and social security, consent of trade unions, etc. are essential in this regard.

The Committee hopes that the Government will provide information on progress made towards compliance with the Convention.

#### Bangladesh (ratification: 1972)

Legal restrictions on the termination of employment. In comments made for a number of years the Committee noted that under the Essential Services (Maintenance) Act, No. LIII of 1952, it is an offence punishable with imprisonment for up to one year for any person in employment of whatever nature under the central Government to terminate his employment without the consent of his employer, notwithstanding any express or implied term in his contract providing for termination by notice (sections 2, 3(1)(b) and explanation 2, and section 7(1)). Pursuant to section 3 of the Act, these provisions may be extended to other classes of employment. Persons to whom the Act



applies may also be ordered, subject to penal sanctions, not to leave specified areas (sections 4, 5(c) and 7(1)). Similar provisions are contained in the Essential Services (Second) Ordinance, No. XLI of 1958 (sections 3, 4(a) and (b) and 5).

Referring to the explanations provided in paragraph 67 of its 1979 General Survey on the Abolition of Forced Labour, the Committee in its previous observation indicated that workers may be prevented from leaving their employment in emergency situations within the meaning of Article 2, paragraph 2(d), of the Convention, i.e. any circumstance that would endanger the existence or the well-being of the whole or part of the population. However, restrictions under the essential services legislation referred to are not limited to such circumstances. The Committee also pointed out that, even regarding employment in essential services whose interruption would endanger the existence or the well-being of the whole or part of the population, there is no basis in the Convention for depriving workers of the right to terminate their employment by giving notice of reasonable length. The Committee notes the observation made by the Bangladesh Employers' Association according to which temporary restriction on termination of employment under the Essential Services Ordinance to ensure the supply of community services should not be construed as forced or compulsory labour as such restrictions are, in its view, permissible under Article 9 of the Convention. The Committee pointed out in its previous observation that the provisions under Article 9 of the Convention are aimed at phasing out certain colonial practices and they do not provide a basis for turning a contractual relationship based on the will of the parties into service by compulsion of law. The Committee thus requested the Government to take the necessary measures to repeal the Essential Services (Maintenance) Act, No. LIII of 1952, and to bring the Essential Services (Second) Ordinance, No. XLI of 1958, into conformity with the Convention.

The Committee notes the Government's statement in its report that it has taken note of the Committee's comments. In view of the Government's repeated indication that the Essential Services (Maintenance) Act, 1952 is not in operation and that no restriction has been imposed under section 3 of the Act, the Committee expresses the hope that the Government will soon be in a position to indicate that the necessary action has been taken to bring legislation as well as practice into conformity with the Convention.

#### Cameroon (ratification: 1960)

1. In its previous observations the Committee has noted that the provisions of Act No. 73-4 of 9 July 1973 to set up the National Civic Service for Participation in Development are contrary to the provisions of the Convention since they provide that work in the general interest throughout the public and private sectors can be imposed on citizens aged between 16 and 55 years for a period of 24 months subject to penalties of between two and three years' imprisonment in cases of refusal.

The Committee notes that the Government again reaffirms the statements made in its earlier reports that amendment of the Act of

9 July 1973 is envisaged. Since this matter has been the subject of comment for many years, and the Government has indicated that in practice enrolment in the National Civic Service is voluntary, the Committee trusts that the necessary measures to amend the Act will soon be taken and that the Government will very shortly be in a position to transmit the new texts that have been adopted in this field.

2. In its previous comments the Committee also drew the Government's attention to the need to adopt legislative measures or issue regulations, in order to restrict, in accordance with Article 2, paragraph 2(e), of the Convention, the scope of communal work that may be imposed under section 2, paragraph 5(e), of the Labour Code. Moreover, it expressed the hope that legislation respecting prisons would be brought into conformity with Article 2, paragraph 2(c), of the Convention, which prohibits prison labour being placed at the disposal of private individuals, companies or associations. On these points too, the Government states that the amendments envisaged and announced are not yet completed and that it will report on new provisions when they are in place. The Committee hopes that the Government will soon be able to report actual progress made in light of the more detailed explanations again given in a request that is addressed directly to the Government.

#### Central African Republic (ratification: 1960)

The Committee notes the information supplied by the Government in its report and the discussions in the Conference Committee in 1988.

In its previous comments, the Committee noted that draft ordinances had been drawn up with a view to repealing Ordinance No. 66/004 of 8 January 1966 respecting the suppression of idleness (as amended by Ordinance No. 72/083 of 18 October 1972), section 11 of Ordinance No. 66/038 of 3 June 1966 respecting the supervision of the active population, and sections 2 and 6 of Ordinance No. 75/005 of 5 January 1975 making the performance of commercial, agricultural and pastoral activities compulsory.

The Committee noted the Government's repeated statements that, by reason of the economic and social effect of these texts, they were to be submitted to an expanded committee bringing together all the social partners with a view to assessing more accurately the effects of repealing them at the social and economic level. The Committee notes the Government's statement that draft legislation has been put before the National Assembly and will be examined when the time comes, and it hopes that the Government will soon be able to indicate that the necessary amendments to ensure observance of the Convention in this respect will be adopted.

In its previous observations, the Committee also referred to section 28 Act No. 60/109, respecting the development of the rural economy, which provides that minimum surfaces for cultivation should be fixed for each rural community.

The Committee noted the information supplied by the Government that these provisions were intended to supply a technical framework and basic services to farmers in order to increase their production,

improve their standard of living, encourage them to expand the areas under cultivation and increase efforts in agricultural activities, since the freedom to work must not mean the freedom to do nothing.

The Committee pointed out that the Convention only authorises recourse to compulsory cultivation for preventing famine or a deficiency of food products, and always under the condition that the food or produce shall remain the property of the producers. It also pointed out that any work or service exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily is incompatible with the Convention.

The Committee notes the statements made by the Government representative to the Conference Committee that the Government is aware of the need to bring its legislation and practice into accordance with the provisions of international labour conventions. In the Government's view, the Ordinances adopted under the former regime have fallen into abeyance and are no longer applicable, although this does not mean that it is not necessary to repeal them formally, which the Government is about to do. The Committee also notes that the Government representative indicated that his country was ready to accept ILO assistance to help formulate draft legislation. It notes, however, that the Government has not contacted the Office to request and organise this assistance.

The Committee once again trusts that measures will be taken in the very near future, in accordance with the Government's announced intention, to give effect to the Convention in law as well as in practice.

Colombia (ratification: 1969)

1. Article 2, paragraph 2(c), of the Convention. In its previous observations, the Committee referred to Decree No. 1817 of 1964 (Prison Code), which imposes compulsory labour not only on persons who have been convicted (section 269), but also on all other detainees except those declared medically unfit (section 233).

The Committee noted the information supplied by the Government in previous reports to the effect that the work of the Special Committee set up to amend the Prison Code was continuing and that the Minister of Labour and Social Security had emphasised that the new Prison Code must contain the express prohibition of work by detainees. The Committee also noted that circulars had been dispatched to all directors of prisons in the country on the prohibition of work by detainees. The Committee requested the Government to supply copies of these circulars.

The Committee notes that in its report, the Government indicates that detainees are given the right to select the form of activity that best corresponds to their aptitudes and inclinations and that in practice the obligation to work for detainees provided for in section 233 of the Prison Code is not enforced due to the lack of infrastructure to provide work for the whole of the prison population.

The Government adds that, as it is an international treaty, Convention No. 29 repeals the provisions that are contrary to it. In view of the fact that section 233 of the Prison Code, in its current

form, provides for compulsory labour for detainees, in contradiction with the provisions of the Convention on this point, and that, according to the Government's indications, in practice detainees are not obliged to work, and the Committee requests the Government to take the necessary measures to amend sections 233 and 266 of the Prison Code so that the statutory provisions respect the practice which, according to the Government, already exists.

The Committee also requests the Government to supply a copy of the circulars which were dispatched to the directors of prisons regarding labour by detainees, to which the Government referred in previous reports, and it requests it to supply information on the progress of the work of the Special Committee set up to amend the Prison Code.

2. In its previous comments, the Committee referred to section 182 of Decree No. 1817 of 1964, under which work in prison establishments may be arranged directly through the administration or through contractors who are provided with premises and the labour of the detainees and convicted prisoners, and who in exchange supply the necessary equipment and material for the work and pay the wages in accordance with the terms and conditions laid down by the prison administration.

The Committee requested the Government to take the necessary measures to give statutory effect to the principle that prisoners must consent freely to the employment relationship with private individuals.

In its report, the Government indicates that the State is not in a position to offer work opportunities satisfying the just aspirations of the prison population to exercise a productive activity, and that therefore it compromises by seeking forms enabling all to have the opportunity to work.

The Committee points out that work by prisoners for private individuals is compatible with the Convention only so far as the labour relationship can be assimilated to a free employment relationship, that is, if the prisoners concerned have freely consented to it, provided that there are appropriate guarantees, such as the payment of normal wages, social security, consent of the trade unions, etc.

The Committee hopes that the necessary measures will be taken in the near future to bring the legislation into conformity with practice, thereby giving statutory effect to the principle whereby prisoners must be in a position to consent freely to an employment relationship with private individuals. The Committee requests the Government to indicate the progress made to this effect.

#### Cuba (ratification: 1953)

1. The Committee notes with satisfaction that the provision contained in section 145 of the Penal Code of 1979, under which penalties of imprisonment involving compulsory labour could be imposed on a public servant who abandoned his duties or activities before legal notification of the acceptance of his resignation, does not appear in the new Penal Code promulgated by Act No. 62 of 29 December 1987.

2. The Committee notes that habitual vagrancy as an indication of dangerousness, which was contained in section 77(e) of the former

Penal Code, has been deleted from the new Penal Code. However, the Committee notes that section 73(2) of the Penal Code currently in force lays down that a person living as a social parasite on the work of others is considered to be in a dangerous state by reason of his anti-social behaviour, and may be subject to pre-delinquency security measures under section 76(2) of the same Code.

The Committee also notes that the security measures applicable to anti-social persons are rehabilitation measures (section 80(2), namely: they may be interned in a specialised work or educational establishment (section 80(a)) or sent to a labour collective (section 80(1)(b)). The duration of the measures is of one year minimum and four years maximum (section 80(3)).

The Committee regrets to observe that section 73(2), read together with section 80, again allows the imposition of penalties in circumstances defined in so broad a manner that any person deemed not engaged in socially useful work can be punished.

In order that the Committee may ascertain the practical scope of section 73(2) with regard to persons considered to be social parasites, it requests the Government to provide a copy of any court decisions made in the implementation of the above provisions and to supply information on any measures taken or contemplated to ensure that the imposition of penalties is confined to those who not only abstain from engaging in work considered to be socially useful, but also disturb public order by begging, neglecting to support their dependants or by some other act in addition to abstention from work.

Dominican Republic (ratification: 1956)

Haitian workers in the sugar-cane harvest. See the observation under Convention No. 105.

Federal Republic of Germany (ratification: 1956)

Article 2, paragraph 2(c), of the Convention. In comments made over a number of years, the Committee has observed that, contrary to the Convention, prisoners are placed at the disposal of private undertakings and that the provisions of the Act on the execution of sentences adopted in 1976 to bring practice into conformity with the Convention have not been put into effect. Thus, the requirement of the prisoner's formal consent to employment in a workshop maintained by private enterprise, laid down in section 41(3) of the 1976 Act, which was to enter into force on 1 January 1982, was suspended by section 22 of the Second Act to Improve the Budget Structure, of 22 December 1981; the 1976 Act also recognised the prisoner's right to wages, but a provision for increases above the initial amount which is 5 per cent of the average wage of workers and employees was not given effect; finally, legislation which was to extend sickness and old-age insurance to prison labour was not adopted.

In its latest report, the Government indicates that the integration of penal labour into enterprises and training institutions of private economy is to contribute to the normalisation of worklife

in prisons and that, under the Act on the execution of sentences, the guarding of prisoners is to be entrusted exclusively to prison officers, and in workshops and other establishments run by private enterprises, employees of these enterprises may be entrusted only with the technical and work-related direction. The Government further indicates that financial constraints have impeded the realisation of the full concept of the Act on the execution of sentences, inter alia, as regards its provisions on the work of prisoners and their integration into the system of social security, and that the Länder authorities responsible for the execution of prison sentences fear that the legal requirement of a prisoner's consent to working in workshops run by private enterprises may lead to the loss of workplaces needed for prisoner rehabilitation. The Government also recalls that the voluntary nature of occupation is already in effect as regards vocational training and assignment to work outside the prison.

The Government concludes that it cannot at present ignore the above-mentioned apprehensions of the Länder concerned. It continues its explicit efforts to fully implement the concept, adopted in the Act on the execution of sentences, for the development of sentence execution. Thus, examination of wage increases, of the inclusion of prisoners into sickness and pension insurance and of putting into effect the provision on prisoners' consent to working in workshops run by private undertakings was taken up at the beginning of the present legislative session and has not yet been completed. While the Government remains firmly committed to implementation, it considers that the requirement of a formal consent of prisoners to working in workshops run by private enterprise cannot, at present, be introduced without prejudice to the employment of prisoners, and that an increase of unemployment among prisoners would also be contrary to the spirit of the Convention.

The Committee takes due note of these indications. It must recall that Article 2, paragraph 2(c), of the Convention specifically excludes that persons from which work is exacted as a consequence of a conviction in a court of law be placed at the disposal of private individuals, companies or associations; only work performed in conditions of a free employment relationship can be held compatible with this prohibition. The Committee trusts that with effective normalisation of wages and social security prisoners will volunteer for employment in private undertakings.

Since the Government has reaffirmed its commitment to fully implementing the concept adopted in the 1976 Act on the execution of sentences, the Committee looks forward to the implementation of the measures required to ensure the observance of the Convention with regard to prisoners.

#### Greece (ratification: 1952)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

For several years, the Committee has been drawing the Government's attention to the provisions of section 2, subsection

5, of Legislative Decree No. 17 of 1974 respecting the civilian planning for a state of emergency. By virtue of this section, a state of emergency includes any situation arising suddenly and resulting in a disturbance of the economic and social life of the country, in which circumstances the Prime Minister may proclaim the full or partial mobilisation of civilians even in peacetime. All citizens may then be called upon to take part in work or the performance of any kind of services, on pain of imprisonment (section 20, subsections 2 and 3, and section 35, subsection 1). In such cases, the application of labour legislation is suspended.

The Committee has taken note of the conclusions of the Committee set up by the Governing Body to examine the application of Conventions Nos. 29 and 105, following the representation made by the Hellenic Airline Pilots Association (HALPA) under article 24 of the ILO Constitution.

In response to a notice of strike action given by the pilots and flight engineers of Olympic Airways in June 1986, the Government proclaimed a national state of emergency and the civil mobilisation of pilots and flight engineers. Several of them, who had not responded to the individual call-up made to them, were imprisoned or dismissed while penal, administrative and civil action was taken against them.

The Committee set up by the Governing Body observed that the position of the pilots and engineers that had been called up met the two criteria embodied in the definition of forced or compulsory labour given in Article 2, paragraph 1, of the Convention and that the service required of them was not covered by the exception provided for cases of emergency as defined by the Convention (Article 2, paragraph 2(d)). The concepts referred to in Legislative Decree No. 17/1974 respecting civil planning in cases of danger to "the economic and social life of the country" or of "prejudice to the national interest" go beyond the strict limits of an emergency for the purposes of the Convention.

The Committee set up by the Governing Body also observed that the call-up of pilots and flight engineers appeared to be a means of labour discipline and a punishment for having participated in a strike that was punishable with sentences of imprisonment involving compulsory prison labour, contrary to Article 1(c) and (d) of Convention No. 105.

The Committee set up by the Governing Body noted that under the decision made by the Council of State on 22 May 1987 the mobilisation order and, consequently, the call-up of those concerned was not to have effect beyond the period of the strike. It recommended that the Government be invited to ensure that the legislation, and particularly Legislative Decree No. 17 of 1974, be brought into conformity with the forced labour Conventions and that any judicial or administrative action that may lead to the imposition of the sanctions laid down in the above Legislative Decree on those concerned should be abandoned.

The Committee noted the Government's statement in its report for the period ending 30 June 1987 that the responsible ministry has initiated revision of Legislative Decree No. 17 of 1974. It

requests the Government to supply information on the measures adopted in order to ensure observance of the forced labour Conventions.

Haiti (ratification: 1958)

The Committee refers to its observation under Convention No. 105.

India (ratification: 1954)

1. The Committee notes the report supplied by the Government in 1988 as well as the discussion which took place in the Conference Committee in 1986. It also notes the observation made by Bhartiya Mazdoor Sangh attached to the Government's report.

2. Identification of bonded labourers. The Committee notes the amendment of the Bonded Labour System (Abolition) Act, 1976 in December 1985 by which clarification was made as to the scope of the definition of bonded labourer. While this amendment was intended to facilitate speedier identification of bonded labourers, as the Government indicated in its communication to the Conference Committee in 1986, the Committee notes from the statistical figures given in the Government's report that the number of bonded labourers identified in the period of 1986-87 is 13,362 which is below the level of previous periods. The Committee in its previous observation cited the 1979 report of the Subcommittee on Bonded Labour set up by the Central Standing Committee on Rural Unorganised Labour which put the figure of bonded labour around 2,000,000. Reference was also made to another survey conducted by the Gandhi Peace Foundation in co-operation with the National Labour Institute which was confined to ten out of 21 states and the agricultural sector only but put a figure of 2,617,000 bonded labourers. The Committee notes the Government's indication in its report that vigilance committees have been constituted, as required under the Bonded Labour System (Abolition) Act, 1976, in almost all the states. The Committee in its previous observation indicated that under Rule 7 of the Bonded Labour System (Abolition) Rules, 1976, vigilance committees are to maintain registers containing names and addresses of freed bonded labourers and other details, but according to the PEO (Programme Evaluation Organisation) study the registers were not adequately kept. As identification is the first and basic step in addressing the problem, the Committee expresses the hope that efforts will be continued to identify the true figures of bonded labourers. It requests the Government to supply information on results achieved in this regard including any reports or findings made by the vigilance committees in various states.

3. Freeing from bonded debt and rehabilitation. The Committee notes with interest the indication in the Government's report that a new scheme was launched in October 1987 to involve voluntary agencies in identification and rehabilitation of bonded labourers. It notes, however, from paragraph 3(a) of the Plan Scheme for Involvement of Voluntary Agencies for Identification and Rehabilitation of Bonded Labourers that an agency established under this Scheme would be paid



managerial subsidies which would not cover more than 50 bonded labourers. The Committee would appreciate information on the functioning and achievements of these agencies. It further notes that the Government set a target for rehabilitation of 18,202 labourers for the years 1987-88 and the state Governments have been requested to conduct surveys in order to activate the efforts towards further identification of bonded labourers. It also notes the Government's indications in the report that all the state Governments have been requested to integrate the Centrally Sponsored Scheme for Rehabilitation of Bonded Labourers with other anti-poverty programmes like Integrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP), Rural Landless Employment Generation Programme (RLEGP), etc. Referring to the PEO study, the Committee pointed out in its previous observation that only a small number of freed bonded labourers could benefit from these programmes. The Committee requests the Government to indicate in its next report to what extent the Government's instruction to integrate the bonded labour scheme into various programmes such as IRDP, NREP, RLEGP, etc., was effectively followed and to what extent the freed bonded labourers could benefit from them in order not to lapse into bondage again. In view of the huge number of bonded labourers, the Committee requests the Government to indicate if it would review the target number for identification and rehabilitation which is now less than 1 per cent of a roughly estimated number of total bonded labourers.

4. Enforcement of sanctions. The Committee notes the statistical information supplied by the Government in its report concerning the penal prosecutions launched against keepers of bonded labourers. It notes that only 26 cases of imprisonment are reported while the great majority of the cases are dealt with by simple fines. Referring to its previous observation and in view of the gravity of the problem, the Committee requests the Government to take effective measures to secure the rigorous application of the laws prohibiting and punishing the exaction of forced labour.

5. The Committee notes that both the Government observer and a representative of the Anti-Slavery Society made reference to a Parliamentary Committee Report on bonded labour in the discussions which took place in the Working Group on Contemporary Forms of Slavery, Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations (E/CN.4/Sub.2/1988/32). The Committee would appreciate it if the Government sent a copy of the report to the ILO.

#### Islamic Republic of Iran (ratification: 1957)

1. In its previous comments, the Committee referred to the provisions of section 273 bis of the Penal Code, under which any person who does not have definite means of subsistence and who, whether through laziness or through negligence, does not look for work may be obliged by the Government to take suitable employment. If he refuses to take this employment, he is liable to imprisonment of from 11 days to three months or to between 50 and 200 strokes of the whip. Referring to paragraphs 45 to 48 of its 1979 General Survey on the

Abolition of Forced Labour, the Committee recalled that laws compelling all able-bodied citizens to engage in a gainful occupation are incompatible with the Convention and that laws on vagrancy and similar offences that define these in so general a way that they may be used as a means of direct or indirect compulsion to work should be amended.

The Committee notes with interest the Government's indication in its report that the Islamic Penal Code, which is to abolish section 273 bis of the Penal Code, has been adopted by the Council of Ministers and presented to the Parliament for final approval. The Committee looks forward to learning shortly of the repeal of section 273 bis of the Penal Code and requests the Government to supply a copy of the new Islamic Penal Code.

2. In its report supplied in 1977, the Government indicated that the Regulations of 24 March 1938 concerning unemployed persons and vagrants were repealed. As the Government has not so far supplied a copy of the repealing legislation, the Committee hopes that the Government will either make it available for examination or indicate in which manner the repeal of the Regulation has taken place and has been made publicly known.

#### Libyan Arab Jamahiriya (ratification: 1961)

1. In comments that it has been making for many years, the Committee has referred to the provisions of section 1 of Act No. 20 of 1962 under which, among other things, certain women seriously suspected or accused of certain offences against morality may be interned for a period of from six months to three years. The Committee has also referred to section 6 of the Royal Decree of 5 October 1955 concerning vagabonds and suspects under which any person who has already been sentenced for certain offences or been the subject of repeated investigations for the same offences and is again suspected of such offences is liable to detention of from one to five years by decision of a judge. The Committee understands that in both cases the persons concerned, who are merely suspected or accused and detained by decision of a judge, are obliged to work.

The Committee notes from the Government's report that the committee charged with examination of international labour Conventions and Recommendations, after examining the observations of the Committee of Experts and the responses communicated by the competent authorities on the subject raised by the Committee, has asked for additional information from the ILO.

As the Committee pointed out in paragraphs 89 to 93 of its 1979 General Survey on the Abolition of Forced Labour, it follows from Article 2, paragraph 2(c), of the Convention that compulsory labour imposed as correction or punishment falls outside the scope of the Convention only if certain conditions are met; first of all, the labour must be imposed "as a consequence of a conviction". Therefore, persons who are in detention but have not been convicted - such as prisoners awaiting trial or persons detained without trial - should not be obliged to perform labour. Furthermore, the term "conviction" indicates that the person concerned must have been found guilty of an offence. In the absence of such a finding of guilt, compulsory labour

may not be imposed, even as a result of a decision by a court of law. Accordingly, the provisions of section 1 of Act No. 20 of 1962 and section 6 of the Royal Decree of 5 October 1955, referred to above, are contrary to the Convention.

The Committee hopes that in the light of these indications, the necessary measures will soon be taken to bring the legislation into conformity with the Convention so as to ensure that no work may be imposed on detainees who are merely accused or suspected of certain crimes, and that the Government will indicate the action taken.

2. The Committee has observed that for several years the report of the Government contained no information in reply to the general direct request of 1981, in which the Committee referred to paragraphs 67 to 73 of its General Survey of 1979 on the Abolition of Forced Labour, concerning restrictions on the freedom of workers to leave their employment. It observed that, in a number of countries, the conditions of service of certain persons in the service of the State, particularly career members of the armed forces, are governed by legal provisions that make the right to leave the service dependent upon authorisation. In certain cases a link is established between the duration of training received and that of the services normally required before resignation is accepted. Since such restrictions may have a bearing on the application of the Conventions concerning forced or compulsory labour, the Committee again asks the Government to provide information on national law and practice concerning the situation of the various classes of persons in the service of the State, particularly in respect of freedom to leave the service on their own initiative within a reasonable period, either at specified intervals or with previous notice.

#### Mauritania (ratification: 1961)

The Committee notes the discussions in the Conference Committee in 1986 concerning the application of the Convention in Mauritania, and the information supplied by the Government in its report that was received in February 1989.

1. Call-up of labour. The Committee has noted in the comments it has been making for many years that Ordinance No. 62-101 of 26 April 1962 and Act No. 70-029 of 23 January 1970 confer very wide powers on the authorities to requisition persons outside the cases of emergency covered by Article 2, paragraph 2(d), of the Convention. The Committee notes that the Government stated previously that it recognised the need to repeal the provisions that were not in conformity with the Convention, that it had drawn up a draft Labour Code in order to bring the legislation fully into conformity with the Convention and that the draft would be submitted for comments to the International Labour Office.

The Committee also notes the statement by the Government representative to the Conference Committee in 1986 that the necessary measures to give effect to the provisions of the Convention had been taken and it trusts that the Government will supply, in the near future, the texts that repeal or amend the provisions in question so as to make them compatible with Article 2 of the Convention.

2. Abolition of slavery. In its previous comments, the Committee referred to the Declaration of 5 July 1980 proclaiming the abolition of slavery and to Ordinance No. 81-234 of 9 November 1981 to abolish slavery. It noted that under the terms of the provisions of the Ordinance, the abolition of slavery would give rise to compensation for those having held titles, for which the procedure would be established by decree, and it noted that the Ordinance did not contain provisions imposing penal sanctions for the illegal exaction of forced labour. The Committee also noted the indications contained in a paper submitted to the United Nations Human Rights Commission (document E/CN.4/Sub.2/1984/23 of the Subcommission on the Prevention of Discrimination and the Protection of Minorities - 2.7.1984) according to which the absence of penalties and the non-adoption of the Decree under the Ordinance on compensation could lead masters to tell their slaves that they are still slaves, since the envisaged compensation has not been received by those entitled to it, namely the masters, who could not demand it due to the absence of the implementing Decree. The Committee also noted, from the information contained in the above report, circular No. 003 of 9 January 1981 (which invites judges and cadis (al-koudath) to respect the decision of 1980 and to remain in complete conformity with international and national law) and circular No. 108 of 8 May 1983 (once again prohibiting judges from taking decisions that are incompatible with the law and requesting governors to give notification of all breaches and irregularities coming to their knowledge).

The Committee notes the information supplied by the Government in its report and to the Conference Committee in 1986 to the effect that, by virtue of section 3 of the Labour Code, forced or compulsory labour is forbidden and punishable, under section 56(a) of the Code, with penal sanctions, and that the practice of forced labour no longer exists in the country. It also notes that the Government is not planning to adopt the Decree mentioned in section 3 of Ordinance No. 81-234 regarding compensation, in view of the fact that it seemed wrong to provide compensation for an activity that has been declared illegal, and that the Government intends to delete this provision.

The Committee also notes the indications supplied by the Government in its reply to the United Nations Human Rights Commission (document E/CN.4/Sub.2/1987/27 of the Subcommission on the Prevention of Discrimination and the Protection of Minorities - 17.7.1987) according to which new circulars have been issued to the regional authorities of the country to reaffirm the conformity of Ordinance No. 81/234 with the sharia and to recall the penalties to which those violating the legislation on this matter are subject.

The Committee takes due note of the Government's indications that section 56 of the Labour Code makes the illegal exaction of forced labour punishable by penal sanctions. The Committee must, however, point out that these provisions have been in force since 1963, when the Labour Code was adopted, but that the practice of slavery has nevertheless persisted, and hence the Government considered it necessary to adopt the Ordinance of 1981 to abolish slavery. The Committee recalls, in this connection, that under the terms of Article 25 of the Convention, not only the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, but that it

shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.

The Committee requests the Government to supply detailed information on the measures that have been taken or are envisaged to implement the decisions to abolish slavery, on the results already obtained and on the penalties imposed on persons who do not respect the provisions abolishing slavery. It requests the Government to supply copies of court decisions made in this regard and of the information supplied by governors, in accordance with circular No. 108 of 8 May 1983. It also requests the Government to supply a copy of the latter circular, of circular No. 003 of 9 January 1981 and of the circulars to which reference is made in the Government's reply, referred to above, to the Human Rights Commission.

The Committee also requests the Government to supply copies of any texts adopted either to repeal section 3 of Ordinance 81-234 on the compensation that is due, or to implement it, and to supply information on the measures that have been adopted to give effect to the Convention in both law and practice.

#### Netherlands (ratification: 1933)

In previous comments the Committee referred to section 6 of the Extraordinary (Employment Relations) Decree, 1945 under which a worker is required to obtain approval for the termination of his employment and requested the Government, pending the necessary action to bring the legislation into conformity with the Convention, to find ways and means of ensuring that the requisite permits are issued to the workers in all cases where they apply for them.

The Committee noted the statement of the Government in its report for the period 1985-87 that it was awaiting the advisory report of the Social and Economic Council which deals with the overall revision of the Dutch Law on dismissal, and which would also involve a review of the requirement under section 6 of the 1945 Decree. The Committee also noted the Government's repeated indication that the continued performance of work can no longer be enforced by a penalty of imprisonment or a fine and that workers can request the courts to terminate the contract of employment for serious reasons under section 1639w of the Civil Code.

The Committee also noted the comments made by the Federation of Christian Trade Unions in the Netherlands (CNV), suggesting that this matter could be solved by a relatively minor piece of draft legislation. The Committee repeatedly expressed the hope that, pending the introduction of the required draft legislation, the Government would use its administrative powers to ensure that the regional employment offices issue the requisite permits in all cases where workers want to leave their employment upon the expiration of the appropriate notice.

The Committee notes with regret from the Government's report that no changes have occurred in the legislation implementing the Convention, and no administrative action is reported either. It also notes the statement by the Netherlands Council of Employers'

Federations that they can agree with the Government's report. The Committee again urges the Government to take the necessary action to ensure the observance of the Convention at least in practice.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

Pakistan (ratification: 1957)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

1. Restrictions on termination of employment. The Pakistan Essential Services (Maintenance) Act 1952 and the West Pakistan Essential Services (Maintenance) Act 1958 have been the subject of comments by the Committee and of discussions at the Conference Committee for a great number of years. Under sections 2, 3(1)(b) and explanation 2 and section 7(1) of the Pakistan Essential Services (Maintenance) Act, it is an offence punishable with imprisonment for up to one year for any person in employment (of whatever nature) under the central Government to terminate his employment without the consent of his employer, notwithstanding any express or implied term in his contract providing for termination by notice. Pursuant to section 3 of the same Act, these provisions may be extended to other classes of employment. Similar provisions are contained in the West Pakistan Act as regards persons in employment under the West Pakistan Government or any agency set up by it or a local authority or any service relating to transport or civil defence.

The Committee noted the Government's statement at the Conference Committee in 1987 and in its last report that it is strictly following a policy of minimum reliance on the essential service law, that the law applies to a very small minority of workers and that it is invoked under dire circumstances. The Government further indicated that it has retained the texts as enabling provisions to be applied in the case of an emergency threatening essential services, i.e. those whose interruption jeopardises the security and well-being of the greater part of the population and directly or indirectly threatens national security.

As to the extension of the Pakistan Essential Services (Maintenance) Act to other classes of employment, the Government stated at the 1987 Conference Committee that some of the industrial units which had been operating under the Act had recently been removed from its purview and that this removal was going to be a continuous process so that, when the application of the Act was no longer considered necessary, action would be taken to eliminate the remaining units from its scope. The Government further stated in its last report that it is reviewing this question and that it hopes to curtail its application further.

The Committee has taken due note of these indications. It has also taken note of the Report to the Government of Pakistan submitted by the ILO's Sectoral Review Mission (July-August 1986)

which indicates that a number of public enterprises have been placed under this Act, the notification sometimes being renewed every six months for an extended period of time, that one such case is the Water and Power Development Authority (WAPDA) and that a recent notification has been given to the Karachi Transport Corporation.

With reference to the Government's statement that the Essential Services Acts are being retained by way of enabling provisions to be applied in cases of emergency to essential services only, the Committee noted that under the two Acts all persons in government employment, of whatever nature, are under a prohibition from leaving their employment by giving notice and that this prohibition was not brought into force under enabling provisions for a specific emergency, but is directly laid down in the Essential Services (Maintenance) Acts and thus in force since 1952 and 1958. Whether government employees can legally leave their employment depends in each case on the consent of the employer. In addition, the Government's power to extend these restrictions to other classes of employment under section 3 of the Pakistan Essential Services Act is not limited to emergencies as defined in Article 2(2)(d) of the Convention.

The Committee further noted that - whether or not specific categories of employment referred to by the Government are essential services whose interruption would endanger the existence or the well-being of the whole or part of the population - there is no basis in the Convention for depriving workers, even in such essential services, of the right to terminate their employment by giving notice of reasonable length. In particular, the concept of emergency in Article 2, paragraph 2(d), of the Convention involves, as indicated by the Committee in paragraph 36 of its 1979 General Survey on the Abolition of Forced Labour, a sudden, unforeseen happening calling for instant countermeasures. In the absence of such an emergency, the need to maintain the functioning of essential services cannot justify turning a contractual relation based on the will of the parties into service by compulsion of law.

In view of the Government's repeated indications that voluntary termination of employment by three months' notice has in actual practice never been restricted, the Committee firmly hopes that the necessary measures will soon be adopted to bring the Pakistan Essential Services (Maintenance) Act 1952, and the West Pakistan Essential Services (Maintenance) Act 1958, into conformity with the Convention, and that the Government will indicate the action taken or contemplated.

2. In its previous comments, the Committee referred to the alleged use of bonded labour by contractors known as "Kharkars" in the construction of dams and irrigation canals and asked the Government to supply information on the measures taken to enforce the prohibition of forced labour in the field of contract labour. The Committee noted the Government's statement at the 1987 Conference and in its last report that no labour camps are allowed to operate where forced labour is exacted from workers

and that any attempt to employ forced labour results in prosecution.

The Committee has noted a reference in the above-mentioned Report of the ILO's Sectoral Review Mission to the employment of illegally bonded children in "Kharkar" camps working at night in irrigation tunnels in remote rural areas.

Recalling the Government's indication at the 1987 Conference Committee that the Prime Minister's Five-point Programme is committed to the complete elimination of all types of exploitation of labour, such as forced labour, the Committee requests the Government to supply detailed information on the actual measures undertaken or envisaged in this regard.

Poland (ratification: 1958)

In earlier comments, the Committee referred to the Act of 26 October 1982 on the procedure concerning persons evading work. It noted that under this Act, administrative authorities enjoy extensive policing powers in respect of persons whom they consider to be inactive for socially unjustified reasons; such persons are placed on a list and have to provide explanations concerning their motives and their sources of income and means of livelihood. Furthermore, Article 13 provides for such persons to be called upon to perform public works in the case of emergency or disaster posing a serious threat to the normal living conditions of the whole or part of the population; under Article 15, assignment to public works must not exceed 60 days per year.

Under Articles 21 and 22 of the Act, persons who fail to report on being summoned by the administrative authorities to provide explanations on their sources of income or to perform public works are liable to imprisonment for up to one and two years respectively.

It appeared to the Committee that the system of public works gradually set up in the various voivodships in application of the said Act and of Article 12 of Act No. 176 of 21 July 1983, which established special legal provisions for overcoming the social and economic crisis and remained in force until 31 December 1985, was not called for by the exigencies of cases of emergency within the terms of the Convention, but led to the imposition of compulsory labour on certain persons described as persistently evading work. The Committee requested the Government to provide full information on legislation and practice concerning persons evading work.

The Committee notes with interest the information provided by the Government to the Conference Committee in 1988, according to which a group of experts under the Ministry of Labour and Social Affairs has been commissioned to examine the conformity of the legislation with the international labour standards concerning the protection of human rights, and to submit its findings to the Legislative Council, together with such recommendations as may be required.

The Committee also notes the statement made by the Government in its report that information is submitted each year to Parliament in accordance with Article 19 of the Act of 26 October 1982; that information indicates that by 31 March 1987 over 229,000 persons had



been placed on the list since the entry into force of the Act; at that date, 90,900 persons were still on the list, 78,700 of whom had been assigned work. Enterprises stated that they had employed 56,300 persons.

The Committee refers to paragraphs 36 and 63-66 of its 1979 General Survey on the Abolition of Forced Labour in which it emphasised that the concept of emergency involves a sudden, unforeseen happening calling for instant countermeasures. To respect the limits of the exception provided for in the Convention, the power to call up labour should be confined to genuine cases of emergency. Moreover, the duration and extent of compulsory service, as well as the purpose for which it is used, should be limited to what is strictly required by the exigencies of the situation.

The Committee requests the Government to provide detailed information on the nature of the work to which the above-mentioned persons have been assigned, on the duration of such assignments and the number of persons still on the list, and on any measures taken to ensure the observance of the Convention, both in legislation and in practice.

#### Sierra Leone (ratification: 1961)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

In comments made since 1964, the Committee has asked the Government to repeal or amend section 8(h) of the Chiefdom Councils Act (Cap. 61) under which compulsory cultivation may be imposed on natives. The Committee noted the information provided by the Government to the International Labour Office in June 1987, and in particular, the Government's statement that in so far as section 8(h) of the Chiefdom Councils Act may not be in conformity with article 9 of the Constitution, it is not enforceable, since the Constitution takes precedence. Pending adoption of the measures to bring section 8(h) of the Act into conformity with the Convention, the Committee asks the Government whether this section has been declared not to be enforceable, and in the affirmative, to supply a copy of the official publication of such declaration. The Committee trusts that measures will soon be adopted to bring section 8(h) of the Act into conformity with the Convention and that the Government will indicate the action taken.

#### Singapore (ratification: 1965)

Article 2, paragraph (2)(c), of the Convention. In earlier comments the Committee has noted that, under section 15 of the Singapore Corporation of Rehabilitative Enterprises (SCORE) Act, the functions of the Corporation relate both to the vocational training of prisoners and to the imposition of prison labour pursuant to section 50 of the Prisons Act and that for these purposes the Corporation may,

under section 16(k) of the SCORE Act, enter into joint ventures with any person or organisation. The Committee has pointed out that the use of the labour of convicted persons in workshops operated by private undertakings outside or inside prisons would be compatible with the Convention only if it were subject to the consent of the prisoners and to safeguards in the field of remuneration, social security, consent of trade unions, etc.

In its most recent report, the Government states that SCORE has never entered into joint ventures with any party under section 16(k) of the SCORE Act.

The Committee takes due note of this indication and hopes that when the SCORE Act is next amended, account will be taken of the requirements of Article 2(2)(c) of the Convention. In the meantime, the Government is requested to indicate in its future reports any developments bearing upon the use of prison labour by private individuals, companies or associations.

#### Sudan (ratification: 1957)

Article 25 of the Convention. The Committee has taken note of information received by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1988 from the Anti-Slavery Society for the Protection of Human Rights (UN document E/CN.4/Sub.2/AC.2/1988/7/Add.1).

According to this information, tribal militia are accused of raiding Dinka villages in northern Bahr el Ghazal, southern Darfur and Kordofan, and between 19 December 1986 until March 1988, over 600 Dinka had been killed in the Abyei area and 400 taken as slaves. This figure had been confirmed by Transport Minister Aldo Ajor, himself a Dinka. The captives were held in Satep, Meram, Datelia, Kolek, Muglad and Tibum in southern Kordofan, and were sold for between about £18 and £36 or kept by their militia kidnappers. They worked as agricultural labourers or house servants. Males between the ages of 15 and 20 cultivated the fields in the rainy season and in the summer tended cattle. Children aged from 7 to 12 looked after goats and other livestock or dug wells. Younger children were employed in the house along with the women that the militia captors "married". Other women were also used as agricultural labour or water carriers. There had also been reports that slaves were killed after the harvest when their labour was no longer required.

According to the same information, apart from direct capture by the militia, war had created another avenue for slavery, which was the sale of children by their destitute parents. Parents who had sold their children admitted during interviews conducted in Nyala that they did not know the names of the owners, and had no expectation of seeing the children again. Rezeigat at Safaha described the children for sale, who were mostly boys between the ages of 6 and 12, as "abid" (slave). Despite the testimonies of escaped slaves now living in Khartoum, and who had provided the locations and names of their abductors, the Government continued to deny the existence of slavery and refused to set up an independent inquiry.

The Committee hopes that the Government will supply detailed comments on these allegations which have a direct bearing on the observance of the Convention, and that it will indicate in particular all measures taken to ensure, in conformity with Article 25 of the Convention, that penalties imposed by law for the exaction of forced labour are really adequate and are strictly enforced against any slave-holders and military or other personnel involved in the practice.

United Republic of Tanzania (ratification: 1962)

The Committee notes the Government's report.

Tanganyika

1. Compulsory cultivation. In comments made over a number of years, the Committee has noted that the Local Government Ordinance and, following its repeal, the Local Government (District Authorities) Act, 1982, and section 121(e) of the Employment Ordinance (as amended by Act No. 82 of 1962) empower local authorities to impose compulsory cultivation, and that by-laws which impose compulsory cultivation on resident landholders have indeed been made by district councils and approved by the national Government. While reference was made during the discussion which took place at the Conference Committee in 1984 concerning the application of the Convention in the United Republic of Tanzania to the impending threat of famine, the Committee in its last observation noted that a number of by-laws adopted in 1984 and 1985 specifically restrict the production of food crops, since they oblige resident landholders to cultivate and maintain a fixed area of cash crops, any contravention being punishable with a fine and imprisonment.

For a number of years also, the Government has indicated its intention to have the legislation revised so as to ensure the observance of the Convention; in its report for 1980-81 it asked for concrete proposals from the ILO to this effect which were forwarded in May 1982; in its report for 1981-82, the Government indicated that measures would be taken in the near future in light of the specific proposals; in the discussion which took place at the Conference Committee in 1987, the Government again stated that it intended to review all laws relating to labour and make amendments, if necessary, to provisions inconsistent with international obligations.

In its most recent report, covering the period ending 15 October 1988, the Government pointed out that the Labour Laws of the country are now under revision and that it is hoped that the new Labour Code will contain provisions which are in harmony with international labour standards.

The Committee takes due note of this indication. It observes that by-laws imposing compulsory cultivation are in actual practice made under the Local Government (District Authorities) Act, 1982. Noting the Government's repeated indications that the legislation referred to would be revised so as to ensure the observance of the Convention, the Committee trusts that the necessary measures will be taken without further delay to bring the Local Government (District Authorities) Act, 1982 and section 121(e) of the Employment Ordinance,

as well as any by-laws made and approved thereunder into conformity with the Convention, and that the Government will indicate the provisions adopted to this end.

2. General obligation to work. In previous comments the Committee had referred to the Human Resources Deployment Act, 1983, which makes provision for the establishment of machinery designed to regulate and facilitate the engagement of all able-bodied persons in productive work. Under section 3 of this Act, every local government authority shall make arrangements to ensure that every able-bodied person over 15 years of age and resident within its area of jurisdiction engages in productive or other lawful employment; for this purpose, the local authority shall establish and maintain registers of employers and of all residents capable of working (sections 13 and 14), and work out a system which will enable the registered employer to utilise the available registered unemployed residents within its area of jurisdiction (section 20). Under section 17 of the Act, arrangements made by the Minister of Labour and Manpower Development are to provide for the transfer to other districts and subsequent employment of unemployed residents, and under section 24, failure to comply with any provision of the Act is punishable with a fine and imprisonment. Referring to the explanations provided in paragraphs 34 to 37 and 45 to 48 of its 1979 General Survey on the Abolition of Forced Labour, the Committee pointed out that legislation obliging all able-bodied citizens to engage in a gainful occupation subject to penal sanctions is incompatible with the Convention.

In its most recent report, the Government refers in this regard to the current revision of the labour laws of the country. The Committee hopes that the necessary measures will rapidly be taken to bring the Human Resources Deployment Act into conformity with the Convention and that the Government will indicate the provisions adopted.

3. The Committee previously noted that by the Written Laws (Miscellaneous Amendments) (No. 2) Act, 1983, section 176 of the Penal Code has been amended by inserting, *inter alia*, a new paragraph (8), punishing "any able-bodied person who is not engaged in any productive work and has no visible means of subsistence". Noting also that persons chargeable under section 176 of the Penal Code may be subjected to administrative measures under the Human Resources Deployment Act (see point 5 below), the Committee requested the Government to supply full information on the application in practice of section 176(8), including any court decisions defining or illustrating its scope and any guide-lines followed by administrative authorities in deciding who is chargeable under this provision. In the absence of a reply, the Committee hopes that the Government will re-examine section 176(8) of the Penal Code in the light of the Convention and the explanations provided in paragraphs 34 to 37 and 45 to 48 of the 1979 General Survey on the Abolition of Forced Labour, already referred to above, and that it will indicate the measures taken or contemplated in this regard to ensure the observance of the Convention.

4. Compulsory labour for public purposes and development schemes. In comments made over a number of years, the Committee observed that, contrary to the Convention, Part X of the Employment Ordinance permits forced labour to be exacted for public purposes, and

section 6 of the Ward Development Committees Act, 1969, gives ward development committees the power to make orders requiring all adult citizens resident in the area of the ward to participate in the implementation of any scheme for agricultural or pastoral development, the construction of works or buildings for the social welfare of residents, the establishment of any industry or the construction of any public utility. In 1984, the Committee noted the Government's statement that proposals for the revision of these provisions had been submitted to the competent authority for decision. In its latest report the Government indicates the non-conformity of Part X of the Employment Ordinance, and section 6 of the Ward Development Committees Act will be corrected when the new Labour Code now under preparation is adopted.

The Committee notes this indication. In view of the Government's earlier indications that amending legislation had been proposed for adoption, the Committee hopes that the necessary action will soon be taken to bring Part X of the Employment Ordinance and section 6 of the Ward Development Committees Act into conformity with the Convention and that the Government will indicate the provisions adopted to this end.

5. Article 2, paragraph (2)(c), of the Convention. In previous comments, the Committee noted that sections 4 to 8 of the Resettlement of Offenders Act, 1969, and sections 4 and 17 of the Resettlement of Offenders Regulations, 1969, permit resettlement orders, with an obligation to perform compulsory labour, to be made by administrative decision. In addition, under sections 26 and 27 of the Human Resources Deployment Act, the Minister shall make such arrangements as will provide for a smooth and co-ordinated transfer or any other measure which will provide for the rehabilitation and full deployment of persons chargeable with, or previously convicted under, sections 176 and 177 of the Penal Code. While in 1984, the Committee noted the Government's statement that proposals for the revision of the provisions of the Resettlement of Offenders Act and Regulations had been submitted to the competent authority for decision, the Government in its report for the period ending October 1987 merely stated that no cases were known where compulsory labour has been applied contrary to Article 2, paragraph (2)(c), of the Convention. In its most recent report the Government adds that since work in Tanzania can only be exacted from a person as a consequence of a conviction in a court of law, it follows, therefore, that no compulsory labour can be imposed by an administrative or non-judicial body. The Committee takes note of these indications. It hopes that the provisions of the Resettlement of Offenders Act, 1969, and Resettlement of Offenders Regulations, 1969, referred to above which appear to authorise the imposition of compulsory labour by administrative order will accordingly be amended so as to ensure in law that no compulsory labour may be imposed on offenders otherwise than as a consequence of a conviction in a court of law, and that the Government will indicate the action taken to this end.

Tunisia (ratification: 1962)

In its previous comments, the Committee referred to:

- the provisions of Legislative Decree No. 62-17 of 15 August 1962, under which any male person who without just cause refuses to work may be directed to rehabilitation through work on state worksites;
- the provisions of Act No. 78-22 of 8 March 1978 to establish civic service, under which any Tunisian between 18 and 30 years of age who cannot show that he has a job or is registered in an educational or vocational training establishment may be assigned, for one year or longer, to economic and social projects or rural or urban development projects, under penalty of compulsory rehabilitation through work in the event of refusal or desertion.

The Committee noted that an interdepartmental committee was due to meet in order to draw up proposals for the amendment of the above texts in order to bring certain of their provisions into conformity with the Convention.

The Committee notes the Government's indication in its report that any new information will be supplied in due time. The Committee notes that the above texts have been the subject of its comments for many years and it also notes the Government's statement that measures have been taken that bear witness to the will of the Government to ensure respect for human rights, and it trusts that the Government will indicate in the very near future the amendments that have been made to bring these texts into accordance with the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: Bahamas, Bangladesh, Barbados, Belize, Cameroon, Cape Verde, Central African Republic, Chile, Colombia, Cuba, Democratic Yemen, Djibouti, Dominica, Dominican Republic, Fiji, France, Federal Republic of Germany, Ghana, Greece, Hungary, India, Indonesia, Islamic Republic of Iran, Ireland, Italy, Jamaica, Kuwait, Lao People's Democratic Republic, Mauritania, Mauritius, Pakistan, Papua New Guinea, Saint Lucia, Somalia, United Republic of Tanzania, Tunisia, Uganda.

**Convention No. 30: Hours of Work (Commerce and Offices), 1930**Ghana (ratification: 1974)

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

In the absence of information in reply to its earlier comments, the Committee is once again addressing a direct request to the Government and hopes that the next report will contain full information on the points raised.

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

Iraq (ratification: 1965)

Article 7, paragraph 2, of the Convention. Further to its previous comments, the Committee notes with satisfaction that the new Labour Code No. 71 of 1987 no longer provides for temporary exceptions to normal working hours in the event of work being required for the purposes of developing or increasing production.

Article 7, paragraph 3. The Committee takes note of section 63 II(c) of the new Labour Code which maintains the possibility of working up to four additional hours in a day in non-industrial activities. This possibility can imply weekly or annual working hours that are far too high and which, in the Committee's opinion, could be contrary to the spirit in which the Convention was formulated (see in this connection the Committee's General Survey on this instrument, ILC, 51st Session, 1967, Report III (Part IV), third part, para. 239).

The Committee would be grateful if the Government would take the necessary measures to establish, within reasonable limits, the maximum number of additional hours which may be allowed in the year, in accordance with this provision of this Convention.

Article 11, paragraph 2(a) and (b). See under Convention No. 1, Article 8, paragraph 1(a) and (b).

Kuwait (ratification: 1961)

See the comments made under Articles 1, 2 and 6, paragraphs 1(b) and 2, of the observation on Convention No. 1.

Morocco (ratification: 1974)

The Committee notes once again that the Government's report contains no new information in reply to its previous direct requests. It is therefore obliged to take up the matter in a new direct request, and trusts that the Government will not fail to take the necessary measures and to provide the information requested.

Nicaragua (ratification: 1934)

See under Convention No. 1.

Paraguay (ratification: 1966)

See the comments made under Convention No. 1 concerning section 205 of the Labour Code.

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In addition, requests regarding certain points are being addressed directly to the following States: Bolivia, Chile, Ghana, Morocco, Saudi Arabia.

### **Convention No. 32: Protection against Accidents (Dockers) (Revised), 1932**

#### Mauritius (ratification: 1969)

For many years, the Government has been expressing the intention of amending the Dock Regulations of 1937 in order to give full effect to the Convention. The Committee notes, from the Government's reply to its previous observation, that no progress has yet been achieved in this connection. It is therefore bound to draw attention once again to the fact that no measures exist to apply Article 3, paragraphs 2 to 4 (safety of means of access to vessels), Article 5, paragraph 5 (provision of ladders in holds), and Article 17, paragraph 3 (posting of copies of Regulations), of the Convention. The Committee once again expresses the hope that the process of amending the Dock Regulations will be completed in the very near future and it trusts that the Government will indicate the progress achieved in this respect in its next report.

#### Panama (ratification: 1971)

With reference to its previous observations, the Committee notes from the Government's most recent reports that the draft regulations concerning the prevention of risks in dock work, which were to give effect to the Convention, have been revised and have now become draft general regulations on safety and health in dock work, the text of which was enclosed with the Government's report. This draft was awaiting approval by the Port Authority Executive Committee. The Committee trusts that the draft will be adopted at an early date, given that, since the ratification of the Convention, it has been drawing attention to the lack of specific legislation to give effect to the Convention.

The Committee also notes with interest the draft regulations for safety and health committees in ports, which were prepared with the technical assistance of the ILO. Bodies of this kind, whose purpose is to promote and support activities for the prevention of occupational accidents, are of particular importance in ensuring that practical effect is given to the Convention. For this reason, the Committee hopes that this draft will also be adopted shortly.

Finally, the Committee acknowledges receipt of the statistical data communicated by the Government in reply to its previous observation.

[The Government is asked to report in detail for the period ending 30 June 1989.]



**Convention No. 33: Minimum Age (Non-Industrial Employment), 1932**

Central African Republic (ratification: 1960)

Further to its previous comments, the Committee notes with satisfaction Order No. 006/MFPTSS-CAB-SG-DGTE-DESTRE of 21 May 1986 which determines the duration and limitations of light work authorised for children over 12 years of age, in accordance with Article 3, paragraphs 1(c), 2(b) and 4(b), of the Convention.

**Convention No. 35: Old-Age Insurance (Industry, etc.), 1933**

Chile (ratification: 1935)

The Committee notes the information supplied by the Government to the Conference Committee in 1987 and in its report for the period 1984-88. It also notes the statistics provided.

1. Article 9, paragraph 1, of the Convention. In reply to the Committee's previous comments, the Government indicates, in particular, that the contributions paid to a pension fund are wholly the property of the worker, which from the point of view of financing, results in no difference between contributions that are payable by the worker or the employer. This is due to the fact that the total cost of labour for the employer remains the same, whether contributions are payable by him or by the worker. In turn, from the worker's point of view, there is no change either to his actual earnings or to the level of his contributions if contributions to the pension fund are payable by him or his employer. Furthermore, in view of the fact that contribution rates under the individual capital accumulation system are those required to balance the provision of the expected benefits, the imposition of the payment of contributions on employers will necessarily result in a decrease in taxable income proportional to the employer's contribution. Indeed, this would otherwise only amount to raising an unnecessary tax on work, with serious consequences for employment.

Until May 1981 employers' contributions existed in Chile, from that date, taxable earnings had to be increased in order to transfer the contributions payable by employers to the workers. As a result, there was no loss of earnings for workers and there was no change in the cost of labour for employers. In addition, the amounts payable as contributions remained constant. Furthermore, there are two additional arguments which mean that it is preferable for contributions to be payable only by workers. The first of these is the increased responsibility of the employer for the payment of contributions to insurance schemes when these are the property of the worker. The second point is the competitive framework within which the pension schemes operate, with different contribution levels. In this way, it is for the worker to give consideration to the advantages of paying higher or lower contributions as a function of the benefits that will be provided in the future.

The Committee takes due note of the detailed information supplied by the Government and of the arguments put forward. The Committee considers, nevertheless, that in order to give full effect to this provision of the Convention, employers should contribute to the financial resources of compulsory insurance schemes for employees. It therefore hopes that the Government will take the necessary measures to give effect to the recommendations of the Committee set up by the Governing Body to examine the representation made by the National Trade Union Co-ordinating Council of Chile (CNS), under article 24 of the Constitution, alleging the non-enforcement by Chile of, *inter alia*, Convention No. 35 (see document GB.234/23/28, 234th Session, 17-21 November 1986).

2. Article 9, paragraph 4. In reply to the Committee's previous comments, the Government indicates that there are various ways in which the public authorities can contribute to the financial resources of compulsory old-age and invalidity insurance schemes for employees. Nevertheless, under the individual capital accumulation system these may be synthesised into two principal procedures. The first of these is a contribution by the State to the resources that each individual maintains and accumulates in his insurance account; once the pensionable age is reached, these resources are the assets through which pensions are financed. Through this procedure, the State distributes resources both for those who are most in need and for those whose earnings levels make it possible for them to finance their pensions themselves, and also to take out supplementary private insurance schemes. However, this system does not guarantee that the State contributes only to those in need, particularly since it is impossible to know the future earnings patterns of workers. The second system, which is in force in Chile, is for the State to contribute directly to the benefits that are provided, that is, to pensions, which makes it possible for the State to provide resources only to those who are in need through the financing of pensions for workers whose accumulated assets in their personal insurance accounts are not sufficient to finance a minimum pension. Sections 73 and 74 of Legislative Decree No. 3500 of 1980 provide that workers who fulfil certain prerequisites are entitled to a State contribution to the payment of their pensions when their pension benefits do not come up to the minimum level. Accordingly, the Chilean pensions insurance system fully complies with the Conventions to which it has subscribed in this respect and it is also the Government's policy to assist and direct resources towards those who are most in need.

The Committee takes due note of the detailed information supplied by the Government. The Committee recalls, nevertheless, the conclusions of the Committee set up by the Governing Body, that, "although the present legislation provides for the possibility of some financial participation by the State in the form of a guarantee, this participation, given its conditional and thereby exceptional nature, does not strictly correspond to the contribution to the financial resources or benefits of insurance schemes" prescribed by the Convention. The Committee therefore hopes that the Government will take the necessary measures to give full effect to this provision of the Convention.

3. Article 10, paragraphs 1 and 2. In reply to its previous comments, the Government indicates that the Chilean Social Insurance System fully complies with these provisions of the Convention, since the law gives broad scope for any worker concerned, or group, to found a pension scheme and, moreover, there are special incentives to encourage this. With the adoption of Act No. 18646 of 29 August 1987, various amendments were made to Legislative Decree No. 3500 for the purpose of encouraging the foundation of union pension schemes. Obstacles to their foundation have been eliminated both in financial terms, such as the decrease in the capital required to found a pension scheme (this was reduced from the 20,000 "unidades de fomento" (insurance units) required in 1987 to 5,000) and in the minimum assets as a ratio of the number of insured persons, and in technical terms (the possibility for larger pension schemes to provide services to smaller ones). In this way in August 1988, the AFP FUTURO was founded, composed wholly of workers in the banking sector (Bankworkers' Confederation). In addition, feasibility studies have been presented to the pension fund supervisory body for the establishment of other integrated pension funds for workers in the National Telecommunications Enterprise (ENDESA), the Telephone Company (CTC), the Chilean Electrical Company (CHILECTRA) and the Development Corporation (CORFO). There are currently four pension funds in existence that were established through the initiative of the employees concerned. Two of them, "AFP Protección" and "AFP FUTURO", are wholly the property of the workers. The two others, "Cuprum" and "Magister", are jointly owned by the persons insured and other enterprises. Moreover, the two largest pension funds, "AFP Provida" and "AFP Santa María", although they were not originally established by workers, are now joint property with 60 per cent and 49 per cent respectively belonging to around 14,000 workers from various sectors. Finally, "AFP El Libertador" is the property of the Pacific Steel Company (CAP), an enterprise in which 34 per cent of the shares belong to its own workers (3,081 workers).

The Committee notes the detailed information supplied by the Government and the measures adopted to encourage the foundation of trade union pension funds. In particular, it notes with interest the establishment of the new "AFP FUTURO" composed wholly of workers in the banking sector. The Committee nevertheless recalls the recommendations of the Committee set up by the Governing Body, to the effect that the Government should adopt measures to amend Legislative Decree No. 3500 so that the pension scheme is administered by institutions not conducted with a view to profit, as prescribed by these provisions of the Convention, with the exception of those cases in which the administration of insurance is entrusted to institutions founded on the initiative of the parties concerned or of their organisations and duly approved by the public authorities. It requests the Government to continue to supply information on the foundation of trade union pension funds and to supply a copy of the statutes of "AFP FUTURO".

4. Article 10, paragraph 4. In reply to the Committee's previous comments, the Government indicates in its reports that one of the main features of the Chilean pension system, is the freedom to choose the pension scheme in which the worker wishes to place his funds. This freedom of choice gives workers a wider range of

participation, since they freely decide to maintain their pension credits or transfer them to the pension fund that is best managed and in which they feel themselves to be best represented. In this way, all employees and self-employed workers, irrespective of whether they are connected to a pension fund through ownership of their entitlement, participate personally and actively in the management of their funds or the election of their representatives whom, although they do not elect them through votes, they select through their choice of pension fund. They can also question them and show their discontentment by transferring their credits to another pension fund. The Government also points out that workers jointly own parts of seven pension funds and are represented on their management boards.

Finally, the Government indicates that the Chilean pension scheme includes worker participation in the administration and management of pension funds: through the ownership of shares by the persons involved or the trade union organisation; through the election of representatives; or through the selection of the pension fund which fits the desired type of management and representation, and that it therefore fully complies with the provisions of the Convention.

The Committee notes with interest the detailed information supplied by the Government. It refers, however, to the conclusions of the Committee set up by the Governing Body to the effect that "the participation of insured persons in the management of the AFPs results neither from the current legislation nor from the statutes of these limited liability companies, which make no reference to them or to any occupational organisations" ... "even if insured persons do in fact participate to some extent in the management of some AFPs, there remains the question of the participation of insured persons in the management of the remaining AFPs".

The Committee therefore hopes that the Government will give effect to the recommendations of the Committee set up by the Governing Body, and will take the necessary measures so that the representatives of insured persons can participate in the administration of all insurance institutions under conditions determined by national legislation in accordance with the provisions of the Convention.

5. The Committee also notes that, in the same way as in its report for the period 1981-84, the Government indicates that the administrative boards of pension funds responsible for administering old-age insurance for beneficiaries under the old system continue to be temporarily suspended. In view of the fact that during this continuing suspension, the insured persons of the above scheme cannot participate in the administration of their old-age insurance, the Committee requests the Government to take the necessary steps so that these insured persons can participate in the administration of their pension scheme, in accordance with the Convention, and requests it to supply information on this matter.

[The Government is asked to report in detail for the period ending 30 June 1989.]

France (ratification: 1939)

With reference to its previous comments, the Committee notes the information supplied by the Government to the effect that it is not proposing to ratify the Invalidity, Old-age and Survivors' Benefits Convention, 1967 (No. 128), whose provisions are more flexible and whose adoption would, in particular, entail the denunciation ipso jure of Conventions Nos. 35, 36, 37 and 38, at the date of its coming into force for France. The Government indicates that under the current state of the law only the old-age part could be adopted, which is possible under the terms of the Convention, thereby excluding several other branches, which is also possible. The scope of the relevant legislation would be too restricted.

Article 12, paragraph 3, of the Convention. The Committee notes that, under the terms of Ministerial Letter No. 1370 of 5 November 1987, workers and former workers who are nationals of the European Economic Community (EEC) and resident in France, may benefit from certain non-contributory benefits, and in particular the supplementary allowance of the National Solidarity Fund, under the same conditions as French nationals. The Committee therefore notes that, contrary to this provision of the Convention, foreign persons other than EEC nationals, and their dependants, if nationals of a Member which is bound by this Convention, but not a signatory to an international reciprocal agreement, still do not benefit, under the same conditions as nationals, from the "supplementary allowance" of the National Solidarity Fund, which is provided under the terms of sections L.685 and L.707 of the Social Security Code. The Committee is therefore bound to reiterate its hope that the Government will consider extending the above allowance to all the nationals of States which are bound by this instrument.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: France, Peru, Poland.

**Convention No. 36: Old-Age Insurance (Agriculture), 1933**Chile (ratification: 1935)

See under Convention No. 35, Chile.

France (ratification: 1939)

See under Convention No. 35, France.

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In addition, requests regarding certain points are being addressed directly to the following States: France, Peru, Poland.

**Convention No. 37: Invalidity Insurance (Industry, etc.), 1933**Chile (ratification: 1935)

The Committee notes the information supplied by the Government to the Conference Committee in 1987 and in its report for the period 1984-89. It also notes the statistics provided.

1. Article 10, paragraph 1 of the Convention. See under Convention No. 35, Article 9, paragraph 1.

2. Article 10, paragraph 4. See under Convention No. 35, Article 9, paragraph 4.

3. Article 11, paragraphs 1 and 2. See under Convention No. 35, Article 10, paragraphs 1 and 2.

4. Article 11, paragraph 4. See under Convention No. 35, Article 10, paragraph 4.

France (ratification: 1939)

See under Convention No. 35, France.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Chile, Djibouti, France, Peru, Poland.

**Convention No. 38: Invalidity Insurance (Agriculture), 1933**Chile (ratification: 1935)

See under Convention No. 35, Chile.

France (ratification: 1939)

See under Convention No. 35, France.

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In addition, requests regarding certain points are being addressed directly to the following States: Djibouti, France, Peru, Poland.

**Convention No. 39: Survivors' Insurance (Industry, etc.), 1933**

Requests regarding certain points are being addressed directly to the following States: Peru, Poland.

**Convention No. 40: Survivors' Insurance (Agriculture), 1933**

Requests regarding certain points are being addressed directly to the following States: Peru, Poland.

**Convention No. 42: Workmen's Compensation (Occupational Diseases) (Revised), 1934**

Guyana (ratification: 1966)

The Committee regrets to note that the amended list of occupational diseases, appended to Regulations No. 34 of 1969 has not yet been finalised by the law officers (drafting) as delays had been necessitated by urgency to restructure the Occupational Health and Safety Section of the Ministry of Labour and Co-operatives in keeping with the Conventions on occupational health and safety and occupational health services. It notes however that the matter of sequelae of the poisonings caused by arsenic and benzene are engaging the attention of the officers from the Occupational Health and Safety Section based upon expert evidence through a technical assistance programme with Cuba.

The Committee requests the Government to indicate in its next report any progress made in this connection, and expresses again the hope that the draft schedule will soon be finalised taking into account the following points:

- (a) replacing items Nos. 1(x), (xi), (xii) and (xiv) of this list with an item containing, in general terms, all the halogen derivatives of hydrocarbons of the aliphatic series;
- (b) including in item No. 7, which refers to certain manifestations due to radiation, all manifestations due to radium, other radioactive substances or X-rays and completing the list of the activities likely to cause them;
- (c) including in items Nos. 1(i) and (v) concerning poisoning by lead or a compound of lead and by mercury or a compound of mercury, the alloys of lead and the amalgams of mercury respectively;
- (d) including in item No. 1(iii), which refers to poisoning by phosphorous or its compounds, the inorganic compounds of phosphorous;
- (e) adding to item No. 2, among the activities likely to cause anthrax infection, the loading and unloading or transport of merchandise of whatever nature;
- (f) adding to the list silicosis with or without tuberculosis and the industries or processes involving a risk of this affection.

\* \* \*

In addition, a request regarding certain points is being addressed directly to Greece.

**Convention No. 44: Unemployment Provision, 1934**

A request regarding certain points is being addressed directly to Spain.

**Convention No. 52: Holidays with Pay, 1936**

Byelorussian SSR (ratification: 1956)

The Committee notes with regret that the Government's report does not contain a reply to its comments which have been made for many years. It must therefore repeat its previous observation which reads as follows:

Article 2, paragraph 1, and Article 4 of the Convention. The Committee wishes once again to draw the Government's attention to the fact that section 74 of the Labour Code, under which - in exceptional cases, with the consent of the worker and the agreement of the trade union committee - it is authorised to postpone the annual holiday until the following year, is not in conformity with the Convention. It recalls that, in accordance with the Convention, a holiday of at least six working days shall be taken each year.

The Committee once again expresses the hope that the necessary steps to bring the legislation into harmony with the Convention on this point will be taken in the near future.

Central African Republic (ratification: 1964)

With reference to its earlier comments, the Committee notes with regret that no progress has so far been made in giving effect to Article 2 of the Convention. It recalls that section 129(2) of the Labour Code provides that the length of service entitling workers to holiday can be of up to two or two-and-a-half years in the case of an individual contract or collective agreement, whereas under Article 2 of the Convention, every person to whom this Convention applies is entitled after one year of continuous service to an annual holiday with pay of at least six working days. It also recalls that in 1980 a draft Decree was drawn up with the assistance of the ILO, providing for the amendment of section 129 of the Code so that persons covered by the Convention may benefit from a minimum holiday with pay every year. In its last report, the Government indicates that the draft, which has again been updated, is still before the competent legislative authorities. The Committee trusts that the draft will be adopted in the very near future, in accordance with the Government's assurances.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]



Côte d'Ivoire (ratification: 1961)

The Committee regrets to note that the report supplied by the Government is only a copy of the report submitted in 1986 with regard to which, at its last session, it made the following observation:

The Committee has been drawing the Government's attention for many years to the fact that section 108, subsection 2, of the Labour Code (under which collective agreements or individual employment contracts may provide for a period of up to 30 months of actual service to give entitlement to the holiday) is in conflict with the provisions of Articles 2 and 4 of the Convention. In its latest report the Government transmitted draft legislation prepared within the framework of the revision of the Labour Code which would amend section 108 by deleting subsection 2. The Committee notes this information with interest and expresses the hope that measures to bring national legislation into full conformity with the Convention will be adopted in the very near future.

The Committee trusts that the Government's next report will contain information on the measures that have been taken to ensure that all workers are granted an annual holiday of at least six working days, as provided for by Article 2 of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Morocco (ratification: 1956)

The Committee notes with regret that the Government's report does not contain any new information in reply to its previous comments. The Committee is therefore bound to repeat its previous observation, which read as follows:

Article 2, paragraph 1, of the Convention. The Committee has been drawing the Government's attention for many years to the need to adopt measures in order to ensure that the accumulation of holidays by staff employed in industrial enterprises and establishments that is permitted under section 16 of the Dahir of 9 January 1946, may not have the effect of reducing the length of holiday taken every year to less than six working days.

The Committee recalls that the Government expressed the intention in 1967 of adopting provisions to this effect within the framework of the future Labour Code. Since the Government states in its last report that the Labour Code has still not been enacted, the Committee can only reiterate the hope that this Code or other legislative measures giving full effect to Article 2, paragraph 1, of the Convention will be adopted in the very near future.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

Panama (ratification: 1958)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report.

Article 2 of the Convention. The Committee notes that no progress has been achieved in giving full effect to this Article of the Convention. It wishes to draw the Government's attention to the fact that the accumulation of holidays authorised under section 59 of the Labour Code would not be contrary to the provisions of the Convention, provided that a portion of the holiday including at least six working days is taken each year. The Committee trusts that the Government will re-examine the situation and will take the necessary measures to bring the national legislation into conformity with the Convention on this point.

Article 3. The Committee notes with interest that a draft decree has been prepared to supplement section 54 of the Labour Code with a provision that expressly provides for the obligation to include in remuneration payable for paid annual holidays the equivalent in cash of any remuneration in kind. The Committee hopes that this draft text will be adopted in the near future.

Ukrainian SSR (ratification: 1956)

With reference to its previous comments, the Committee notes from the Government's report that, in order to bring the legislation into conformity with Article 2, paragraph 1, of the Convention, section 80 of the Labour Code is to be amended by introduction of a provision establishing a compulsory annual holiday of at least six working days. It hopes that the Labour Code will be amended in the very near future.

Furthermore, the Committee notes with interest that new legislation concerning holidays, which takes account of the provisions of Conventions Nos. 52 and 132, is being drafted.

USSR (ratification: 1956)

Article 2, paragraph 1, of the Convention. With reference to its previous observations, the Committee notes with satisfaction that sections 74 and 251 of the Labour Code of the Russian SFSR (and similar provisions in the Codes of other Republics of the Union) have been supplemented by a provision under which, for each year of work, a holiday of at least six working days must be taken not later than during the course of the year after the entitlement to the holiday has been acquired, thereby bringing the legislation into conformity with this provision of the Convention.

Article 2, paragraph 4. The Committee recalls that the Labour Codes of certain Republics (and particularly those of Estonia, Lithuania and Latvia) authorise the splitting of annual leave without specifying that one of the fractions must correspond to at least the minimum holiday provided for by the Convention. The Committee hopes that it will be possible to settle this matter within the framework of

the new Act respecting holidays, which is currently being prepared and to which the Government refers in its report.

Furthermore, the Committee notes with interest that, in the formulation of the new Act respecting holidays, the provisions of Convention No. 52 and Convention No. 132 are being taken into consideration.

### **Convention No. 53: Officers' Competency Certificates, 1936**

Mauritania (ratification: 1963)

Article 3 of the Convention. The Committee notes the Government's statement in reply to its previous observations, to the effect that the Department of Fisheries and Maritime Economy is already well-advanced in the general revision of the maritime legislation. It also notes the administrative difficulties mentioned in the report. The Committee hopes that provisions establishing the requirements for the award of competency certificates and the procedures for the approval by the Mauritanian authorities of certificates issued abroad will be adopted in the very near future. It once again requests the Government to supply a copy of this legislation as soon as it is available.

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In addition, requests regarding certain points are being addressed directly to the following States: Brazil, Djibouti, Egypt, Libyan Arab Jamahiriya, Panama.

Information supplied by Norway in answer to a direct request has been noted by the Committee.

### **Convention No. 55: Shipowners' Liability (Sick and Injured Seamen), 1936**

Panama (ratification: 1971)

The Committee notes from the Government's report, as well as from the information supplied to the Conference Committee in 1988, that the draft maritime labour legislation to which the Government has been referring since 1982 has still not been adopted.

This draft legislation contains provisions corresponding to the following Articles of the Convention: Article 2 (liability of the shipowner in respect of sickness and injury occurring between the dates specified in the articles of agreement for reporting for duty and the termination of the engagement); Article 3(b) (liability of the shipowner to provide board and lodging); Article 7 (liability of the shipowner to defray burial expenses in case of death occurring on board or on shore); and Article 8 (liability of the shipowner to safeguard property left on board by sick, injured or deceased persons). The Committee trusts that legislation giving full effect to the

above-mentioned Articles of the Convention will soon be adopted and requests the Government to report any progress made in this connection.

Further to its previous comments the Committee notes the statement of the Government that Executive Decree No. 56 of 8 October 1976 sets out the regulations under Act No. 39 of 8 July 1976, as regards the inspection measures required on ships flying the Panamanian flag.

The Committee reiterates its hope that the Government would provide in its next report the information concerning the implementation and results of the inspection of vessels flying the Panamanian flag and all other statistical information available requested by point V of the report form.

#### Tunisia (ratification: 1970)

The Committee notes the information supplied by the Government concerning the letter of the Ministry of Transport under which draft texts to bring national legislation into conformity with the requirements of the Conventions ratified by Tunisia, and in particular with Convention No. 55, will be the subject of urgent consultations with the parties concerned. With reference to its previous comments, the Committee once again expresses the hope that the draft formulated in 1982 by the Ministry of Transport, with the participation of an ILO official, which includes, among other measures, provisions to give effect to Articles 4, 5 and 11 of the Convention, will be adopted in the near future. It requests the Government to supply information on any progress achieved in this respect.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, a request regarding certain points is being addressed directly to Egypt.

### **Convention No. 56: Sickness Insurance (Sea), 1936**

#### Peru (ratification: 1962)

1. The Committee has noted the observations made in December 1987 by the "Sindicato Marítimo de Tripulantes y Defensa en el Trabajo al Servicio de CPVSA" to the effect that insured workers cannot receive medical treatment because of the non-payment of the financial contributions to the sickness insurance institutions by the enterprise "Compañía Peruana de Vapores SA". The Committee has also noted that these observations were sent to the Government, in January 1988, for such comments as might be judged appropriate. The Committee observes that the Government's report contains no comments as to the substance of these observations. It therefore requests the Government once again to refer to these observations in its next report and to make

such comments as it considers appropriate in order to enable the Committee to examine the questions raised by the above-mentioned organisation in substance.

2. Article 3 of the Convention (Medical benefit). The Committee notes from the report that the Government has transmitted the observation made by the Committee in 1988 to the Peruvian Institute of Social Security (IPSS) in order to take appropriate measures with a view to providing information requested by the Committee. It would like to draw the Government's attention once again to the point that Article 3 of the Convention does not authorise the provision of medical treatment to be subject to any qualifying period. It therefore hopes that the Government will take the necessary measures in order to abolish, in accordance with the Convention, any qualifying periods regarding medical benefit.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Egypt, Mexico.

#### **Convention No. 58: Minimum Age (Sea) (Revised), 1936**

Requests regarding certain points are being addressed directly to the following States: Grenada, Seychelles, United Republic of Tanzania.

#### **Convention No. 59: Minimum Age (Industry) (Revised), 1937**

##### Sierra Leone (ratification: 1961)

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

Further to its previous observations, the Committee notes with interest the Government's intention to prescribe the age of 16 years for admission to dangerous employment, so as to give effect to Article 5 of the Convention. The Committee hopes that the necessary measures will be adopted to this end in the near future.

The Committee also takes note of the information concerning difficulties resulting from the absence of birth records for many young persons, which the Government expects to solve through a UNDP-sponsored project aiming at the establishment of a system of accurate birth records. The Committee hopes that this project will make it possible for the Government to give effect to Article 4 of the Convention, which requires the employers of

industrial undertakings to keep a register of all employed persons under the age of 18 years and indicating their date of birth.

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

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, a request regarding certain points is being addressed directly to Democratic Yemen.

### **Convention No. 62: Safety Provisions (Building), 1937**

#### **Algeria (ratification: 1962)**

With reference to its previous observations, the Committee takes note of the adoption of Act No. 88-07 of 26 January 1988 respecting occupational health and safety and occupational medicine, which establishes the general framework of occupational risk prevention. The Committee notes that it is still necessary to adopt special regulations concerning safety in the building and public works sector which, according to the Government's last report, currently employs more than 650,000 workers and has a high rate of industrial accidents. Since the Government has been referring for a number of years to legislation which is in the process of being drafted, the Committee trusts that the relevant regulations will be adopted at the earliest possible date, to give effect to the provisions of the Convention.

Furthermore, the Committee takes due note of the information supplied by the Government in reply to its general observation of 1988, and particularly of the comparative statistical study on occupational accidents in the building and public works sector for 1984. It requests the Government to continue to provide information in its future reports on the practical effect given to the Convention.

[The Government is asked to report in detail for the period ended 30 June 1989.]

#### **Mauritania (ratification: 1963)**

Further to its previous comments concerning the need to bring section 42 of Order No. 10281 of 2 June 1965 into conformity with Article 13, paragraph 2, of the Convention (which requires that a minimum age be fixed for the operation of hoisting machines or for giving signals), the Committee notes from the last report that no progress has been made. The Government has repeated that it intends to publish the Order drafted during the direct contacts in 1979, once the new Labour Code has been adopted. The Committee trusts that the Government will do everything possible to ensure that real progress is made and that this Order will be adopted in the very near future.

The Committee again requests the Government to communicate with its next report the statistical information requested under Article 6 of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Denmark, Egypt.

### **Convention No. 63: Statistics of Wages and Hours of Work, 1938**

Panama (ratification: 1971)

The Committee notes the information supplied by the Government in its report and in the publications of labour statistics for the years 1983, 1984 and 1985. It notes that the Directorate of Statistics and Census has undertaken an annual survey on enterprises in the manufacturing industry employing five or more persons.

Part II of the Convention. The Committee notes from the information supplied by the Government that the mining industry is not a significant sector of activity in the country. It also notes that surveys are not undertaken on this sector. With regard to the construction industry, the Committee notes that a survey is undertaken every ten years. In this connection, the Committee notes that undertaking a survey every ten years does not make it possible to compile the information required to comply with the provisions of this part of the Convention, Article 10 of which lays down that statistics of average earnings and of hours actually worked should be compiled once every year and where possible at shorter intervals. It also provides that statistics of average earnings and, so far as practicable, statistics of hours actually worked should be supplemented once every three years and where possible at shorter intervals by separate figures for each sex and for adults and juveniles. Consequently, with reference to its previous comments, the Committee hopes that the Government will be able to take the necessary measures in the near future to obtain information on the average earnings and hours actually worked in the construction industry and will communicate them to the Office.

Part III of the Convention. Having noted the annual survey carried out by the Directorate of Statistics and Census, the Committee hopes that the Government will be able to communicate more detailed information in its next report on the hours actually worked and normal hours of work in the manufacturing industry, in order to give effect to the provisions of this Part of the Convention.

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A request regarding certain points is being addressed directly to Djibouti.

**Convention No. 68: Food and Catering (Ships' Crews), 1946**Peru (ratification: 1962)

1. With reference to its previous observations and the discussions in the Conference Committee for a number of years, the Committee notes with interest that the Government's report enclosed a copy of the Harbour Masters and Marine River and Lake Activities Regulations (Supreme Decree No. 002-87-MA) adopted in 1987, which partly give effect to certain provisions of the Convention. In a direct request, the Committee asks the Government to provide additional information on some of the points in question relating to the application of the Convention.

2. In its previous observation, the Committee referred to the communication received from the Maritime Trade Union of Crews in the Service of the Peruvian Steamship Company, submitted to the Government for possible comments in January 1988. The communication refers, inter alia, to a number of problems concerning the hygiene of food transport and drinking water tanks. The Committee notes that the Government's report contains no comments on these matters. The Committee trusts that the Government's next report will contain relevant information on any measures that may have been taken as a result of the above-mentioned communication, along with any comments it may consider appropriate.

[The Government is asked to report in detail for the period ending 30 June 1989.]

United Kingdom (ratification: 1953)

The Committee has noted the information supplied by the Government in reply to its previous observation, which took account of comments received in 1986 from the Trades Union Congress (TUC). The Government refers to its earlier information and now confirms that when inspecting ships all the requirements of Articles 4 and 6 of the Convention are met, including those relating to spaces and equipment used for the storage and handling of food and water, and galley and other equipment used for the preparation and service of meals. With regard to Article 8, the Government states that fees for inspections are never charged to seamen who make a complaint. With regard to Article 9, paragraph (2) - in respect of which the Committee had asked the Government to provide information as to the monetary amount and frequency of resort to fees charged in certain cases for inspectors' services - the Government states that such charge is only made when the Department is requested to carry out an investigation.

The Committee would be grateful if the Government would provide clarification in its next report on the further questions raised in the previous observation. These concerned, first, whether an inspection fee is charged in cases of written complaints made on behalf of a recognised organisation of shipowners or seafarers (having regard to Article 2(b) and Article 8 of the Convention). Secondly, in the light of the Government's statement, in its report on Convention No. 147 received in 1985, that there are no penalties imposed as such



for infringements, but that fees can be charged for inspectors' services, the Committee recalls the provision in sections 21, 22 and 76 of the 1970 Merchant Shipping Act for the imposition of fines in conformity with Article 9, paragraph (2) of the Convention. In its latest report on the present Convention, the Government indicates that the inspectorate has been further reduced to only two officials for the whole country, reflecting a drastic reduction in the size of the UK registered fleet; and that the frequency of visits by inspectors is in turn reduced, although the usefulness of their "consultancy and advisory" services is said to have been demonstrated. It also indicates that none of the defects found by inspectors in 1987 were thought to warrant prosecution. The Committee has further noted in this connection the comments of the National Union of Marine, Aviation and Shipping Transport Officers (NUMAST) and the Transport and General Workers' Union (TGWU), both of which consider that the reduction in the number of inspectors competent in the field of food and catering has reduced the effectiveness of the application of the Convention; they believe that frequent monitoring is necessary. The Committee hopes the Government will indicate any measures taken or proposed in the light of these comments and continue to include in its reports the information on the practical application of the inspection requirements of Articles 8 and 9, requested under point V of the report form, as well as on the matters raised in the direct request.

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In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Egypt, Peru, United Kingdom.

#### Convention No. 69: Certification of Ships' Cooks, 1946

Panama (ratification: 1971)

With reference to its previous comments, the Committee notes with satisfaction the provisions of resolution No. 603-04-62-ALCN, of 16 June 1988, making it compulsory to obtain a certificate of qualification and pass a proficiency examination in order to be hired as a ship's cook, as required by Article 3, paragraph 1, and Article 4, paragraph 2(c), of the Convention. In a direct request, the Committee is raising another question concerning the application of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: Djibouti, Netherlands, Norway, Panama, United Kingdom.

**Convention No. 71: Seafarers' Pensions, 1946**

Peru (ratification: 1962)

The Committee has noted the observations made in March 1988 by the Fishermen's Federation of Puerto Supe concerning the rates of the contributions payable to the Fishermen's Social Security and Benefit Fund (Caja de Beneficios y Seguridad Social del Pescador). The Committee has also noted that these observations were sent to the Government, in July 1988, for such comments as might be judged appropriate. The Committee observes that no comments have been communicated by the Government so far. It therefore requests the Government once again to refer to these observations in its next report and to make such comments as it considers appropriate in order to enable the Committee to study the questions raised by the above-mentioned organisation in substance at its next session.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Egypt, Greece.

**Convention No. 73: Medical Examination (Seafarers), 1946**

Requests regarding certain points are being addressed directly to the following States: Djibouti, Egypt, Panama.

**Convention No. 74: Certification of Able Seamen, 1946**

Requests regarding certain points are being addressed directly to the following States: Italy, Netherlands, Panama, Yugoslavia.

**Convention No. 77: Medical Examination of Young Persons (Industry), 1946**

A request regarding certain points is being addressed directly to Portugal.

**Convention No. 78: Medical Examination of Young Persons  
(Non-Industrial Occupations), 1946**

A request regarding certain points is being addressed directly to Portugal.

**Convention No. 81: Labour Inspection, 1947**Bahamas (ratification: 1976)

The Committee notes the information supplied by the Government to the Conference Committee in 1988 and in its report, in reply to the Committee's previous comments. It notes, in particular, that it is proposed to undertake in the near future an examination of the legislation dealing with problems relating to labour inspection, in which the Committee's comments will be taken into consideration. The Committee points out that this legislation, to which the Government has been referring for many years, should give fuller effect to the Convention, and particularly to Article 13 (the authorisation for labour inspectors to make or have made orders requiring preventive measures in the event of danger to the health or safety of the workers) and Article 14 (the obligation to inform the labour inspectorate of industrial accidents and cases of occupational disease). It trusts that this legislation will soon be adopted and requests the Government to supply detailed information in its next report on any progress achieved in this respect.

Articles 20 and 21 of the Convention. The Committee notes the Government's statement that an annual inspection report will be transmitted in 1989. It trusts that in future annual reports will be published and communicated within the time-limits set forth in Article 20 and that they will contain information and statistics on all the points set out in Article 21.

Central African Republic (ratification: 1964)

Article 11, paragraph 2, of the Convention. In reply to the Committee's previous comments concerning the application of this provision of the Convention, the Government refers once again to Decree No. 004 of 1981. The Committee notes that section 1 of the above Decree establishes the fixed rates for compensation for risks and expenses payable to all the staff of the labour inspectorate (from 10 to 20 per cent of monthly earnings, according to the post) and it once again requests the Government to indicate how, when these allowances are established, account is taken, among other expenses, of the reimbursement of labour inspectors for their travelling expenses (which may vary considerably between individual inspectors and from one month to another).

Articles 20 and 21. The Committee notes with regret that no progress has been made in giving effect to the provisions of these Articles. It trusts that the Government will not delay in taking the necessary measures to ensure that annual inspection reports, containing information and statistics on all the points set out in Article 21, are published and communicated to the ILO within the time-limits laid down in Article 20.

Denmark (ratification: 1958)

The Committee notes with satisfaction that section 3(2) of the Administration Act (Act No. 571 of 19 December 1985) gives effect to the provisions of Article 15(a) of the Convention, which were the subject of its previous comments (the prohibition upon labour inspectors having any interest in the undertakings under their supervision).

Dominican Republic (ratification: 1953)

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

Article 6 of the Convention. The Committee notes that the draft statute for the civil service, which the Government referred to in its previous reports, has not been approved by the Senate of the Republic. It trusts that the Government will take the necessary measures so that appropriate legislative provisions guaranteeing labour inspectors stability of employment and independence in the exercise of their functions are adopted in the very near future.

Article 13, paragraphs 2(b) and 3. For many years the Committee has been urging the Government to amend the Labour Code with a provision explicitly providing labour inspectors with the right to make or to have made orders requiring measures with immediate executory force in the event of imminent danger to the health and safety of the workers. It recalls that a preliminary Bill was formulated during the direct contacts missions which took place in 1977 and that another Bill was prepared in 1980 by the Secretariat of State for Labour.

The Committee notes with regret that no progress has yet been made in adopting the legislative measures which would give effect to the provisions of Article 13, paragraphs 2(b) and 3. It notes from the Government's last report that it even appears to have given up the idea of adopting such measures, as it considers that under sections 400, 401 and 403 of the Labour Code, the labour inspectors are provided with sufficient legal mechanisms to ensure the application of the provisions of the Convention. The Committee does not share this opinion and requests the Government to reconsider its position. It trusts that in its next report the Government will be able to indicate the adoption of a text which will give the labour inspectors the right to take measures of immediate executory force as envisaged in the Convention.

Article 14. The Committee wishes once again to draw the Government's attention to the fact that the labour inspectorate shall be notified not only of occupational accidents, but also of cases of occupational disease. It hopes that the Government will not fail to take the necessary measures soon to give effect to this Article of the Convention.

Articles 20 and 21. The Committee recalls that the annual reports on the work of the inspection services should be published and transmitted to the Office within the time-limits set forth by Article 20 and that these reports should deal with all the subjects listed under Article 21. It hopes that in the future the requirements of these Articles will be observed.

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

Guinea (ratification: 1959)

Article 13, paragraph 2, of the Convention. The Committee notes with regret that the report contains no reply to its previous comments, which read as follows:

With reference to its earlier comments, the Committee notes the statement by the Government that it envisages the insertion in the new Labour Code of provisions conferring upon labour inspectors the power to order measures of immediate executory force in the event of imminent danger to the health and safety of the workers. It hopes that the Code will be adopted in the near future and will give full effect to this provision of the Convention.

The Committee trusts that the necessary measures to give effect to this provision of the Convention will be adopted without delay.

Articles 20 and 21. The Committee notes the information and statistics supplied by the Government with its report concerning all the points set out in Article 21, with the exception of statistics of industrial accidents and occupational diseases (points (f) and (g)). It hopes that the Government will take the necessary steps to ensure that, in future, annual reports on the work of the inspection services, containing all of the information set out in Article 21, are published and transmitted to the ILO within the time-limits laid down in Article 20.

Haiti (ratification: 1952)

The Committee notes with regret that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 14 of the Convention. The Committee notes that under section 411 of the revised Labour Code, the labour inspectorate receives notification of employment accidents which are transmitted by the Occupational Accidents, Sickness and Maternity Insurance Office (OFATMA). Please state whether the inspectorate is informed of cases of occupational disease.

Articles 20 and 21. The Committee notes that neither the annual report of the General Labour Inspectorate for the 1980-81 period which, according to the assurances given by the Government, should be published in the review Prévention, nor the reports for 1982-84, have yet been received by the Office. It trusts that the Government will not fail to take the necessary

measures so that in the future annual inspection reports containing information on all the subjects listed in Article 21 are published and transmitted to the Office within the time-limits set forth in Article 20.

The Committee is addressing a direct request to the Government concerning other points.

Ireland (ratification: 1951)

Referring to its earlier comments the Committee notes with interest from the Government's report that the Safety, Health and Welfare at Work Bill, 1988, was introduced into Parliament. It expresses the hope that this Bill which, according to previous information given by the Government will ensure, *inter alia*, the application of Article 14 (in conjunction with Article 21(f) and (g)) of the Convention, will be adopted very shortly.

Article 20 of the Convention. The Committee recalls that the annual reports on the work of the inspection services should be published and transmitted to the Office within the time-limits set forth by Article 20. It hopes that in the future the requirements of this Article will be observed.

Italy (ratification: 1952)

The Committee notes with regret that the Government has not reported in detail for the period ending 30 June 1988. It nevertheless notes the information communicated by the Government representative to the Conference Committee in reply to its previous observation. It has also examined the Presidential Decree of 20 December 1979 laying down the conditions of service of local health unit staff, and the 1987 annual inspection report.

Article 5(a) of the Convention. In reply to the Committee's comments, the Government indicates that there are clearly a number of problems regarding co-operation between the labour inspectorate and local health units, in the areas of workers' health and observance of technical standards in the workplace. The Committee again expresses the hope that the Government will take the appropriate steps to secure effective co-operation and requests it to provide detailed information on the measures taken in this respect.

Article 9. The Committee again requests the Government to provide information on the measures taken or under consideration to ensure the co-operation of duly qualified technical experts and specialists in the operation of the inspection services of local health units.

Articles 10 and 16. The Government recognises that, although labour inspection staff are duly qualified, their number should be increased to meet the growing demands for inspection and supervision. The Committee trusts that the Government will not fail to take the necessary measures to ensure that all the workplaces liable to inspection are inspected as often and as thoroughly as necessary.

Articles 20 and 21. The Committee notes that the annual report on the work of the inspection services contains no information on the

following subjects: laws and regulations relevant to the work of the inspection service, statistics of workplaces liable to inspection and the number of workers employed therein, and statistics of occupational diseases (paragraphs (a), (c) and (g) of Article 21). The Committee hopes that, in future, annual inspection reports will contain all the information required by Article 21 and will be published and transmitted to the ILO within the period laid down by Article 20.

Libyan Arab Jamahiriya (ratification: 1971)

Articles 20 and 21 of the Convention. The Committee notes with regret that, despite the assurances given by the Government to the Conference Committee in 1988, no report on the work of the labour inspection services has reached the ILO. It trusts that the Government will not delay in meeting its obligations under these Articles of the Convention.

Mauritania (ratification: 1963)

Article 3 of the Convention. With reference to its previous comments, the Committee notes with concern that there has been no progress in separating manpower offices from labour inspection offices in order that labour inspectors may perform their main duties more efficiently. On the contrary, in the light of the information provided by the Government, the situation appears to be deteriorating: whereas in 1986 such a separation existed in three regions (Nouakchott, Zouérate and Nouadhibou), in 1989 it exists only in Nouakchott.

The Committee takes note of the Government's indications that, given the important economic activity and the volume of labour in the various regions, the separation of manpower offices and labour inspection offices is not essential in all regions and that the labour inspectorate carries out its tasks to the satisfaction of the social partners, but expresses the hope that the Government will make every effort to create conditions to enable labour inspectors to perform effectively the tasks set out in Article 3, paragraph 1, of the Convention. In this context, the Committee asks the Government to refer also to its direct request in which a certain number of points are raised concerning the application of Articles 10, 11, 16, 20 and 21 of the Convention.

Article 6. The Committee notes with regret that the draft statute of the labour inspectors and supervisors, to which the Government has been referring for a number of years, has not yet been adopted. It trusts that this statute will shortly be promulgated and will ensure the inspection staff stability of employment and make them independent of any change of government and improper external influences.

Paraguay (ratification: 1967)

Articles 20 and 21 of the Convention. The Committee notes that the summaries of the Labour Inspectorate reports for 1987, to which

the Government refers, were not enclosed with the report on the application of the Convention. It trusts that the Government will take the necessary steps to ensure that, in future, annual inspection reports containing information on all the subjects listed under Article 21, will be published and communicated to the ILO within the period specified by Article 20.

Romania (ratification: 1973)

Articles 20 and 21 of the Convention. The Committee takes note of the statistical data and information on the work of the inspection services in 1987 communicated by the Government to the Conference in 1988 and contained in its report. However, it must again stress the importance it attaches to well drawn up annual inspection reports which enable the practical results of labour inspection activities to be assessed at both national and international levels. It therefore trusts that the Government will not fail to take the necessary measures to ensure that, in future, reports containing precise information on all the points listed under Article 21 of the Convention are published and communicated to the ILO within the period specified by Article 20.

Uganda (ratification: 1963)

Articles 20 and 21 of the Convention. The Committee notes with regret that, since the communication in 1985 of the annual reports of the Ministry of Labour for 1977 and 1978, it has received no information on the activities of the labour inspection services. It trusts that the Government will not fail to take the necessary measures to ensure that, in future, annual inspection reports, containing all the information laid down in Article 21 of the Convention, are published and communicated to the ILO within the time-limits set forth in Article 20.

[The Government is requested to supply full particulars to the Conference at its 76th Session.]

Yemen (ratification: 1966)

Articles 19, 20 and 21 of the Convention. With reference to its previous comments, the Committee notes from the Government's report that the periodical reports submitted to the central administration of labour inspection and occupational health and safety contain information on all the points listed under Article 21 of the Convention, but that the central inspection authority is unable to publish these reports annually owing to a lack of material means. In this connection, the Committee wishes to stress (as it has already done in paragraph 277 of its General Survey of 1985 on Labour Inspection and in its general observation of 1986) that, in cases where there are difficulties of a financial nature in the publication of an annual report, recourse to inexpensive methods of printing - for instance roneoed or mimeographed inspection reports - should enable the



requirements of the Conventions to be met, provided that the reports are widely disseminated among the authorities and administrations concerned and among workers' and employers' organisations and that they are placed at the disposal of all interested parties. The Committee hopes that the Government will take note of these suggestions and take the necessary steps to ensure that, in future, annual inspection reports are published and transmitted to the ILO within the period laid down in Article 20 of the Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: Cape Verde, Djibouti, Ecuador, France, Grenada, Guyana, Haiti, Kuwait, Mauritania, Mauritius, Niger, Panama, Paraguay, Romania, Sao Tome and Principe, Spain, Sudan, Uganda, United Arab Emirates, Venezuela.

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

A member of the Committee, Mr. Ivanov, stated that he was not in agreement with certain of the Committee's comments concerning the USSR and other socialist countries. He emphasised that, in the world of today, which is characterised by the existence of different social, economic, political and legal systems, the provisions of universal international Conventions, which are generally democratic in their social nature, may give rise, in their application, to internal legal provisions which may equally apply under a capitalist system and under a socialist system. It therefore follows that the social realities resulting from the application of international labour Conventions or the social realities facing these Conventions may be different in capitalist countries and socialist countries, while in both cases these realities may be in conformity with the Conventions. This is particularly true for Conventions which deal with the fundamental principles and structures of the existing social systems, such as Convention No. 87. In these circumstances, there is a tendency to consider that the methods and results of the application of these Conventions in capitalist countries are the only ones that are in conformity with the Conventions. This approach to the implementation of these Conventions has been evident on certain occasions and, in particular, in the Committee's comments on the application of Convention No. 87.

Another member of the Committee, Mr. Gubinski, stated that in his opinion the application of ratified Conventions and, in particular, essential instruments such as Conventions Nos. 87 and 98 and the other instruments concerning fundamental human rights, cannot be examined in isolation from the historical development of a given society, the development of its institutions, the form of its trade union activity and, in general, its socio-economic and political circumstances. This concerns in particular certain socialist countries referred to in the report.

In the light of the foregoing statements, the Committee wishes to recall its position as stated in its previous reports. The Committee has never ignored the fact that the social realities existing in countries based on different social and political systems, although differing one from another, may be in conformity with particular ILO Conventions. Divergencies between national legislation or practice and a ratified Convention may, however, occur in countries belonging to any of these systems. In compliance with its terms of reference, while itself noting the various political, economic and social conditions existing in different countries, the Committee has to examine and has in fact examined, from a strictly legal point of view, to what extent countries which have ratified Conventions give effect in their legislation and practice to the obligations which derive therefrom and are binding upon them, irrespective of their political, social or economic systems. The Committee's observations contain the conclusions drawn by it from a uniform application of this objective approach, in the strict framework of the guarantees provided for in the Convention concerned.

Antigua and Barbuda (ratification: 1983)

Referring to its previous comments, the Committee must reiterate its earlier concerns with respect to sections 19, 20 and 21 of the Industrial Courts Act 1976, which can be applied in practice to place a general prohibition on the right to strike, at the initiative of one party, as illustrated by Case No. 1296, examined by the Committee on Freedom of Association in March 1986. Under these provisions a trade dispute may be referred to the Court at any stage by the minister (section 19(1)) when he is informed of its existence, and by a party within ten days of such knowledge (section 19(2)); strikes and lock-outs are then prohibited. Furthermore, an injunction may be issued against a legal strike when national interest is threatened or affected (section 21(1)).

The Committee therefore requests once more the Government to re-examine its legislation in respect of the right to strike and to take measures to ensure that the settlement of disputes through conciliation does not lead to restrictions on the right to strike, which can be admitted only in respect of essential services in the strict sense of the term, that is to say the services whose interruption would endanger the life, personal safety or health of the whole or part of the population. As regards the provisions of the Act relating to compulsory arbitration which can be invoked by one of the parties, the Committee reiterates its view that these would be in conformity with the Convention where the arbitration award is to be accepted by both parties to the dispute and, failing agreement, if the workers still have the right to strike. With respect to the provisions allowing the issuance of an injunction putting an end to a legal strike, the Committee recalls that such measures can only be justified in situations of acute national crisis, and then only for a limited period.

As regards section 3 of the Public Order Act, 1972, under which no public meeting may be organised or held without a permit of the

Chief of Police, the Committee takes due note of the Government's statement that permission is refused only if the Commissioner of Police has cause to believe that public order and safety may not be ensured, as provided furthermore by section 5(1) of the above-mentioned Acts. In addition, it also notes that the definition of "public march" exempts trade unions from obtaining a permit to organise a march in furtherance of a trade dispute or for the celebration of Labour Day.

Argentina (ratification: 1960)

The Committee notes with satisfaction the promulgation of Act No. 23551 on trade union associations, dated 14 April 1988, and its implementing Decree No. 467 of 1988, which repeals "de facto Act No. 22105" of 1979. The new Act on trade union associations, which was a product of consensus, according to the Government, ensures the operation of trade union organisations in accordance with democratic principles. The Committee notes that by virtue of this Act, the provisions of Act No. 22105, which had been the subject of the Committee's comments, cease to exist. These comments concerned restrictions on the right to establish organisations, on trade union autonomy, on the right of organisations to draw up rules and determine their own geographical competence.

The Government points out in its report that the new Act provides that trade union associations may, without any legislative interference, affiliate with or join international organisations. Federations and confederations enjoy the same guarantees regarding their establishment, operation and dissolution as first-level trade union associations. Act No. 23551 permits the Ministry of Labour and Social Security to request the suspension or cancellation of the trade union status of a union organisation only by decision of the courts and then only in cases in which a violation of legal provisions or by-laws has been detected (section 56(3)(a) and (b)).

While noting this information with interest, the Committee wishes to refer to several points which do not appear to be in conformity with the Convention.

Section 25 of the Act provides that the trade union association whose activities are the most representative in terms of the geographical area and the persons falling within its scope, and has, as dues-paying members, more than 20 per cent of the workers which it claims to represent during the six-month period preceding its request, shall be granted trade union status. Section 28 provides that where there already exists an organisation enjoying this trade union status, another trade union association may be granted such recognition for the purposes of undertaking action in the same area and activity or category only if the petitioning association has a "considerably higher" number of dues-paying members for a continuous period of at least six months prior to the request. Implementing Decree No. 467 of 1988, in section 21, qualifies the term "considerably higher" by laying down that the association claiming this trade union status should have at least 10 per cent more dues-paying members than the association which has already been granted this status. In the Committee's opinion, this additional percentage of 10 per cent more

members than the association already granted trade union status seems excessive.

Section 29 of the Act provides that "a trade union at the enterprise level may be granted trade union status only when another first-level trade union and/or a union does not already operate within the geographical area or the area of activity or category covered", and section 30 establishes that "when a trade union association which has been granted trade union status has decided upon the form of the union, association or trade union covering a particular activity, and the petitioning association has adopted the form of a trade union covering a particular occupation, profession or category, such status may be granted if there are different trade union interests which justify special representation ... provided that the pre-existing trade union or union does not already include such workers within its scope of representation".

The Committee considers that this type of provision could have the effect of restricting the right of workers to establish and join organisations of their own choosing (Article 2 of the Convention).

By virtue of sections 38 and 39 of the Act, workers' trade union associations which have been granted trade union status enjoy a number of privileges such as the deduction of trade union dues and fiscal exemptions. In addition, the right to represent workers in the undertaking can only be exercised by members of those associations enjoying trade union status (section 41 of the Act) and only the representatives of these associations enjoy special protection (sections 48 and 52 of the Act). In this respect, both the Committee of Experts and the Committee on Freedom of Association have expressed the opinion that where the legislation, without being bent on discrimination, confers on the most representative unions - a description based on their greater number of members - in certain privileges in connection with the defence of the occupational interests of their members, by virtue of which they alone are in a position to act effectively, the granting of such privileges should not be made subject to such conditions as to influence unduly the choice of workers regarding the organisation to which they intend to belong. [See paragraph 146 of the 1983 General Survey of the Committee of Experts and paragraphs 234, 235 and 238 of the Digest of decisions and principles of the Committee on Freedom of Association.]

The Committee trusts that the Government will examine attentively the conclusions and observations that it has made and will take appropriate measures to bring the legislation into complete conformity with the Convention.

The Committee is addressing a direct request to the Government on the definition of the term "worker" in the Act, on the representation of the interests of individual members of associations which do not have trade union status and on the conditions of eligibility of trade union leaders.

Bangladesh (ratification: 1972)

The Committee takes note of the report of the Government. It also takes note of the observations made by the Bangladesh Employers' Association.

The Committee recalls that for a number of years it has expressed concerns relating to:

- the right of association of persons carrying out managerial and administrative functions;
- the right of association of public servants;
- restrictions upon the range of persons who can hold office in trade unions;
- the extent of external supervision of the internal affairs of trade unions; and
- the "30 per cent" requirement for initial or continued registration as a trade union.

Managerial and administrative functions

The Committee has pointed out that section 2(b)(xxviii) of the Industrial Relations Ordinance, 1969, as amended, excludes from the definition of "worker" and "workmen" persons who are employed in a managerial or administrative capacity or who exercise functions of a managerial or administrative nature. This has the consequence that such persons are denied the right of association which is set out in section 3(a) of the Ordinance. In the past the Committee has noted statements by the Government and by the Bangladesh Employers' Association to the effect that such staff are covered by the definition of "employer" in section 2(b)(viii), whose right of association is provided for by section 3(b) of the same Ordinance. The Committee has pointed out, as it does in paragraph 131 of its General Survey of 1983, that forbidding such persons to join trade unions representing other workers is not necessarily incompatible with freedom of association, on two conditions: first, that they have the right to form their own organisations to defend their interests and, second, that the categories of managerial staff and employees in positions of confidence are not so 'broadly defined' that the organisations of other workers in the establishment or branch of activity are weakened by being deprived of a substantial proportion of their present or potential membership. According to the Bangladesh Employers' Association, there would be no management or administration if these groups of staff were authorised to set up trade unions with the workers under their orders. The Committee has noted that these groups of persons are entitled to set up their own associations for the defence of their interests. Bearing these considerations in mind, the Committee has repeatedly asked the Government and/or the Bangladesh Employers' Association to provide details as to the number or percentage of workers affected by these provisions. In its most recent observation, the Employers' Association states that the number is "small". The Government states that the required information is not readily available.

The Committee again asks the Government to try to provide some estimate of the percentage of the workforce who are regarded as being

employed in a managerial or administrative capacity. It also asks the Government to provide information as to the number, and size of membership, of organisations which have been formed in order to represent the interests of such staff.

#### Right of association of public servants

The Committee recalls that public servants, apart from those employed on the railways, and in postal, telegraph and telephone services, are excluded from the scope of the Industrial Relations Ordinance, 1969. They are permitted to form and to join associations for purposes of ventilating their grievances and promoting their interests. However, such associations are subject to a number of constraints which do not apply to trade unions which operate within the framework of the 1969 Ordinance. For example, section 29(c) and (e) of the Government Servants (Conduct) Rules, 1979, forbids associations from engaging in any form of political activity, whilst section 29(d) denies them the right to issue or maintain any publications other than in accordance with Government orders, or to publish any representation on behalf of their members except with the express sanction of the Government.

The Committee has repeatedly pointed out that such restrictions are not in conformity with the requirements of the Convention. It again urges the Government to reconsider the situation, in order to give full effect to Articles 2 and 3 of the Convention with respect to public servants.

#### Restrictions upon the right to join or to hold office in trade unions

As a result of amendments in 1970 and in 1980, section 7A(1)(a)(ii) and (b) of the Industrial Relations Ordinance, 1969, limited the right to be a member or officer of a trade union to persons actually employed in the establishment or group of establishments where the union was formed. The Committee has consistently taken the view that a provision of this kind restricts the right of workers to establish and to join organisations of their own choosing (Article 2 of the Convention), to elect their representatives in full freedom and to organise their administration and activities (Article 3) (see the Committee's General Survey of 1983, paragraphs 157 and 158). Section 7A was amended in 1985 so as to remove the prohibition formerly contained in section 7A(1)(b). The Committee has observed that this change reflected the fact that this provision had ceased to be necessary by reason of the effluxion of time. The stipulation formerly embodied in section 7A(1)(a)(ii) is now found in a new section 7A(1)(b), but with the important qualification that former employees at an establishment or group of establishments can now be members or officers of a trade union formed at that establishment. Both the Government and the Bangladesh Employers' Association are of the opinion that section 7A(1) is now consistent with the requirements of the Convention. The Committee notes the amendment, and the views of the Government and of the Employers' Association, with interest. However, it requests the Government to adopt measures with a view to making

these provisions more flexible by exempting from the occupational requirement a reasonable proportion of the officers of an organisation so as to allow the candidature of persons who are outside the profession. [General Survey, paragraph 158.]

#### External supervision

The Committee has noted on a number of occasions that section 10 of the Industrial Relations Rules, 1977, invests the Registrar with very wide-ranging powers as regards access to, and inspection of, the accounting and other records of trade unions. In a 1987 observation, the Bangladesh Free Trade Union Congress also drew attention to the broad scope of these powers, and to the fact that officials of the Federation (and other unions) are summoned to the office of the Authorised Officer (Registrar) immediately on receipt of their annual returns.

The Committee notes the information supplied by the Government to the effect that in practice the supervision exercised by the Registrar is limited to the inspection of account books and calling for any necessary clarification. The Government further states that no investigatory measure has so far been taken by the Registrar against any trade union or federation, and that the summoning of officials of the Bangladesh Free Trade Union Congress was entirely consistent with both the legislation and the Convention. The Government also points out that the powers of the Registrar in relation to the deregistration of trade unions (for example because of financial irregularities) is subject to judicial review by virtue of section 10(3) of the Industrial Relations Ordinance, as amended in 1985. However, the Committee notes that there does not appear to be any express provision for judicial review of the exercise of the Registrar's powers under section 10(g) of the Industrial Relations Rules 1977. The Committee asks the Government to inform it whether or not this is indeed the case.

The Committee also notes the views of the Bangladesh Employers' Association to the effect that union officers hold the funds of the union on trust for the members, and that accordingly it is appropriate that the law should seek to protect the interests of those members. The Committee refers again to paragraph 188 of its General Survey of 1983, where it points out that investing an administrative authority (such as the Registrar) with broad discretionary powers to examine the papers of an organisation creates a grave danger of interference with the guarantees provided by the Convention. Accordingly it requests the Government to keep it informed of any practical problems which may arise from the continued operation of these provisions - especially in the form of complaints by registered unions of undue interference on the part of the Registrar.

#### The 30 per cent requirement

The Committee again notes that section 7(2) of the Industrial Relations Ordinance, 1969, provides that no trade union may be registered under the Ordinance unless it has a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments in which it is formed. It

also notes that section 10(1)(g) of the Ordinance gives the Registrar the power to cancel the registration of a trade union where its membership has fallen short of 30 per cent of the workers at the establishment(s) concerned. Decisions under both of these provisions are subject to judicial review.

In its report, the Government reiterates its opinion that the purpose of sections 7(2) and 10(1)(g) is to help the unions to maintain their numbers and ensure social peace by avoiding a multiplicity of small competing unions. The Government also points out that no group of workers, union or federation, has ever raised any doubt about the efficacy of these provisions.

The Committee has taken the view that provisions like section 10(1)(g) which grant an administrative authority discretionary powers over the existence of a trade union, are equivalent to a restriction on the right of workers to establish and to join organisations of their own choosing without prior authorisation, as envisaged by Article 2 of the Convention [see General Survey, 1983, paragraphs 104-119]. It is obviously appropriate that there be a right of appeal against decisions of the Registrar under sections 7 and 10 of the Ordinance. However, the Committee points out that the existence of such a right of appeal does not of itself constitute a sufficient protection of the rights guaranteed by the Convention since it does not alter the nature of the powers conferred upon the Registrar in the first place [see General Survey, 1983, paragraph 117].

The Committee considers that, where the legislation lays down a criterion of a minimum number of members, this number should be a reasonable one. The figure of 30 per cent, applied generally both to small and to large establishments, is excessive in the opinion of the Committee, which considers that it may be an obstacle to the establishment of organisations [see General Survey, 1983, paragraphs 123-124].

The Committee urges once again the Government to reconsider the situation as a whole in the light of the above comments and to report any measure that is taken in order to give effect to the Convention.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

#### Belgium (ratification: 1951)

In its previous comments, the Committee invited the Government to take steps for the adoption by legislative means of objective, pre-determined and detailed criteria to govern the rules for the access of workers' and employers' occupational organisations to the National Labour Council and to the various public and private sector committees in which binding collective agreements are formulated, in order to avoid any possibility of partiality or abuse in the choice of organisations authorised to sit on these bodies.

The Committee notes with regret the Government's statement that it does not envisage at the present time amending the legislation in this sense. It does, however, indicate that this matter remains one of the Government's concerns and is still under study. The Committee expresses the firm hope that the Government will indicate in its next



report the measures that have been taken in order to bring its legislation into conformity with the Convention.

Bolivia (ratification: 1965)

The Committee recalls that its previous comments concerned the refusal of the right to organise to public servants (section 1 of the General Labour Act, of 29 May 1939); the requirement of previous authorisation for the establishment of a trade union (section 99 of the Act and section 124 of the Decree issued thereunder, of 23 August 1943); the impossibility of setting up more than one union in an enterprise (section 103 of the Act); the wide powers of supervision of the labour inspector over the activities of trade unions (section 101 of the Act); the possibility that trade unions may be dissolved by administrative authority (section 129 of the Decree); and the power of the executive to prohibit strikes by imposing compulsory arbitration (section 113(c) of the Act).

The Committee notes the information supplied by the Government in its report, particularly concerning the setting up of a commission to formulate a draft of the new General Labour Act, with the technical assistance of the ILO, and the Government's clear intention that this draft of the Act should be in complete conformity with the ILO Conventions on which the Committee of Experts has made observations.

1. Public servants

The Committee wishes once again to request the Government to supply information in its next report on the current situation regarding the Bill on the right to organise of public servants, which was drafted on 22 February 1983 and approved by the Chamber of Deputies.

2. The impossibility of setting up more than one trade union per enterprise (section 103 of the Act)

The Committee notes the Government's statement to the effect that section 103 does not prevent the establishment of more than one trade union in an enterprise, but that the social situation and the history of the trade union movement in the country are such that only one trade union is formed in an enterprise. The Government adds that such "freedom" would only result in a weakening of the trade union movement and could be used by those who seek to divide it and diminish its achievements.

The Committee notes the Government's argument regarding the risk of weakening the trade union movement within the enterprise, but once again points out that section 103 of the Act provides that it is not possible to set up a trade union with fewer than 50 per cent of the workers in an enterprise. In the view of the Committee, the obligation to assemble such a high percentage of workers to form a trade union constitutes an obstacle to the right of workers to set up organisations of their own choosing. The Committee recognises that

bargaining privileges may be granted to the most representative union in an enterprise, but has always considered that national laws should not prevent workers from coming together in more than one trade union organisation in an enterprise should they so wish. In such cases, minority trade union organisations should be able to defend the individual interests of their members and to assert their representativity in accordance with objective criteria laid down in advance. The Committee is addressing a direct request to the Government on the subject of setting up more than one trade union in an enterprise.

3. The wide powers of supervision over  
the activities of trade unions  
conferred on the labour inspector  
(section 101 of the Act)

The Committee notes that, according to the Government, the provision that labour inspectors shall be present at discussions and supervise the activities of the executive committees of trade unions has fallen into abeyance.

In view of this situation, the Committee once again expresses the firm hope that the Government will be able to bring its legislation into conformity with current practice and will repeal the above-mentioned provision in the near future.

4. Dissolution of trade union organisations  
by administrative authority  
(section 129 of the Decree)

The Committee notes the Government's statement that this provision is not applied. The Committee is once again addressing a direct request to the Government concerning section 129 of the Decree.

5. Compulsory arbitration  
(section 113(c) of the Act)

The Committee had noted that, according to the Government, sections 105 et seq. of the Act and section 150 of the Decree issued thereunder provide that workers' claims shall be submitted to conciliation and arbitration and that, during this procedure, neither workers nor employers may call a strike or effect a lock-out.

However, the Committee considers that the possibility left to the executive to make the decision of an arbitration court compulsory by special order (section 113(c) of the Act) is equivalent to prohibiting recourse to strikes, which should only occur in relation to essential services in the strict sense of the term, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in an acute national crisis.

Furthermore, the Committee is addressing a direct request to the Government concerning restrictions on the right to strike and the election of trade union officials.

The Committee requests the Government to indicate in its next report the measures that have been adopted, in particular within the

context of the general labour legislation drafted with the assistance of the ILO, to bring its legislation into conformity with the Convention.

Bulgaria (ratification: 1959)

The Committee notes the information supplied by the Government in its report. It recalls that its previous comments referred to the system of trade union unity prevalent in the country, which seems to considerably reduce, for workers who wish to do so, the value of establishing trade union organisations outside the existing trade union structure, due to the broad powers conferred by the law on the central leadership of the trade unions and on the Central Council of Bulgarian Trade Unions with regard to labour protection, labour inspection, State social insurance and safety and health within the enterprise (sections 35 and 36 of the Labour Code and specific laws and regulations adopted with the participation of the Central Council, including the Act of 30 June 1973, Decision No. 15 of 12 May 1973, Decision No. 57 of 13 June 1962, the Regulations of 17 April 1967 and the Ordinance of 25 March 1960). It has also been noting since 1979 the guiding role in society and the State assigned by the Constitution to the Bulgarian Communist Party (section 1(2)) and the fact that, according to the Government, Bulgarian trade unions voluntarily mention in their by-laws the guiding role of the Bulgarian Communist Party.

The Committee notes that, according to the Government, Article 3 of the Convention confers upon the founding members of trade union organisations the responsibility of defining the objectives of their activities in the rules that they formulate, and that therefore the question of the possible functions of another trade union structure should be a question for the founding members and not for the Government.

The Government explains that each central leadership of trade unions may take the initiative with regard to laws and that it can put forward any type of proposal concerning the interests of the workers with regard to safety and health, sickness insurance, participation in the management of enterprises, the fixing of wages, vocational training and the resolution of social problems. Consequently, in the Government's opinion, the concerns of the Committee of Experts that there would be an obstacle to the development of another trade union structure have no basis in the text of Convention No. 87 where the activities in question are conferred upon existing trade unions. Furthermore, the Government indicates that Act No. 44 respecting the management of social insurance, dated 5 June 1984, transferred the administration of this insurance, which was previously entrusted to the trade unions under the terms of Act No. 11 of 1960, to the Committee on Labour and Social Affairs, under the Council of Ministers.

While noting this information and these explanations, the Committee emphasises that in its 1983 General Survey on Freedom of Association and Collective Bargaining, in paragraphs 136 to 138, it indicated that systems of trade union unity set out in the law are at variance with the principle of free choice of workers' and employers' organisations contained in Article 2 of Convention No. 87. This

principle of the Convention was not intended as an expression of support either for the idea of trade union unity or for that of trade union pluralism. It was clearly not the purpose of the Convention to make trade union pluralism an obligation. However, the Convention at least requires this diversity to remain possible in all cases.

The Committee would therefore like to make it clear that, even in a case where a de facto monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalise this factual situation, for example, by designating the single central organisation by name. Indeed, even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure. In addition, the rights of workers who do not wish to join existing trade unions or the existing central organisation should also be protected.

The Committee therefore requests the Government to indicate in its next report the measures that have been taken or are envisaged to enable all workers who so wish, without distinction whatsoever, to establish trade union organisations of their own choosing that are independent from the existing structure, with the objective of furthering and defending the interests of the workers in accordance with Articles 2 and 10 of the Convention.

#### Burkina Faso (ratification: 1960)

The Committee notes the Government's report and the observations made by the Committee on Freedom of Association in relation to the effect given to its recommendations concerning Case No. 1266 (254th Report) approved by the Governing Body at its 239th (February-March 1988) Session.

In particular, it notes with satisfaction that, under the terms of Communiqué No. 5 of the People's Front, published in Sidwava No. 879, of 19 October 1987, all the teachers dismissed in 1984 following a strike have been reinstated into their original services, the sanctions that had been applied to suspended public employees have been set aside and all political prisoners and administrative detainees have been freed.

It also notes, from the Government's report, that all the reinstated teachers and all workers in general are free to join and participate in the activities of the trade union of their choosing for the defence of their interests. The Committee, however, requests the Government to state whether, within the context of these measures, dismissed teachers who have reached the retirement age, and their dependants, have recovered their pension rights.

The Committee is addressing a direct request to the Government concerning the application of the Convention on another point.

Burma (ratification: 1955)

The Committee notes the Government's reply to its previous comments.

The Committee recalls that for many years it has been raising the question of the trade union monopoly established under section 9 of Act No. 6 of 1964, as amended, and under sections 2 and 6(b) of Regulation No. 5 of 1976. These provisions clearly establish a single union structure, and prevent workers from establishing other organisations outside that structure. This is inconsistent with Articles 2, 5 and 6 of the Convention, which require that all workers should have the right freely to associate for trade union purposes, including the establishment of federations and confederations.

In its previous reports the Government has indicated that, following disappointments with pluralistic trade union structures in the past, the workers themselves decided to introduce a single trade union structure. It was not, therefore, imposed by law. From the Government's point of view, this has the consequence that the current system could only be modified with the consent of the workers, who had not yet put forward any proposals to this effect.

The Government had, on several occasions, indicated that the legislation does not prevent workers from establishing other associations if they so choose. As evidence of this, it referred to the fact that various groups of professional workers had established associations on their own account. Apparently, these included doctors, nurses, actors and writers. In its previous comment the Committee had asked the Government to provide further information as to the nature of these associations and the activities in which they could engage. In its report the Government indicates that major political changes are currently under way in Burma. In particular, the former single-party system is in the process of being transformed into a multi-party system. These changes have caused the Government to conclude that there would be no point in making a detailed reply in respect of a situation which no longer exists. The Government also expresses the hope that these changes will mean that in its future reports it will be able to demonstrate full conformity with the requirements of the Convention.

In view of these changes, and of the Government's stated preparedness to respect its obligations under the Convention, the Committee trusts that it will indeed take appropriate steps to bring its legislation into conformity with the Convention, and in particular with Article 2 thereof. The Committee also reminds the Government that the technical and advisory resources of the Office remain at its disposal if required.

Byelorussian SSR (ratification: 1956)

The Committee notes the information supplied by the Government in its last report in reply to the comments that it addressed to the Government of the USSR. The Committee therefore asks the Government to refer once again to the comments that it has made concerning the USSR under this Convention.

Cameroon (ratification: 1962)

The Committee takes note of the Government's report and recalls that its previous comments addressed the following points:

- the need to apply to prison staff, governed by Decree No. 74-250 of 3 April 1974, the provisions of Law No. 68/LF/19 of 18 November 1968 (article 1) and Legislative Decree No. 74-138 of 18 February 1974 (article 36) which provide for the right to organise of public servants;
- the need to repeal the requirement of approval by the Minister of Territorial Administration to establish the legal existence of a trade union or a public servants' occupational association (section 2 of Law No. 68/LF/19 of 18 November 1968 relating to trade union or occupational associations or unions not governed by the Labour Code, which permits members of the public service to come together in trade unions);
- the need to modify the requirement that trade union administrators or leaders be of Cameroon nationality (section 10, paragraph 3 of the Labour Code);
- the need to amend the legislation concerning the prohibition against the calling of a strike before the conciliation and arbitration procedures laid down by the Labour Code have been exhausted, or in breach of an arbitration award having executory force, and the power of the authorities to requisition workers involved in a strike called in a vital sector of economic, social or cultural activity (section 165, subsections 2 and 3, of the Code and sections 2 and 3 of Decree No. 74/969 of 3 December 1974 laying down the procedure for giving effect to section 165 of the Labour Code).

1. The Committee takes due note of the information supplied by the Government, that Law No. 68/LF/19 of 18 November 1968 and Legislative Decree No. 74-138 of 18 February 1974 regulating the right to organise of public servants apply to prison staff. However, it draws the Government's attention to the fact that the public servants covered by these provisions must enjoy the right to establish organisations of their own choosing without previous authorisation, while the legislation provides that no trade union or professional association may have legal personality without the approval of the responsible Minister.

The Committee requests the Government to provide information on the measures contemplated to ensure the application of the Convention in that respect.

2. With regard to the banning of foreign workers from trade union office (section 10(3) of the Labour Code), the Government indicates that it has taken due note of the Committee's comments.

The Committee hopes that as part of the revision of the Labour Code, it will be possible to make this provision more flexible to enable foreign workers to have access to trade union office, at least after a reasonable period of residence in Cameroon [in this connection see paragraph 160 of the 1983 General Survey on Freedom of Association and Collective Bargaining].

3. With regard to the restrictions on the right to strike contained in the legislation, the Committee notes from the information

provided by the Government that the comments concerning the inconsistency of these provisions with the Convention will be taken into account in the revision of the Labour Code.

The Committee recalls that the exercise of the right to strike should be one of the means available to workers and their organisations for the promotion and protection of their interests, and that restrictions or a ban on strikes should only be imposed on public servants acting in their capacity as agents of the public authority or employed in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national emergency for a limited period [in this connection see paragraphs 200, 214 and 226 of the General Survey].

The Committee again expresses the hope that the legislation will be amended in the near future in the light of its comments. It requests the Government to provide information in its next report on any progress in these matters.

#### Canada (ratification: 1972)

The Committee takes note of the Government's report and the comments made by the National Union of Provincial Government Employees (NUPGE) on the labour legislation in Newfoundland.

#### Articles 2 and 3 of the Convention

1. Newfoundland. In its previous observation the Committee had requested the Government to reconsider Bill 59, the Public Service (Collective Bargaining) Act, dated 1 September 1983 (which excludes many workers from the definition of "employee"), so as to allow said workers without distinction whatsoever the right to belong to a union of their own choosing (Article 2) and had also requested the amendment of section 10.1, relating to the procedure for the designation of "essential employees", which leads to difficulty in access to independent arbitration in the event of a dispute (Article 3). The Committee had expressed hope that the pending public service labour legislation review, to be carried by a joint body, would lead to legislative amendments ensuring full conformity with the Convention.

In its last report, the federal Government indicated that the Government of Newfoundland has replied that the Legislative Review Committee was set up in late 1986. The membership of the Committee was later expanded to include representatives from other unions who represent employees working in the public service. Thus, the membership on the Legislative Review Committee was one representative from Treasury board; four representatives of public service unions; the chairperson, an executive secretary and legal counsel. The Committee began its work in early 1987. It examined other provincial and national legislation on public sector employees, held public hearings to give all interested parties an opportunity to make submissions and prepared an information paper for the Government as part of the ongoing consultative process. The Committee held a number of meetings on its own and finalised its report with a series of

recommendations on proposed amendments to public sector legislation. This report was submitted to the Minister of Labour of Newfoundland on 21 July 1988.

The Committee further notes that, according to NUPGE, 28 of the 30 recommendations contained in the report were submitted unanimously; the remaining two (one of which deals with interest arbitration in essential services) were not supported by the Government's representatives on the Committee. Still according to NUPGE, the Government stated that it would study the report and recommendations in the spring of 1989, and intended to repeal the Public Service (Collective Bargaining) Act and replace it with different legislation.

The Committee reminds the Government that prohibitions on the right to strike should be confined to public servants acting in their capacity as agents of the public authority, or to essential services, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population (General Survey, 1983, paragraph 214). Furthermore, as pointed out by the Committee on Freedom of Association in the complaints presented against the Government of Canada, Newfoundland [Case No. 1260, paragraph 155(c)], any limitation on the right to strike in the public service or in essential services should be compensated by adequate, impartial and speedy conciliation and arbitration procedures in which the parties can take part at every stage and in which the awards should, in all cases, be binding on both parties.

Since both the Committee on Freedom of Association and the present Committee have been making these comments for some time, the Committee trusts that the Government of Newfoundland will take the necessary measures to give full effect to the Convention on these points in the near future, and asks the federal Government to indicate in its next report any progress in this regard.

2. Alberta. Referring to the conclusions of the Committee on Freedom of Association in relation to Cases Nos. 1234 and 1247, approved by the Governing Body in its 241st Report (November 1985), the Committee recalls that in order to ensure compliance with Article 2 of the Convention, the Government should have taken measures: (1) to repeal section 17(1)(d.1) of the University Act, as amended in November 1981, which empowers the Board of Governors to designate those employers who shall be "academic staff members" for the purpose of joining academic staff associations; and (2) to introduce an independent system of designation where the parties cannot reach agreement for the purpose of joining academic staff associations.

The Government should also have taken measures to amend the provisions of the Public Service Employee Relations Act and the Labour Relations Act, as amended in 1983, to restrict the prohibition of strikes to services which are essential in the strict sense of the term, and to adopt legislation along the lines already suggested by the Committee and the Committee on Freedom of Association, in the context of the report of the September 1985 study and information mission.

In its previous observation, the Committee noted that the Government of Alberta had initiated a general review of its labour legislation through a joint committee which intended to look at foreign experience and to hold public debates on the legislation. In



its last report, the Government of Alberta indicates that it has carried out an extensive review of its private sector labour legislation and enacted the Labour Relations Code (effective date, 28 November 1988), which repeals and replaces the Labour Relations Act, and the Construction Industry Bargaining Act. The Government admits that time constraints and the extent of the consultations with interest groups in the private sector prevented it from reviewing its public sector labour legislation, but gives assurances that its future policy decisions related to public sector collective bargaining will give due consideration to the concerns raised in ILO observations.

The Committee strongly hopes that any reform of the public sector labour legislation in Alberta will be preceded by wide consultations with all interested groups, as was the case for the private sector, so as to allow for a thorough examination of all issues and concerns raised in previous observations and direct requests of the Committee of Experts, the reports of the Committee on Freedom of Association, and the report of the September 1985 study and information mission to Canada. The Committee requests the federal Government to keep it informed in its next report of developments in that respect.

#### Central African Republic (ratification: 1960)

The Committee notes, with regret, that the Government's report has not been received. It notes, however, the discussions which took place in the Conference Committee in June 1988. With reference to its previous comments concerning the application of this Convention, the Committee recalls that on three occasions, in June 1986, in June 1987 and in June 1988, a Government representative indicated to the Conference Committee that his Government was ready to receive a direct contacts mission between the competent national authorities and a representative of the Director-General, in order to contribute to the elimination of the divergencies that exist between, on the one hand, the law and practice and the Conventions on freedom of association, on the other hand.

The Committee recalls that the conclusions of the Committee on Freedom of Association in Case No. 1040 and its own comments concerned the following points:

- the general suspension since 1981 of all trade union activities, which is known as the "trade union truce";
- the dissolution by administrative authority, on 16 May 1981, of the General Union of Central African Workers (UGTC);
- the fate of the property of the former UGTC, both real estate and liquid assets;
- the reasons why the Bangui Court, which has been seized with the question of the disposal of the UGTC property since 1982, has not yet given a decision;
- the right of Central African workers to carry on freely their activities of furthering and defending their economic and social interests through the central trade union organisations of their own choosing;
- the reasons for which the rules of two central trade union organisations, the Central African Confederation of Free Unions

(CCSL) and the Central African Workers' Federation (FCT), deposited in 1981 have not yet, after eight years, been approved by the authorities;

- the obligation placed on the members of the executive of a trade union to have belonged to the occupation for five years (section 10 of the Labour Code);
- the obligation placed on delegates of employers' and workers' organisations to belong to the occupation(s) concerned, to be able to discuss collective agreements (section 22 of the Code);
- restrictions on the rights of foreigners to join a trade union (obligation to have lived in the country for at least two years and the condition of reciprocity on behalf of Central African citizens established in the country from which the foreigners come) (section 6(2) of the Code).

During the last session of the Conference, in June 1988, a Government representative stated that Act No. 88/009 on freedom of association and protection of the right to organise had been promulgated on 19 May 1988 and that it conforms on all points with the Convention. A Regional Economic Council, which is a consultative body made up of regional representatives and socio-professional categories, had been set up, and the trade unions should be represented on it. In his opinion, it was urgent to allow the establishment of trade unions so that they could be represented on this body and on other bodies such as the National Consultative Committee on Labour. He added, in reply to questions put by several members of the Committee of the Conference, that examination of Act No. 88/009 would show that a single trade union system was not imposed on workers and that the right to organise was guaranteed by section 8 of the Act, which constituted substantial progress in this area.

The Committee of Experts notes the content of Act No. 88/009 and it notes with interest that sections 6 and 10 of the Labour Code, which restricted the trade union rights of foreigners and the right to freely elect trade union officers through imposing the requirement that candidates should have exercised the occupation for five years, have been withdrawn.

Nevertheless, it notes with concern that section 4 of the above Act enshrines trade union monopoly in the legislation by explicitly providing that:

occupational trade unions constituted into Federations and Confederations may join together within a sole Central National Organisation to further and defend the interests of their members.

Furthermore, the obligation for delegates of employers' and workers' organisations to belong to the occupation or occupations concerned in order to negotiate collective agreements (section 22 of the Code) remains.

The Committee is bound to point out to the Government as it indicated in its 1983 General Survey on Freedom of Association and Collective Bargaining, that systems of trade union unity or monopoly imposed by law are at variance with the principle of free choice of workers' and employers' organisations contained in Article 2 of the Convention. This principle of the Convention was not intended as an

expression of support either for the idea of trade union unity or that of trade union pluralism. Thus, although it was clearly never the purpose of the Convention to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases. There is a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by law and the factual situation in which the workers or their trade unions join together voluntarily in a single organisation, without this being the result of legislative provisions adopted to this effect.

The Committee would like to make it clear that, even in a case where a *de facto* monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalise this factual situation, for example, by designating the single central organisation by name. Indeed, even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure [paragraphs 136 and 137 of the General Survey].

The Committee can only deplore the fact that, contrary to what was stated before the Conference Committee and despite the repeated requests made by the ILO, the Government has not given effect to the requests to accept a direct contacts mission which would have certainly made it possible to assist the authorities in the elimination of all the divergencies existing between, on the one hand, the law and practice and, on the other hand, the Conventions.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Chad (ratification: 1960)

The Committee notes the Government's report and recalls that its comments concerned the following points:

- the need to repeal Ordinance No. 001 of 8 January 1976 prohibiting public and similar employees from exercising the right to organise;
- the need to repeal or amend section 36 of the Labour Code, prohibiting the trade unions from all political activity;
- the need to repeal Ordinance No. 30 of 26 November 1975 suspending all strikes throughout the country.

In its previous observation the Committee requested information from the Government on the progress achieved in the revision of legislative texts that was undertaken in order to implement fully the Convention.

The Committee indeed noted the assurances given by the Government that Ordinance No. 001 of 8 January 1976 would be repealed. It also noted that the draft Labour Code, formulated with the technical assistance of the ILO, would remove the prohibition on trade unions from participating in political activities and repeal Ordinance No. 30 of 26 November 1975. It drew the Government's attention, however, to the fact that the above draft did not contain provisions granting the

right to strike to workers (except for sections 431-4 and 433-7 in a very restrictive and allusive manner) and that the procedure for settling industrial disputes did not appear to give workers the possibility of calling a strike.

In its report the Government indicates that the competent authorities have still not examined the texts that are to repeal these Ordinances and that the new labour legislation will contain provisions making it possible for workers to call strikes.

The Committee notes this information with interest and points out that the Convention applies to all workers, without distinction whatsoever, with the exception of the armed forces and the police (Article 9 of the Convention), and that the right of workers to call a strike is one of the essential means available to them to defend their interests (Article 10) and to organise their activities (Article 3) and can only be restricted, following the failure of conciliation procedures, in services whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis [in this connection, see paragraphs 214 and 226 of the 1983 General Survey on Freedom of Association and Collective Bargaining].

The Committee once again expresses the firm hope that the legislation to give full effect to the Convention will be adopted in the near future and it requests the Government to indicate any progress achieved in this respect in its next report.

#### Colombia (ratification: 1976)

The Committee notes the Government's report, the comments on the application of the Convention submitted by the Workers' Central Organisation of Colombia (CUT) and the Government's reply to these comments. The Committee also notes the last report of the Committee on Freedom of Association regarding the complaints submitted against the Government, and the report of the direct contacts mission undertaken in Colombia (from 31 August to 7 September 1988) in the context of the procedure before the Committee on Freedom of Association [see the 259th Report of the Committee on Freedom of Association, Cases Nos. 1429, 1434, 1436, 1457 and 1465, paragraphs 589 to 678, and the mission report which is annexed to that Report].

#### A. Matters raised by the CUT with regard to the application of the Convention

The CUT refers in its comments to the violent situation in Colombia which has resulted in the assassination of many trade union leaders and trade unionists. In view of the fact that the Committee on Freedom of Association examined this question in its 259th Report (November 1988), and taking into account the allegations made by trade union organisations, the Government's reply and the information obtained in the direct contacts mission, the Committee refers to the conclusions of the Committee on Freedom of Association. In particular, the Committee of Experts, as the Committee on Freedom of Association has already done, expresses its deep concern at the alarmingly violent

situation confronting Colombia, which in general makes it impossible for the normal living conditions of the population to be maintained and prevents the full exercise of trade union activities.

The CUT indicates that the Ministry of Labour and Social Security is placing obstacles in the way of the establishment of trade union organisations, by repeatedly denying recognition of their legal personality or approval of their rules. The CUT regrets that the Supreme Court of Justice has declared that Decrees Nos. 2932 and 1658, of 1981 and 1985 respectively, which govern the suspension of the legal personality of trade union organisations, are constitutional.

However, the Government denies that it is placing obstacles in the way of the establishment of trade union organisations, recognition of their legal personality, the amendment of their rules and regarding trade union officers, except where the legal requirements are not fulfilled. For example, the legislation provides that the Ministry of Labour, within 15 days following the receipt of the file in question, shall decide upon the recognition or denial of legal personality, and in this latter case shall indicate the grounds of a legal nature or the provisions of the Code which have resulted in a negative decision. The Government adds a list of the organisations which obtained legal personality in 1987. The Government states that the Decrees of 1981 and 1985, under which the legal personalities of some trade union organisations were suspended, were issued under the powers of the state of emergency, which was declared due to the fact that the inaccurately termed "national strikes" that were to be called contributed enormously to the disturbance of public order, which the Government was obliged to avert.

The Committee notes the Government's statements regarding the recognition of legal personality and the approval of amendments to trade union rules. The Committee observes, nevertheless, that in its last report concerning Colombia (November 1988), the Committee on Freedom of Association emphasised that it would be advisable to simplify the processing procedures and the numerous formal requirements under the legislation, with a view to streamlining the recognition of legal personality [see the 259th Report, Case No. 1434, paragraph 664] and that in practice the recognition of legal personality and the approval of modifications of rules is denied with a certain frequency and that the corresponding procedures are inordinately slow [see the 259th Report, Case No. 1434, paragraph 662]. Taking into account the conclusions of the Committee on Freedom of Association, the Committee of Experts requests the Government to take measures to amend the legislation and remedy the deficiencies in question.

With regard to the comments of the CUT regarding the suspension of legal personality the Committee had previously addressed a direct request to the Government on this point. The Committee notes the Government's statements in its report for 1987 in which it affirms, in particular, that there is a legally confused situation brought about by the co-existence of Act No. 20 of 1976 (approving Convention No. 87, Article 4 of which forbids the dissolution or suspension by administrative authority of workers' and employers' organisations), and section 450 of the Labour Code, which permits the above in the event of illegal strikes. The Committee also notes that section 380(c) permits the suspension of the legal personality of a trade

union by administrative authority in the event of continued violations of the provisions of Title 1 of the Code.

The Committee wishes to refer to the conclusions made by the Committee on Freedom of Association when examining Case No. 1343 concerning Colombia [see 244th Report, paragraph 376] in which it gave its opinion on the suspension of the legal personality of an organisation and pointed out that the dissolution or suspension by administrative authority of workers' and employers' organisations is contrary to the provisions of Article 4 of the Convention, particularly since the appeal to the Ministry of Labour (the result of which would be subject to judicial appeal) did not result in the suspension of the measure; consequently the organisations in question could not legally operate while the measure was in force. The Committee also notes that in October 1988, subsequent to the above report of the Committee on Freedom of Association, Decrees were again issued under the state of emergency penalising the organisations participating in the general strike planned for 20 October 1988 with the suspension of their legal personalities.

In these circumstances, the Committee regrets that the Government has not taken into account the comments by the supervisory bodies on this subject and requests the Government to take measures to eliminate from the legislation any possibility of suspension or dissolution by administrative authority, or at least to provide that the administrative decision does not take effect until the judicial authority has ruled on any appeal that may be made by the trade union organisations concerned. The Committee points out that trade union organisations must be able to call legitimate strikes in order to further the economic and social interests of their members without being liable to suspension or dissolution when their action has remained peaceful in nature.

B. Provisions of the legislation criticised  
by the Committee in previous comments

1. Interference in the internal administration  
of trade unions

The Committee referred to the following points:

- ministerial approval of amendments to the constitutions of first-level unions and those of federations and confederations (sections 369, 370 and 425 of the Labour Code and section 15 of resolution No. 4 of 1952);
- regulation by resolution No. 4 of 1952 of questions that should be governed by the constitutions of the unions rather than by the law (quorum of the general assembly, composition of the executive bodies, electoral procedure, etc.);
- supervision of the internal management and meetings of unions by public servants (section 486 of the Labour Code and section 1 of Decree No. 672 of 1956), strict rules for trade union meetings (Decree No. 2655 of 1954) and presence of authorities at general assemblies convened to vote the calling of a strike (section 444(2) of the Labour Code);

- the obligation to be Colombian for election to trade union office (section 18(a) of resolution No. 4 of 1952);
- the election of trade union officers to be submitted for approval by the administrative authorities (section 21 of resolution No. 4 of 1952 and sections 10 to 13 of Decree No. 1469 of 1978);
- the suspension, with loss of trade union rights, of leaders who have been responsible for the dissolution of their unions (sections 380(2)(b) and (c) and 4 of the Labour Code);
- obligation to belong to the trade or occupation in order to be considered eligible for election to trade union office (sections 388(1)(c) and 432(2) of the Labour Code and section 18(c) of resolution No. 4 of 1952, for first-level unions and 422(1)(c) of the Labour Code for federations).

2. Right of trade unions to further and defend the interests of the workers

The Committee referred to the following points:

- prohibition on trade unions from taking part in political matters (sections 378(a) of the Labour Code, 16 of Decree No. 2655 of 1954, and 12 and 50 of resolution No. 4 of 1952);
- prohibition on trade unions from holding meetings on political matters (section 12 of resolution No. 4 of 1952);
- prohibition of federations and confederations from calling a strike (section 417(1) of the Labour Code);
- prohibition of strikes not only in the essential services in the strict sense of the term but also in a very wide range of public services which are not necessarily essential (section 430 of the Labour Code and Decrees Nos. 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967);
- compulsory arbitration, which empowers the President of the Republic to order the termination of a strike affecting the interests of the national economy and to submit disputes to arbitration (section 3(4) of Act No. 48 of 1968);
- sentences of imprisonment during the temporary suspension of the right to strike under emergency powers (Decree No. 2004 of 1977);
- the automatic dismissal of trade union leaders who have intervened or participated in an illegal strike (section 450(2) of the Labour Code).

The Committee also noted in its previous observation the Government's statement in its report that the legislation in force does not place restrictions on the duration of strikes, and that when, by virtue of section 448 of the Labour Code, the Ministry of Labour and Social Security proposes that an arbitration court be set up, it is for the workers at their assembly to decide whether the settlement worked out by the court is to be adopted or rejected. The Committee requests the Government to indicate whether, in view of these explanations, it must be understood that section 3 of Decree No. 939 of 1966 (the power of the Ministry of Labour to end a dispute that has lasted more than 40 days through compulsory arbitration) has been repealed or no longer applies.

The Committee concludes that the legislation is contrary to the provisions of the Convention on many points. It requests the

Government to consider the in-depth reform of the trade union legislation that is in force in order to bring it into conformity with the requirements of the Convention and to report any measure that it adopts in this respect.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Congo (ratification: 1960)

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

The earlier comments of the Committee related to the question of the trade union monopoly established by the legislation, namely section 173 of the 1975 Labour Code, the modalities being laid down by Ministerial Order No. 78.08 of 21 December 1976. Under section 173, first-level unions and unions in undertakings are governed by the rules of 'the trade union organisation', it being understood from the report of the Government for 1979 that this means the Congolese Trade Union Confederation. The Committee has further pointed out that this organisation receives, by virtue of Decree No. 73/167/MJT of 18 May 1973, a percentage of the basic monthly wage that each worker in the country must pay as trade union dues. As the Committee has pointed out earlier, this situation under the law conflicts with Article 2 of the Convention, which proclaims the freedom of workers to establish and to join organisations of their own choosing.

The Committee takes note of the statement by the Government representative to the Conference Committee to the effect that the single trade union system results from the common will of the workers and from political, economic and historical development, the Government having merely confirmed the will of the workers.

The Committee refers to its General Survey submitted to the 69th (1983) Session of the International Labour Conference, particularly paragraphs 134, 136 and 137, in accordance with which the principle of Article 2 is not intended as an expression of support either for the single trade union system or for that of trade union pluralism but it does at least imply that this pluralism must be possible in all cases. The Committee points out that a situation of de facto trade union monopoly as a result of the will of the workers must not be institutionalised by the law, since the workers must be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure.

The Committee notes that the Government has indicated its intention to reconsider the question of the institution of the check-off system for the benefit of the Congolese Trade Union Confederation. It trusts that measures will be adopted in the very near future to abolish this obligation placed on all workers for the sole benefit of one trade union organisation.



With regard to trade union monopoly, the Committee requests the Government to ensure that the above-mentioned legislative provisions are also re-examined with a view to bringing the legislation into conformity with Article 2.

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

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Costa Rica (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

The Committee recalls that its previous comments related to:

- the right of trade union leaders to hold meetings on plantations;
- restrictions on the right of trade unions of certain categories of workers to formulate their programmes for furthering and defending the interests of their members, including recourse to strikes.

1. The right of trade union leaders to hold meetings on plantations

In its last report, the Government states that section 60 of the Political Constitution enshrines the right to freedom of association. That section provides that: "both employers and workers may organise freely, for the exclusive purpose of obtaining and preserving economic, social, or occupational benefits." This section of the Constitution is given full effect through the obligation placed on employers to provide appropriate facilities for workers so that they can carry out their tasks rapidly and effectively. Accordingly, workers have every right to hold meetings in plantations, although this right has to be regulated so that the exercise of the right does not disturb the normal work of the farms or harm property.

While noting the information that has been supplied, the Committee requests the Government to indicate rapidly the legislative or administrative measures to which it refers when it indicates that the right to hold meetings in plantations has to be regulated, since this point has been the subject of its observations for several years.

2. Right of trade unions of certain categories of workers to formulate their programmes of action, including recourse to strikes

The Committee recalls that section 369 (a), (b), (d) and (e) of the Labour Code prohibits strikes in the public services, that is: those in which the work is performed by persons in the employment of the State or a state institution, if the work in question is not of the same nature as work performed also by private undertakings carried on for profit; work performed by employees engaged in the sowing, cultivation, care or harvesting of agricultural or sylvi-cultural

products or in stock-raising, and in the treatment of products in cases where they would deteriorate, and those declared by the State to fall in this category. The Committee considers that the prohibition of strikes should be confined to the following three cases: strikes in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population; strikes by public servants acting in their capacity as agents of the public authority; and strikes during a grave national crisis.

The Committee notes the Government's indications in its report to the effect that the committee set up to draft the integral reform of the new Labour Code has included substantial amendments to the restrictions laid down in the national legislation that is currently in force respecting strikes. Nevertheless, in relation to section 450(b) of the above draft, the Committee considers that transport and fuel enterprises and loading and unloading in airports and docks do not appear prima facie to constitute essential services in the strict sense of the term. The Committee therefore trusts that in the near future the committee set up to draft the integral reform of the new Labour Code will bring this point into full conformity with the Convention.

The Committee requests the Government to keep it informed of developments concerning the points raised in its observation.

#### Côte d'Ivoire (ratification: 1960)

The Committee notes the information supplied by the Government in its last report.

In its previous observation, the Committee noted with interest that the new proposed wording of section 183 of the Labour Code would restrict the current powers of the President of the Republic to decide to submit an industrial relations dispute to compulsory arbitration, when a strike or a lock-out is likely to prejudice public order in the following circumstances:

1. in cases where the strike affects an essential service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population;
2. in cases where the strike is called by public officials acting in their capacity as agents of the public authorities;
3. in the event of an acute national crisis.

The Committee notes, from the Government's report, that the draft amendment to the above text has been transmitted to the social partners for their examination.

The Committee requests the Government to indicate in its next report the measures that have been taken to bring the legislation into conformity with the Convention.

#### Cuba (ratification: 1952)

In its previous observation, the Committee pointed out that the Labour Code, which came into force in 1985, continued to refer

expressly to the Central Organisation of Workers of Cuba (particularly in section 15) and that Legislative Decree No. 67 of 19 April 1983 conferred on this organisation the monopoly of representing the workers of the country before the State Committee on Labour and Social Security of the Ministry of Labour (section 61).

In its report, the Government states that section 15 of the Labour Code does not mention by name the Central Organisation of Workers of Cuba (CTC), as it is named in section 1 of the by-laws of that organisation. The above section 15 cannot be interpreted out of the general context expressed in that legal provision, since the reference to the Central Organisation of Workers in that section does not imply the institutionalisation of the Central Organisation of Workers of Cuba (CTC), or the creation or maintenance of a single trade union system. The Government states in its report that the reference to the Central Organisation of Workers in section 15 of the Labour Code reaffirms and gives effect, within the Cuban legal system, to a principle set out in Article 3 of the Convention and does not institutionalise or maintain a "trade union monopoly" as it is termed by the Committee of Experts. The Government reiterates that the wish for unity in the trade union movement does not stem from the law but is a historical fact, strengthened and consolidated by the workers themselves in their revolutionary and trade union struggles which commenced in the first workers' congresses at the end of the last century, prior to any law or to Convention No. 87.

In its report, the Government states that section 61 of Legislative Decree No. 67 of 1983, when considered in isolation, does not convey the scope of the forms of workers' participation in the decision-making process at all levels, which stimulates and protects labour legislation as a whole. As a practice that is protected and encouraged by many provisions in the Labour Code and its supplementary legislation, the various directorates and departments that carry out the functions of the State Committee on Labour and Social Security consult the national trade unions when taking decisions that affect the interests of the workers. The Central Organisation of Workers of Cuba (CTC) is not an exclusive and restricted association, as it is wished to be implied by describing it as a "trade union monopoly", since it is composed of 17 national trade unions. In turn, the CTC and the 17 national branch trade unions are composed of provincial and municipal committees with a total of 58,569 trade union sections and 2,576 trade union offices, in which 98 per cent of the workers throughout the country are gathered together.

The Committee once again takes note of these statements, particularly as regards the development and practices of the trade union movement in Cuba, but must point out that the national legislation, in sections 15, 16 and 18 of the Labour Code, refers by name to the "Central Organisation of Workers", in the singular form, which in itself constitutes recognition in the legislation of the single trade union system.

The Committee recalls that in its 1983 General Survey on Freedom of Association and Collective Bargaining it indicated in paragraph 137 that, even in a case where a *de facto* monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalise this factual situation. Even in a situation where,

at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure.

The Committee therefore once again requests the Government to indicate the measures that are under consideration in order to eliminate from the legislation the numerous references to a single trade union central organisation, called the "Central Organisation of Workers" in the Act, and to enable the workers to create unions of their own choosing, distinct from the existing union structure, if they so wish.

#### Cyprus (ratification: 1966)

The Committee notes the information contained in the Government's report in response to its previous comments.

1. Right of trade unions to elect their representatives in full freedom. In its previous comments, the Committee has asked the Government to amend certain legislative provisions (paragraph 4 of First Schedule, section 20(1) and section 57 of the Trade Unions Law) which restrict the rights of trade unions to elect their representatives freely and are not in conformity with the Convention.

The Committee notes from the Government's report that the Special Committee of the Labour Advisory Board has not finalised the consultations with the social partners on the revision of the Trade Unions Law; the Government expresses hope that progress on this issue will be reported in its next report.

The Committee would remind the Government that this question has been scrutinised by the Special Committee of the Labour Advisory Board since 1977, and accordingly urges the Government to indicate in its next report the measures taken to bring its legislation into conformity with the Convention at an early date.

2. Restrictions on the right to strike. The Committee notes from the Government's report that during the period under review the Government has had recourse to the Defence Regulations 79A and 79B, which allow prohibition of strikes in services declared essential by the Council of Ministers, to put an end to strikes and lock-outs in the banking sector. The Government adds that recourse to said Regulations was considered necessary and consistent with article 27 of the Cyprus Constitution.

The Committee recalls once more, as it did in its last direct request, that the right to strike may only be prohibited or restricted in the public service (that is to say, as regards public servants acting in their capacity as agents of the public authority) or in essential services in the strict sense of the term, that is those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee trusts that the Government will give due consideration to these principles in any future application of the Regulations in question.

In addition, it requests the Government to supply details of any future instances in which strikes may be prohibited or brought to an end by invoking these Regulations.

Czechoslovakia (ratification: 1964)

The Committee takes note of the information supplied by the Government in its report. It recalls that its previous comments addressed the questions of trade union unity embodied in the law and the right to organise of members of collective farms.

1. Trade union unity embodied in the legislation. The Committee has pointed out for several years that under section 5 of the Constitution, Act No. 37 of 1959 and the Labour Code of 1965 as amended, the only recognised trade union organisations are the Revolutionary Trade Union Movement and its constituent units. In these circumstances, it pointed out to the Government that workers' organisations aiming to promote the interests of their members, independently of the Revolutionary Trade Union Movement, do not have the opportunity to conduct their activities and carry out their programmes, because of the large number of powers granted by the law to the Revolutionary Trade Union Movement. Recalling paragraph 136 of its 1983 General Survey on Freedom of Association and Collective Bargaining, in which it points out that, while it has never advocated either trade union pluralism or trade union unity, it has always affirmed that although it was clearly never the purpose of the Convention to make trade union diversity an obligation, the Convention none the less requires this diversity to remain possible in all cases. It therefore requested the Government to reconsider the situation with a view to giving full effect to the Convention.

In its last report, the Government indicates, with regard to the problem of trade union unity, that since its previous report, no changes have taken place in legislation or in practice but that it has taken note of the Committee's comments, including those concerning trade union diversity and trade union unity contained in the 1983 General Survey. The Government adds that these matters have been discussed in detail with the representatives of the Revolutionary Trade Union Movement and that a number of new laws or amendments to existing ones are currently under discussion or have already been adopted, mentioning in particular the adoption of the Law on state enterprises which will entail consequential changes in other legislation, including the Labour Code. According to the Government, the amendments are meant to support the implementation of the decisions concerning the changes to be made in the economic machinery with a view to attaining the planned objectives. Only indispensable amendments have been proposed to various provisions of the Labour Code following these economic changes, as well as partial amendments resulting from the experience acquired over the years during the application of the Code. The amended text of the Labour Code will be provided after its adoption by the Federal Assembly, probably in January 1989. The impact of the restructured economic machinery on the economic performance of the society will necessarily influence the future role of trade unions and their status.

While noting all the above information and indications, the Committee must none the less recall that, with current legislation as it now stands, and in the prevailing situation in the country where only a single trade union organisation and its constituent units are recognised by the law, workers who might wish to establish trade union organisations of their own choosing outside the existing trade union structure, to protect their interests, are denied the right to do so, contrary to the guarantees provided for in Article 2 of the Convention. The Committee once again requests the Government to indicate in its next report the measures taken or envisaged to ensure that the Convention is implemented in this respect.

2. The right to organise of members of collective farms. According to the Government's report, co-operative farmers have not established trade unions, although they have been entitled to do so since 1973, other than the Union of Co-operative Farmers, an independent organisation which is neither a typical trade union nor affiliated to the Revolutionary Trade Union Movement, but which promotes the improvement of the workers' working environment and living conditions and carries out occupational safety and health inspections.

The Committee takes due note of this information and requests the Government to indicate in its next report under which provision of the law or regulations members of collective farms have been able to establish trade unions since 1973, since, under sections 3 and 267(a) of the Labour Code, these workers do not seem to be covered by the provisions relating to trade union organisations.

#### Denmark (ratification: 1951)

With reference to its previous comments on legislative interventions which, in practice, follow strikes in different sectors, the Committee takes note of the Government's report and of the conclusions reached by the Committee on Freedom of Association in Cases Nos. 1443 (presented by the Danish Computer Workers' Trade Union) and 1470 (presented by several national workers' federations including the Danish Seamen's Union) [approved by the Governing Body respectively in November 1988 and February-March 1989: see 259th Report, paragraphs 163 to 197, and 262nd Report, paragraphs 33 to 78].

According to the Government's report, during 1987 collective bargaining for the renewal of agreements took place without industrial action on a major scale although in a few minor fields in the public sector the Government was obliged to intervene to end industrial action and prolong the agreements: Act No. 246 of 8 May 1987 for junior hospital doctors, Act No. 542 of 20 August 1987 for computer workers, Act No. 657 of 15 October 1987 for the seamen running the only island ship service for the state-owned company "Bornholmstrafikken", and Act No. 289 of 20 May 1987 for ambulance drivers and emergency fire-service workers. In the private sector, it states that Parliament adopted Act No. 408 of 1 July 1988 to set up the Danish International Ships' Register, the aim of which is to improve the competitiveness of the Danish merchant fleet and thus to strengthen employment on board Danish ships. Section 10 of this Act introduces special rules concerning collective agreements for ships registered on the Danish

International Ships' Register which necessitate the renegotiation of existing agreements.

The Committee regrets that, despite its comments made over recent years on such interventions, the Government has again resorted to statutory prohibitions of strikes in a number of sectors and, in addition, to interference in current collective agreements for certain Danish-flag ships. It recalls, as does the Committee on Freedom of Association, that recourse to strike action is one of the essential means available to workers and their organisations for the promotion and defence of their occupational interests and that restrictions on strikes should be limited to public servants acting in their capacity as agents of the public authority or to workers in essential services, namely those whose interruption could endanger the life, personal safety or health of the whole or part of the population. The Committee considers that several of the sectors involved in the various legislative interventions do not meet this criterion.

Observing that negotiations in a few sectors are to open in the spring of 1989, the Committee expresses the hope that the Government will remove the prohibition of strikes in those fields which are not essential in the strict sense of the term.

#### Dominican Republic (ratification: 1956)

The Committee notes with regret that the Government's report has not been received. It also takes note of the communications of the General Confederation of Workers dated 3 and 31 January 1989 and relating to, among others: the refusal by the Secretary of State for Labour to register the unions of agricultural workers of several sugar-cane plantations; certain prohibitions on the right to join confederations; refusal to register certain founding meetings of unions; refusal to register unions set up in free trade zones; and the massive dismissals of workers so as to prevent the formation of unions. These communications were sent to the Government on 7 February 1989. The Committee asks the Government to send its observations on the matters raised in these communications.

In previous observations, the Committee pointed out that the discrepancies between the legislation and the Convention related to the following points:

- the exclusion from the scope of the Labour Code, by virtue of section 265, of agricultural workers in agricultural, agro-industrial, stock-raising or forestry undertakings employing not more than ten workers continuously and permanently;
- the exclusion from the scope of the Code, by virtue of section 3, of public officials and other workers in the service of the public authorities who, with a few exceptions, are covered by special laws. Other legislative provisions (Act No. 2059 of 22 July 1949, Act No. 56 of 24 November 1965, Act No. 520, section 13) which contain important restrictions on the trade union rights which these workers should enjoy under the Convention (in particular, the prohibition of all trade union propaganda and proselytism within public and municipal administrations or autonomous institutions of the State (Act No. 56); the

provisions contained in section 13 of Act No. 520 which empowers the Executive to dissolve, by administrative procedures, any associations which might be formed by public officials);

- the major restrictions on the exercise of the right to strike by virtue of sections 373, 374 and 377 of the Labour Code (the prohibition of sympathy strikes and political strikes, the requirement that more than 60 per cent of the workers of the enterprise or enterprises concerned must have voted in favour of the strike, and the cessation of legal strikes and the guarantees provided for in section 375 upon initiation of the arbitration procedure which is deemed to be open from the date of the official notification referred to in section 640 and which involves the resumption of work within 48 hours following the above notification);
- the prohibition of the right to strike in the permanent public services listed in section 371, some of which, in the opinion of the Committee, do not come within the definition of essential services in the strict sense of the term (including, for example, transport in general, the sale of fuel for transport and the retailing of foodstuffs in markets).

I. Workers in agricultural enterprises  
employing no more than ten workers  
(section 265)

The Committee notes that the authorities explained once again to a representative of the Director-General during his mission to the country in December 1987 that the provisions of section 265 of the Labour Code, which excludes from the scope of the Code agricultural workers in enterprises employing no more than ten workers, do not imply any restriction of their right to organise because they have the possibility of forming or joining occupational unions and because, by law, the minimum number of workers required for the formation of a union is 20.

II. Public officials and employees

The Committee notes from the information supplied by the Government to the representative of the Director-General to the effect that, in practice, certain categories of public employees, especially in decentralised enterprises, appear to have formed unions. The Committee wishes to recall that, according to the Convention, public officials should enjoy the right to associate for trade union purposes. However, the law may establish certain specific restrictions on the right to organise of certain public officials involved in high-level management or decision-making. In the view of the Committee, such restrictions would not necessarily run counter to Article 2 of the Convention.

III. Restrictions concerning the right to strike

With regard to restrictions on the right to strike, the Committee would suggest an amendment concerning the number of workers in an



undertaking necessary for a strike to be declared (section 374, subsection 3): the number might be reduced to a simple majority of the voters of a bargaining unit, excluding those workers not taking part in the vote. Similarly, it would be necessary to delete services relating to transport in general, the sale of transport fuel and the retailing of foodstuffs in markets from the list of permanent public services, since, as it has already stated on other occasions, in the opinion of the Committee they do not come within the definition of essential services in the strict sense of the term [see paragraph 214 of the General Survey submitted to the 69th Session of the International Labour Conference, 1983], in other words, those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

As regards the prohibition of sympathy and political strikes, the Committee considers that a general prohibition of sympathy strikes could be open to abuse and that workers should have the possibility of recourse to such action on condition that the strike with which they are in sympathy is legal. Furthermore, the Committee suggests that the prohibition of political strikes should be limited so that workers may come out on strike in protest against state economic and social policies which they consider to be contrary to their interests, it being understood that the main objective of unions should be to ensure the economic and social development and well-being of all workers [see paragraphs 195 and 217 of the General Survey].

The Committee recalls that for a long time the Government has been stating its intention to revise the legislation. The Committee expresses its serious concern and urges the Government once again to take the necessary measures to bring these provisions of the legislation into conformity with the Convention in the near future and requests it to provide information on any progress made in this connection in its next report.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Ecuador (ratification: 1967)

The Committee takes note of the Government's report and the discussions that took place in the Conference Committee in 1987. The Committee also notes the comments on the application of the Convention sent by the Ecuadorian Confederation of Class Organisations (CEDOC) in a communication dated 22 January 1988 and regrets that the Government has not replied in detail to them.

In its comments on the application of the Convention, the CEDOC refers to a number of provisions which the Committee has already criticised, and points out that requirements not provided for in the legislation are imposed on public sector workers subject to the Labour Code, if they wish to establish trade union organisations (for example, that they must present work contracts and daily wage slips). In addition, the authorities make unnecessary observations and changes to the by-laws of incipient organisations and, according to the CEDOC, decisions concerning refusals to register are illegally delegated to

officials of a lower category. The Committee requests the Government to provide information on these matters.

Furthermore, the Committee has been pointing out that the following provisions of the legislation are incompatible with the requirements of the Convention:

- the prohibition placed on public servants from setting up trade union (section 10(g) of the Civil Service and Administrative Careers Act of 8 December 1971), although they have the right to associate and to appoint their representatives (section 9(h) of this Act);
- the obligation to be Ecuadorian for membership of the executive committee of a works council (section 455 of the Labour Code);
- the administrative dissolution of a works council when its membership drops below 25 per cent of the total number of workers (section 461 of the Code);
- the prohibition placed on unions from taking part in religious or political activities, with the requirement that provisions to this effect shall be included in the by-laws of the unions (section 443, paragraph 11, of the Code);
- the penalty of imprisonment laid down by Decree No. 105 for the instigators of collective work stoppages and for those who participate in them;
- the lack of protection against acts of anti-union discrimination at the time of recruitment.

The Committee notes from the report that the present Government considers that the matters referred to above are extremely serious and is therefore encouraging consultations at various political and administrative levels, which will determine the country's final position regarding this Convention which, in the view of the Ministry of Labour, is being fully applied.

The Committee wishes to point out that it has been stressing, since 1979, that the above-mentioned provisions are at variance with the requirements of the Convention and that in December 1985 a direct contacts mission joined the Minister of Labour and Human Resources in preparing draft amendments to the legislation which would be acceptable to the Government so that the comments made by the Committee would be taken into account. Since then, there has been no indication that the Government has taken any measures to follow up these proposals.

The Committee expresses the firm hope that the present Government will take the necessary measures, in the near future, to apply the proposed amendments in order to bring the legislation into conformity with the Convention, and will report on any developments in the situation.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Egypt (ratification: 1957)

The Committee notes the information supplied by the Government in its report and the modifications to the draft amendment to the Trade

Union Act, No. 35 of 1976, which, with regard to certain points, constitute progress towards a better implementation of the Convention.

1. The single trade union system laid down by law. In its previous observations, the Committee noted that sections 7, 13, 14, 16, 17, 31, 41, 52 and 65 of Act No. 35 of 1976, as amended, institutionalised a single trade union system, contrary to the provisions of Article 2 of the Convention. The Committee notes that the draft legislation provides for amendments to sections 13, 14, 31, 41 and 52 which make progress towards greater autonomy for trade union committees and general trade unions vis-à-vis the Confederation of Egyptian Trade Unions, which is the highest body in the trade union structure. However, the Government once again states that the principle of a single trade union system, as laid down in sections 7, 16, 17 and 65, will be maintained in so far as this type of organisation represents the wish of the workers and corresponds to the needs of many countries, including developing countries, of which Egypt is one.

In this connection, the Committee is bound to recall that the principle set forth in the Convention is not an expression of support either for trade union unity or for trade union pluralism; however, the Convention implies that pluralism should be possible in all cases. Consequently, the legislation should guarantee workers the possibility of setting up, should they so wish in the future, unions outside the existing trade union structure. The Committee trusts that the Government will continue to examine the national legislation with a view to amending the above provisions in accordance with the principles guaranteed by the Convention.

2. Regulation of the internal management and activities of trade unions. With regard to the provisions of Act No. 35 of 1976 respecting the regulation of the internal management and activities of trade unions, in relation to which the Committee has noted discrepancies with the principles set forth in Article 3 of the Convention, the Committee notes that the proposed amendments to sections 23 (the exclusion of the unemployed and retired persons from the right to organise) and 36(c) of Act No. 35 of 1976 (the obligation to have been a member of a trade union organisation for one year in order to be elected to office) are in line with its comments.

Concerning the control exercised by the Confederation of Egyptian Trade Unions over the nomination and election procedures to the executive committees of trade union organisations (section 41 of Act No. 35 of 1976) and over the financial administration of trade union organisations (section 62 of Act No. 35 of 1976), it is proposed to entrust these powers to the general assembly of the Confederation of Egyptian Trade Unions on the grounds that in practice it represents all workers' trade unions.

While taking note of the proposed change, the Committee is of the opinion that this amendment does not fully comply with the requirements of Article 3 of the Convention, which guarantees trade union organisations the right to organise their administration in full freedom. The Committee requests the Government to leave these matters to the rules of trade unions.

3. Compulsory arbitration and the broad powers of the public prosecutor to call for the removal from office of the executive

committee of a trade union that is responsible for work stoppages. In its previous observations, the Committee noted that the procedure for the settlement of disputes laid down in sections 93 to 106 of the Labour Code, as amended by Act No. 137 of 6 August 1981, by enabling one of the parties to the dispute, namely the employer, to resort to compulsory conciliation and arbitration, was liable to result in a restriction on the right to strike.

It also noted that section 70(b) of Act No. 35 of 1976 empowers a criminal tribunal, at the request of the Public Prosecutor, to dissolve the executive committee of a trade union organisation that has provoked work stoppages or deliberate absenteeism in a public service or public utility.

In its report, the Government indicates that the right to strike is guaranteed by law and has been regulated so as not to prejudice the security and economic stability of the country.

The Committee points out, in this connection, that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests (Article 10 of the Convention) and for the organisation of their activities (Article 3 of the Convention). The Committee trusts that measures will be taken to safeguard the full exercise of this right by all workers, subject only to the prohibitions which may be laid down in the case of public employees acting in their capacity as agents of the public authority or in essential services in the strict sense of the term, that is where the interruption of their activities due to strike action would endanger the life, personal safety or health of the whole or part of the population.

4. The Committee requests the Government to indicate in its next report the measures that have been taken to bring its legislation into conformity with the Convention.

#### Ethiopia (ratification: 1963)

1. With reference to its previous comments, the Committee notes the information supplied by the Government in its last reports and, in particular, that the draft Labour Code is currently being completed in the light of the Committee's comments and that in the near future it is due to be submitted to the "National Shengo".

2. The Committee recalls that the discrepancies between the legislation and the Convention concerned the following points:

- the organisation of workers and peasants into a single trade union system (sections 6, 9 (4), (5) and (11) of Proclamation No. 222 respecting trade unions, and sections 9, 10 (3), 29 and 30 of Proclamation No. 223 respecting the consolidation of peasants' organisations);
- the obligation upon workers' trade unions and peasants' associations to disseminate among workers the Government's development plans and Marxist-Leninist theory, and to apply the political and economic directives of the higher authorities (section 5 of Proclamation No. 222 and sections 6 (3), 15 (4) and 22 (4) of Proclamation No. 223);

- the formulation of the rules of workers' organisations and peasants' associations by the higher trade union organisations referred to by name in the legislation, namely: the All-Ethiopia Trade Union (section 6 (7) of Proclamation No. 222) for workers' trade unions, and the All Ethiopia Peasants' Association (section 30 (6) of Proclamation No. 223) for peasants' associations;
- the right of affiliation to international organisations, which is reserved to the All-Ethiopia Trade Union (section 6 (6) of Proclamation No. 222);
- restrictions on the right to strike (sections 99 (3) and 106 of the Labour Proclamation of 1975);
- the non-recognition of trade union rights for public servants and domestic personnel;
- the right of employers to establish employers' organisations in accordance with the principles set forth in the Convention. (Proclamation No. 148 of 1978 on the Chamber of Commerce entrusts employers' organisations with the implementation of the revolutionary programme and lays down that the Secretary-General of the National Chamber of Commerce is appointed by the responsible Minister).

Single trade union system  
set forth by law

(a) For several years, the Committee noted that Proclamation No. 222 imposed upon workers a system of organisation which, at the highest level, resulted in the creation of an expressly designated single national trade union, namely the All-Ethiopia Trade Union (AETU), by obliging base-level trade unions to conform to the rules formulated by the AETU and by subordinating trade union bodies to ideological and economic policies. It requested the Government to amend the legislation in order to safeguard the right of workers to establish trade union organisations of their own choosing outside the existing trade union structure.

According to the information supplied by the Government, the system of trade union organisation that is currently in force is a result of the common will of the workers. However, in accordance with section 47 of the Constitution, which guarantees the right of association, the Government states that it is prepared to envisage amending the legislation in the light of the Committee's comments.

The Committee notes these statements and points out that the principle of workers' freedom of choice of their organisations, as set forth in Article 2 of the Convention, does not imply an expression of support for the idea of trade union unity or for trade union pluralism. It means that pluralism must remain possible under the legislation. Furthermore, it wishes once again to emphasise that where a single trade union system implies that the trade union organisations are to conform to the rules formulated by the single national trade union, to disseminate Marxist-Leninist theory and to apply the Government's economic and political directives, workers' organisations do not have the right to organise their administration and activities and to formulate their programmes without interference from the public authorities (Article 3 of the Convention).

The Committee requests the Government to indicate in its next report the measures that have been taken to bring the legislation into conformity with the Convention.

(b) The Committee made identical comments concerning the peasants' associations established under the terms of Proclamation No. 223.

The Government once again indicates that peasants are either state employees considered as workers under the terms of the Labour Proclamation of 1975 and covered by Proclamation No. 222, or workers associated in co-operatives, who are excluded from the Proclamation of 1975 by virtue of section 1 (27) and are regulated by Proclamation No. 223.

In the Government's opinion, this latter category of peasants are not workers in the sense of Convention No. 87, but come under the Rural Workers' Organisations Convention, No. 141, which Ethiopia has not ratified.

The Committee nevertheless points out that Convention No. 87, in Article 2, covers workers "without distinction whatsoever". This expression in the sense of Convention No. 87 does not refer to the legal status of workers and cannot, in any case, be restricted to the concept of employee as usually understood in national labour legislation, and consequently all workers irrespective of the juridical nature of employment relationship are covered by the Convention. Furthermore, Convention No. 87, by referring to workers' organisations, does not limit the rights set forth in its second Article only to trade unions, but applies to any form of workers' organisations.

In the Committee's opinion, the rural workers covered by Proclamation No. 223 and the associations that are established in conformity with that Proclamation are respectively workers and workers' organisations in the sense of Convention No. 87.

The Committee trusts that the Government will take this interpretation into account and that the above provisions of Proclamation No. 223 will be amended in order to guarantee peasants employed on their own account or grouped in associations, who so wish, the right to establish organisations of their own choosing to further and defend their economic and social interests, outside the existing trade union structure.

#### International affiliation

With regard to the right to affiliate with international organisations, which is recognised exclusively for the AETU, the Committee understands, from the information supplied, that this provision may be re-examined. The Committee points out that this right must be recognised for all workers' organisations, without distinction, in accordance with Article 5 of the Convention. It requests the Government to indicate the measures that have been taken in order to give effect to the Convention in this respect.

#### Restrictions on the right to strike

In its previous comments, the Committee noted that sections 99(3) and 106 of the Labour Proclamation of 1975 could result in practice in

a prohibition of the right to strike. According to the information supplied, the Government considers that the right to strike is not restricted by the Constitution and states that specific legislation is envisaged in this connection once the new Labour Code has been adopted.

While noting this statement, the Committee points out that the right to strike is one of the means available to workers' organisations to defend their interests (Article 10 of the Convention) and to formulate their programmes (Article 3 of the Convention) and cannot be restricted, following mediation and conciliation procedures, except in the case of public servants acting in their capacity as agents of the public authority, or in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis [see, in this connection, paragraphs 214 and 226 of the 1983 General Survey on Freedom of Association and Collective Bargaining].

The Committee requests the Government to indicate the measures that have been taken in order to modify the legislation.

#### The trade union rights of public servants and domestic personnel

In its previous observations, the Committee noted that distinct practical measures would be taken to recognise the trade union rights of public servants and domestic personnel once the new labour legislation had been adopted.

Noting that the formulation of the new labour legislation is being completed, the Committee trusts that the measures that have been announced concerning these workers will be adopted in the near future and requests the Government to supply information on the progress achieved in this respect.

#### The right to organise of employers

In its previous observations, the Committee noted that employers' organisations established by virtue of Proclamation No. 148 of 1978 on the Chamber of Commerce were not employers' organisations in the sense of the Convention, that is organisations for furthering and defending the interests of employers without interference by the public authorities.

The Committee notes, from the information supplied by the Government, that a draft Proclamation respecting chambers of commerce has been submitted to the Council of Ministers.

The Committee requests the Government to indicate the measures that have been taken to guarantee employers the right to organise in organisations of their own choosing, without interference from the public authorities, and to transmit a copy of the draft Proclamation.

#### Finland (ratification: 1950)

Referring to its previous comments, the Committee notes with interest that the Government has taken its views into consideration

during the final revision of the Bill on Associations by proposing to transfer to a court the power, previously vested in the Ministry of the Interior, to forbid the activities of an association, in order to bring the legislation into conformity with Article 4 of the Convention. The Committee would appreciate receiving the text of the new Act when it is adopted and ratified.

Gabon (ratification: 1960)

The Committee notes the Government's report and the comments made by the Confederation of Employers (CPG) and the Trade Union Confederation of Gabon (COSYGA) regarding the implementation of the Convention.

The Committee recalls that its previous comments concerned the following points:

- the impossibility of joining more than one union in a given occupation or a given region and the obligation placed on every workers' or employers' organisation to affiliate with the Trade Union Confederation of Gabon (COSYGA) or the Confederation of Employers (CPG) (sections 173 and 174 of the Labour Code);
- the imposition of a trade union solidarity tax deducted each month by the employers for the COSYGA, the rate of 0.4 per cent of a workers' wage being fixed by decree (Act No. 13/80 of 2 June 1980 and Decree No. 9/000/882/PR/MFPTE);
- the imposition of compulsory arbitration, making it legally impossible to call a strike (sections 239, 240, 245 and 249 of the Labour Code) even though in practice strikes may be called without legal action being taken.

In its previous observation, the Committee noted that a general review of the Labour Code was being undertaken and that the Government requested the Committee to grant the necessary time to carry this out, particularly in view of the delicate nature of some of the points to be revised. The Government explained, in particular, that section 174 of the Code met the desire of the occupational organisations to unite and not the will of the Government to interfere with the freedom of workers to set up unions of their own choosing in the future.

While noting that, according to COSYGA, trade union unity is the result of the wish of the workers and that the introduction of the trade union solidarity tax responds to the COSYGA's need for independence from extra-national trade unions, which used to subsidise the central trade union organisations, and that no discontent has been reported from workers, the Committee once again emphasises to the Government the need to amend the legal provisions that are not in conformity with the Convention. It points out that the legislation should enable workers who so wish to establish trade unions of their own choosing outside the existing trade union structure and that the obligation should not be imposed on workers to pay without their consent a solidarity tax to the central organisation designated by name in the legislation. Such union security clauses are only in conformity with the Convention if they are negotiated and agreed between workers' and employers' organisations in a collective agreement.



The Committee also points out that the right to strike is one of the means available to trade unions to further and defend the interests of their members (Article 10 of the Convention) and to formulate their programmes (Article 3). Restrictions or prohibitions on calling strikes should only be admissible in exceptional cases for workers in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population or in the event of an acute national crisis [in this respect, see paragraphs 199 to 226 of the 1983 General Survey on Freedom of Association and Collective Bargaining, concerning the right to strike].

The Committee therefore requests the Government to indicate in its next report the measures that have been taken to bring its legislation into conformity with the Convention.

German Democratic Republic (ratification: 1975)

The Committee takes note of the information in the report of the Government.

The right of workers to establish organisations of their own choosing. The Committee has previously observed that section 44 of the Constitution and section 6, subsection 2, of the Labour Code expressly mention the Confederation of Free German Trade Unions (FDGB) as the only central organisation recognised, with its affiliated unions, for the furthering and defending of the workers' interests. It has also noted that, according to the information previously communicated by the Government, that the interests of the members of collective farms were represented at the political, economic and cultural levels by the Peasants' Mutual Assistance Association. The Committee has thus observed that a system of trade union unity is explicitly established by the legislation, in violation of Article 2 of the Convention.

The Government states that it cannot accept this view. It stresses once more that trade union unity in the German Democratic Republic has not been established by legislation but rather reflects the unified trade union movement which became a reality long before the Constitution came into force, the establishment of a single trade union association being based on the will of the workers themselves. According to the Government, nothing in the Convention prohibits member countries to incorporate existing realities in their legislation.

With respect to the principle that Article 2 of the Convention does not favour either trade union unity or pluralism, the Government replies that Convention No. 87 does not prevent any government from encouraging the activities of its existing trade unions, from supporting them or from placing them under the protection of the State, and it rejects the interpretation of the Committee of Experts.

The Committee takes note of these replies and comments, but can only recall the unambiguous statements it made in the General Survey on Freedom of Association and Collective Bargaining, presented to the 69th (1983) Session of the International Labour Conference, paragraphs 132 to 148, and particularly the following:

Although it was clearly never the purpose of the Convention to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases. There is a fundamental difference between a situation in which a trade union monopoly is instituted or maintained by law and the factual situation in which the workers or their trade unions join together voluntarily in a single organisation, without this being the result of legislative provisions adopted to this effect (paragraph 136).

The Committee would like to make it clear that, even in a case where a de facto monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalise this factual situation, for example, by designating the single central organisation by name, even if the existing trade union so requests. Even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure (paragraph 137).

While it is generally to the advantage of workers and employers to avoid proliferation of competing organisations, trade union unity directly or indirectly imposed by the law runs counter to the standards expressly laid down in the Convention (paragraph 138).

Under Convention No. 87, workers and employers have the right to establish and join organisations of their own choosing. Put in these terms, the principle must be considered as one of the foundations of freedom of association. It entails in particular the right to determine the structure and composition of trade unions, to set up one or several organisations in any one enterprise, occupation or branch of activity, and to establish federations and confederations freely. Provisions ... which impose a single trade union system are incompatible with the guarantees laid down in the Convention. Any system of trade union monopoly imposed by law is at variance with the principle of free choice of organisations laid down in Article 2 of Convention No. 87. ... trade union unity imposed by law at all levels runs counter to the Convention even if it is a result of a request made by the existing trade union organisation (paragraph 147).

Although the Convention clearly does not aim to make trade union pluralism compulsory, pluralism must be possible in every case. Trade union unity imposed by law, whether directly or indirectly, runs counter to the principles of the Convention (paragraph 148).

For the reasons mentioned above, the Committee considers that the situation in the German Democratic Republic is not compatible with the Convention and again requests the Government to re-examine the situation in the light of these comments and to ensure that the legislation grants the workers, including members of collective farms, freedom to establish organisations of their own choosing.

Federal Republic of Germany (ratification: 1957)

The Committee notes the information supplied by the Government in reply to its previous comments and the observations made by the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund (DGB)) dated 16 September 1988 on the application of the Convention.

The Committee recalls that its previous comments concerned the following matters:

- denial of the right of access to the workplace for trade union officials who do not belong to an enterprise;
- requisitioning of postmen, counter clerks and telephonists in the postal service with the status of civil servants (Beamte), who clearly do not act in a capacity as agents of the public authority, in order to replace striking postmen, counter clerks and telephonists in the postal service with the status of State manual workers or employees (Angestellte);
- the illegality of protest strikes.

1. Access to the workplace for trade union officials who do not belong to an enterprise. In relation to the Committee's comments concerning the denial of the right of access to the workplace for trade union officials who do not belong to an enterprise, in its last report the Government reiterates its previous statements to the effect that this question has not given rise to any dispute between employers and workers for a long time and adds that there have been no new developments in this respect.

However, the German Confederation of Trade Unions (DGB), intimates that it does not agree with the Government's reply. It explains that the Federal Constitutional Court handed down an order in 1981 establishing that the constitutional protection of the right to organise, and therefore of trade union activities, only applies to the central core of trade union activities (Kernbereich). Consequently, trade union activities only enjoy constitutional protection if they are considered to be indispensable for the maintenance of the trade union and to safeguard its very existence. This court order of the Court had the result of denying the right of access to the workplace for trade union officials who do not belong to an enterprise, and in particular to establishments belonging to the Church and other establishments. In the view of the DGB, as a result of this order, the Federal Government has not yet been able to adapt its legislation to the requirements of the Convention. Furthermore, the Federal Labour Tribunal and all the lower labour tribunals have felt bound by the order. According to the DGB, this denial of the right to organise is contrary to the provisions of Conventions Nos. 87 and 135. The DGB points out that Article 3 of Convention No. 87 affords workers' organisations the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, which signifies that the Convention guarantees trade unions the right to establish the limits that they intend to impose upon themselves regarding the development of their functions and the scope of their activities. However, this latitude is denied them by the order of 1981, especially in workplaces where labour disputes in fact arise and develop. The consequence of this order is that in the event of

disputes at the workplace, the trade union is obliged to give proof that its activities are indispensable to maintain and safeguard its very existence. Furthermore, Article 3 implies that it is for trade unions to decide how they wish to organise themselves and whom they wish to appoint as their representatives in their trade union activities at the workplace. In view of the fact that in the Federal Republic of Germany there are no works unions and that trade unions are totally independent of individual enterprises, which, in the view of the DGB, is one of the essential prerequisites for trade unions' capacity to negotiate, the very structure of the trade unions, which are organisations that are independent of enterprises, means that the interests of the workers must, to a large extent, be represented by trade union officials who do not belong to the enterprise in question. Furthermore, by requiring that the internal trade union activities of an enterprise be carried out only by trade union officials belonging to the enterprise in question, the tribunals are automatically dictating to the trade unions the names of the persons who will represent the interests of the trade unions and the workers in an enterprise. Such an interpretation results in a situation in which only the workers directly employed by the enterprise can take part in trade union activities in the enterprise. This is liable to lead to the denial of the right to organise in enterprises where trade unions do not yet have any members or, where employees who are trade union members, when such exist, do not dare to make themselves known for fear of discrimination or reprisals by the employer. Finally, if there is only one unionised worker within an enterprise, under this order, all the trade union activities and recruitment activities in the enterprise should be entrusted to this one worker. In the view of the DGB, this situation is clearly contrary to Article 3 of the Convention, which guarantees trade unions the right to elect their representatives in full freedom without external interference and requires that public authorities refrain from any interference which would restrict this right.

The Committee duly notes the comments made by the DGB on that issue. It recalls that it has been commenting on this question for several years and therefore, once again, requests the Government to indicate in its next report the measures that it has taken to guarantee that trade union officials, even those not belonging to an enterprise, can if necessary have access to the workplace in an enterprise, and to bring its legislation into conformity with the Convention in this respect.

2. Requisitioning of civil servants (Beamte) to replace striking state employees and manual workers (Angestellte) in the public services. With regard to the DGB's allegations that postal employees were requisitioned to break a strike by postal manual workers and employees who are denied the right to strike, the Government indicates only in its report that the Federal Constitutional Court has still not handed down its order concerning the appeal made by the workers. The Government hopes that the Committee will understand that in these circumstances it can make no statement while the Federal Court has not given its verdict.

With regard to the intervention of civil servants as strike-breakers, the DGB states its concern that the Federal

Constitutional Court has not yet handed down its order. It recalls that, while awaiting this order, the legal situation remains as it was. Civil servants may be requisitioned against their will to carry out tasks normally entrusted to state employees who are on strike. The Government has used this measure in the past and probably envisages having recourse to it once again in the event of industrial disputes in the public services. This has the result of jeopardising the constitutionally guaranteed right to strike of large sectors of the public services. In the view of the DGB, this problem has recently taken on greater significance in the postal service since two-thirds of employees there are civil servants (Beamte) and one-third is composed of manual workers (Arbeiter) and state employees (Angestellte). This means that the Government is able to overcome the effects of a strike by state employees by ordering civil servants to break the strike. This legal situation is particularly incomprehensible since the Government and the labour tribunals completely deny civil servants (Beamte) the right to strike and oblige them to act as strike-breakers in fields in which the work carried out does not even lie within the scope of their occupational activities and responsibilities.

The Committee recalls that it drew the Government's attention in its previous observation to the fact that, when national legislation prohibits or restricts strikes in the public service or in essential services, such restrictions become meaningless if the legislation defines the public service or essential services too broadly. Accordingly, any prohibition of strikes should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee therefore once again requests the Government to indicate in its next report the measures that it has taken to guarantee the right to strike to public servants who do not act in a capacity as agents of the public authority, and in particular postmen, counter clerks and telephonists in the postal service, whether they are considered to be state employees (Angestellt) or whether they have the status of civil servants (Beamte).

Furthermore, with regard in particular to the requisitioning of civil servants (Beamte) who are not acting in their capacity as agents of the public authority, to replace strikers, the Committee considers that such a measure may constitute a breach of Article 3 of the Convention, under which public authorities must avoid any intervention that could limit the right of workers' organisations to organise their activities and to formulate their programmes.

The Committee, like the Committee on Freedom of Association, recognises that normal community life can be disrupted when the operation of services or enterprises, such as transport or the postal service, is stopped. However, it cannot be said that the stopping of such services or enterprises creates in itself a situation of acute national crisis. Therefore, the Committee considers that the requisitioning of postal civil servants (Beamte) during a dispute in that service was such as to restrict the right to strike recognised to postal employees (Angestellte) as a means of defending their professional and economic interests. In other words, the recourse to public servants (Beamte) or to another group of persons to execute the

functions not accomplished by reason of a labour dispute is only justified, if the strike is otherwise lawful, by the necessity of ensuring the operation of services or enterprises whose interruption would create a situation of acute national crisis; the fact that the Government had recourse to employees who are not part to a labour dispute to replace strikers may constitute a risk of restriction of the right to strike, affecting the free exercise of trade union rights.

However, the Committee recalls that it has always considered that, if the extent and duration of a strike could cause an acute national crisis, a minimum service concerning a specified category of workers could be maintained. In that case, however, the trade unions should be able to participate, should they so wish, in defining such minimum service alongside the employers and public authorities.

While noting that the Constitutional Court has not yet issued its verdict on the appeal brought before it on this matter, the Committee requests the Government to indicate in its next report the measures it has taken in this respect, since it is responsible for ensuring that effect is given to this Convention.

3. Protest strikes. Regarding the illegality of protest strikes, and in particular the reprisal measures that, according to the DGB, in its observation of 21 January 1986 and 16 September 1988 were taken against trade unionists undertaking a protest strike against the amendment of section 116 of the Employment Promotion Act, the Government refers in its report to its previous statements and indicates once again that the workers fully enjoy the right to strike and that it sees no reason to take measures in this field at the present time. It adds that no fines were imposed on the trade union officers and it specifies that labour tribunals do not have the power to inflict penal sanctions. In the view of the Government, the actual situation was that the trade union officials were prohibited by the labour tribunals from calling a protest strike, under penalty of a fine in the event of violation of this prohibition. However, the threat of a fine by a tribunal does not constitute in itself a sanction. The purpose of such a threat or such a warning is to give weight to the tribunal's injunction to refrain from such activities. However, the amount of the fine was not established. Concerning the DGB's allegation that trade unionists were dismissed because they had participated in a protest action, the Government indicates that it contacted the German Confederation of Employers' Associations, which informed it that it had undertaken a survey among its affiliated organisations which found that no worker had been dismissed because he had participated in a protest action against the amendment of section 116 of the Employment Promotion Act. If dismissal notices were sent out, they were probably either withdrawn or declared null and void by tribunals.

The DGB once again in its comments dated 16 September 1988 indicates that it considers that the prevailing legal situation in the Federal Republic of Germany, under which the Government considers protest strikes as illegal, is not compatible with the requirements of the Convention. The DGB recalls that the supervisory bodies have repeatedly drawn attention to the right of trade unions to call protest strikes, particularly with a view to expressing criticism of the economic and social policy of governments. The DGB also indicates

that the protest strike to which it referred in its previous comments only lasted three hours during working time and that the tribunals ordered trade unions not to call protest actions under threat of heavy fines. In the view of the DGB, the Government's opinion that these fines do not constitute penal sanctions and were not imposed by courts of summary jurisdiction but by labour tribunals is not relevant. It is also irrelevant that the above fines were not, in the final analysis, inflicted. The fact that no coercive or disciplinary penalty was inflicted results only from the fact that the amount of the fines with which the trade unions were threatened was exorbitant, since they amounted to DM500,000 for each offence, which lead the trade unions to obey the injunctions of the tribunals. With regard to the dismissal of workers who took part in the protest action, the judicial procedures that were undertaken in all cases resulted in the withdrawal of dismissal notices. In cases in which appeals were made before labour tribunals, the dismissal notices were declared null and void. However, the DGB regrets that the tribunals did not explain their decisions by stating that participation in protest actions was legal. On the contrary, they stated that in theory it was illegal and constituted a rupture of the employment contract. In certain cases, they even considered that the strikes in question were illegal political strikes. The dismissal notices were declared null and void because the tribunals considered that participation in these protest actions was an isolated offence and they took into account the length of service of the persons in question to declare insufficient grounds for their dismissal. Furthermore, the DGB indicates that several workers received warning letters threatening them with sanctions under the industrial relations legislation, including dismissal in the event of a re-occurrence of the offence. The threatened sanctions had the effect that several workers, who feared for their employment, refused to exercise their right to criticise the amendment of section 116 of the Act by taking part in the protest action. The pressure created by the warning letters is liable to have a negative effect in the future on possible trade union actions. For this reason, the DGB wishes to emphasise its criticism of the current legal situation with regard to restrictions on the right to strike.

The Committee notes with concern the statements by the Government and the DGB on these matters and recalls that it has on many occasions stated that trade union organisations must be able to call protest strikes, particularly to criticise the economic and social policies of governments, without being threatened by sanctions.

#### Ghana (ratification: 1967)

For several years, the Committee has been noting divergencies between the legislation and the Convention on the following points:

- the powers of the Registrar to oppose the registration of a trade union following any comments or objections concerning an application for registration (sections 11(3) and 12(1)(d) of the Trade Unions' Ordinance, 1941);
- the powers of the registrar, in the context of the procedure of granting recognition for purposes of collective bargaining, to

refuse to appoint a trade union for any class of employees if there is in force a certificate as a negotiating representative for that class of employees or any part of that class (section 3(4) of the Industrial Relations Act, No. 299 of 1965);

- the absence of provisions on the right to form and to join federations and confederations and the right to join international organisations of workers and employers, even though, in practice, the Ghana Trades Union Congress and its 17 national organisations are affiliated to the International Confederation of Free Trade Unions (ICFTU) and to the Organisation of African Trade Union Unity (OATUU).

In its previous observation, the Committee noted that the Subcommittee of the National Advisory Committee on Labour had been given the task of examining the comments of occupational organisations on draft amendments to the Industrial Relations Act of 1965.

The Committee notes, from the Government's last report, that the Subcommittee is continuing its work and that the examination of the question will only be begun when the National Advisory Committee on Labour examines the work of the Subcommittee.

The Committee points out that the provisions respecting the powers conferred upon the competent official to refuse to register a trade union are so broad that they could be used in a manner that is contrary to Article 2 of the Convention, by preventing workers from establishing without previous authorisation organisations of their own choosing. With regard to the prohibition upon issuing a certificate designating a trade union in the event of another trade union already being designated, the Committee points out that it is not necessarily incompatible with Article 3 of the Convention to provide for a certificate to be issued to the majority trade union of a particular unit recognising it as the exclusive negotiator for that unit. However, the majority trade union should be determined according to pre-established and objective criteria. Furthermore, the legislation should provide that, if another trade union becomes the majority union, it should be entitled to be issued with a certificate designating it as the exclusive negotiating representative.

The Committee also points out that workers' organisations should have the right to establish and join federations and confederations and freely to affiliate with international organisations in accordance with Article 5 of the Convention.

The Committee expresses the firm hope that measures will be taken in the near future in the light of the points set out above and it requests the Government to supply information in this respect with its next report.

#### Greece (ratification: 1962)

The Committee notes that the Government's report has not been received. It notes, however, the information supplied by the Government to the Conference Committee in June 1987.

In its previous comments, the Committee pointed out the need to explain which solution had been finally adopted with respect to the collection of union dues and the financing of the operating costs of



the labour centres, since Act No. 1264 of 1982 (section 6(2) and (3)) provided for a choice of three solutions, namely a general collective agreement, an arbitration award or a provisional presidential decree on the system for the collection of dues and their repayment by the employers. It also pointed out the necessity of drafting legislation on freedom of association and the protection of the right to organise of seafarers, who are excluded from the scope of Act No. 1264 of 1982 concerning freedom of association and to amend Act No. 1365 of 22 June 1983 to make it possible for a simple majority of voters (excluding workers who did not take part in the vote) to call a strike in state enterprises.

1. Collection of union dues. In its previous observation, the Committee noted the information supplied by the Government to the Conference Committee in June 1985 and in its latest reports, according to which the Ministry of Labour had asked the most representative organisations of employers and workers to submit proposals concerning the collection of dues of members of trade union organisations at the workplace and that the General Confederation of Labour of Greece (CGTG) did not think that these proposals could serve as a basis for the promulgation of the above-mentioned presidential decree. The Committee expressed the hope that the question of deductions for the collection of union dues would be settled by direct negotiation between the parties, namely the representative organisations of workers and employers, without the Government's intervention.

In its statements to the Conference Committee in 1987, the Government indicated that, after receiving the proposals of the most representative occupational organisations on this subject, a draft presidential decree was formulated which was to be adopted in the near future, thereby bringing and end to the question of the collection of union dues.

While noting this information, the Committee points out once again that union security clauses are generally intended to strengthen the position of trade unions by ensuring that they become better established among workers and by giving them greater weight with employers and that such clauses are, therefore, compatible with the Convention. Nevertheless, in its 1983 General Survey on Freedom of Association and Collective Bargaining (paragraphs 144 and 145), the Committee recalled that, although the Convention is not opposed to the existence of union security clauses freely negotiated between the workers and the employers, the situation is altogether different when the system of union security is not based on clauses freely agreed between the workers and employers, but where the law designates a specific trade union which benefits from the system.

The Committee trusts that the draft presidential decree will take these clarifications into consideration and requests the Government to supply the text of the draft decree.

2. Seafarers. In its previous observation, the Committee also noted that the Ministry of the Mercantile Marine had set up a committee comprising shipowners, seafarers and officials of the administration, which had prepared a Bill on the democratisation of the seafarers' trade union. This Bill was circulated for observations to 34 seafarers' and shipowners' organisations. The above committee

had resumed its meetings with a view to drafting proposals taking into account the observations submitted by these organisations.

The Committee notes from the information supplied by the Government that the most representative organisations, namely the Panhellenic Maritime Federation and the Greek Shipowners' Union have still not forwarded their comments on the draft legislation to the public authorities. However, steps have been undertaken with these organisations so that the draft can be submitted to Parliament in the near future.

The Committee once again expresses the firm hope that legislation in conformity with the Convention will be adopted in the near future, since the problem of freedom of association for seafarers has been the subject of its comments for several years. It urges the Government to supply information in its next report on any progress made in this field.

3. Clause restricting the right to strike. In its previous comment, the Committee invited the Government to amend section 4 of Act No. 1365 of 22 June 1983, which provides that a strike in a state enterprise may not be called unless voted for by an absolute majority of the registered members of base-level trade union organisations (which signifies, in the case of panhellenic organisations, that it is necessary to vote at the regional level) in order to enable a simple majority of voters to be able to call a strike.

It noted in this connection the information supplied by the Government in its report to the effect that this provision is justified, since the enterprises that it covers operate in vital sectors of the life of the country (health services, the production and distribution of electricity, the transport of passengers and goods, telecommunications, banks, the postal services, radio and television), and decisions to call a strike not only affect the limited number of workers in the enterprise concerned, but the whole of the population, since the mobilisation of strikers may have a negative impact on the normal running of the economy and result in social upheaval.

In the absence of any new information on this subject, the Committee recalls that it has always considered that there may be legitimate reasons for restricting, or even prohibiting, recourse to strikes in strictly essential services, that is to say those whose interruption would endanger the life, personal safety or health of the whole or part of the population or in the event of an acute national crisis. Since the legislation in question, however, covers not only essential services but also services that are not necessarily essential such as the transport of passengers and goods, banking, etc., the Committee emphasises the need to ensure, with respect to strikes other than those in essential services, that a simple majority of the registered members of the base-level trade union organisations that have participated in a vote (other than those workers not taking part in the vote) may call a strike.

The Committee urges the Government to indicate in its next report the measures that it has taken to bring the legislation into conformity with requirements of the Convention on this point.

Guatemala (ratification: 1952)

The Committee notes with interest the establishment of the "Tripartite Committee to Update and Develop the Labour Code" which will put forward proposed amendments to the current Labour Code.

Without overlooking this positive development, the Committee emphasises the need to bring the whole of Guatemalan legislation into conformity with the Convention, and in particular the following sections of the Labour Code of 16 August 1961:

- section 211(a) and (b) on the strict supervision of trade union activities by the Government;
- section 207 on the impossibility for unions to take part in politics;
- section 226(a) on the dissolution of trade unions that have taken part in matters concerning electoral or party politics;
- section 223(b) which confines to Guatemalans the possibility of being elected to trade union office;
- section 241(c) which lays down the obligation to obtain a majority of two-thirds of the workers in the enterprise or production centre for the calling of a strike;
- section 222(f) and (m) which requires a majority of two-thirds of the members of a trade union for the calling of a strike;
- sections 243(a) and 249 which prohibit strikes or work stoppages by agricultural workers at harvest time, with a few exceptions;
- sections 243(d) and 249 which prohibit strikes or work stoppages by workers in enterprises or services in which the Government considers that a suspension of their work would seriously affect the national economy;
- section 255 which provides for the possibility of calling upon the national police to ensure the continuation of work in the event of an illegal strike;
- section 257 which provides for the detention and trial of offenders;
- section 390(2) under which a sentence of from one to five years' imprisonment can be imposed on those who carry out acts intended not only to cause sabotage and destruction (which, indeed, do not lie within the scope of the protection provided by the Convention), but also to paralyse or disturb the functioning of enterprises contributing to the development of the national economy, with a view to jeopardising national production.

The Committee once again recalls that: with regard to the election of trade union leaders, provisions to the effect that they shall be nationals of the country should be relaxed in order to enable foreign workers to obtain access to trade union office, at least after a reasonable period of residence in the host country; that, with regard to the prohibition of political activities, the legislation should permit trade unions to participate in public institutions with the task of improving the cultural, economic and social conditions of the workers; and that, with regard to the exercise of the right to strike, limitations and prohibitions are only compatible with the Convention in respect of essential services in the strict sense of the term, that is where their interruption due to a strike would endanger

the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

However, the Committee notes with interest the information supplied by the Government within the context of Case No. 1459 before the Committee on Freedom of Association [see the 259th Report of the Committee on Freedom of Association, paragraphs 275 to 306, approved by the Governing Body at its 241st Session (November 1988)] according to which the Ministry of Labour and Social Security has taken the initiative of proposing amendments to a number of sections of the Labour Code, which will be examined by the legislative body in the near future.

The Committee once again urges the Government to inform it as soon as possible of the measures that have been adopted or are envisaged in order to bring the whole of the legislation into conformity with the provisions of the Convention.

#### Guinea (ratification: 1959)

The Committee notes the Government's report.

In its previous observation the Committee noted a number of discrepancies between the legislation and the Convention:

- The right of access to trade union office reserved for workers of Guinean nationality (section 251 of the Labour Code).
- Restrictions on the exercise of the right to strike (sections 342, 350 and 351 of the Labour Code).

1. The Committee notes with satisfaction that section 251 of the Labour Code, as amended, extends the right to exercise trade union office, which had previously been restricted to Guinean nationals, to any person who has been resident in the Republic of Guinea for at least five years.

2. In its previous observation, the Committee noted that, under the terms of the procedure for the settlement of industrial disputes set out in sections 342, 350 and 351 of the Labour Code, a dispute may be referred to compulsory arbitration: (a) at the request of one party to the dispute; (b) at the request of the Minister if he considers that a strike is liable to endanger the public order or the national interest; and that, in the event of opposition to an arbitration decision and in the event of disputes that are liable to jeopardise the normal functioning of the national economy, the Minister may request the Council of Ministers to give the decision executory force.

The Committee notes with interest that section 342, as amended, limits the powers of the Minister to submit a dispute to compulsory arbitration to cases of strikes which occur in an essential service or during a period of national crisis when it would endanger public order or the national interest.

The Committee notes however that recourse to the arbitration procedure can be initiated at any time at the request of only one party to a labour dispute, which might limit the exercise of the right to strike, in contravention with Article 3 of the Convention.

The Committee asks the Government to supply information on the measures contemplated to give effect to the Convention in that respect

and to provide a list of the essential services referred to by section 351, as amended, if such a list has been adopted.

Guyana (ratification: 1967)

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous direct request, which read as follows:

The Committee has taken note of the information which has come to its attention through the reports of the Governing Body Committee on Freedom of Association in November 1986 and February 1987 on Case No. 1330 concerning the Government's intention to enact a Trade Union Recognition Bill which has been under consideration since 1979. It notes that, according to the 248th Report of the Committee on Freedom of Association (paragraph 307), this will contain provisions that have received the support of representatives of employers' and workers' organisations which have been consulted concerning the establishment of an independent body for the certification of trade unions and regarding representation on the basis of majority votes. The Committee trusts that the Government will provide it with full details of the legislation so that due consideration can be given to this in the light of the provisions of the Convention.

The Committee has also noted with some concern from the report of the Government that, in the five years which have elapsed since attention was first drawn to this matter, no steps have been taken to amend the Public Utility Undertaking and Public Health Services Arbitration Act (Chapter 54:01) so as to bring it into line with the Convention as regards the limitation of the power of resort to compulsory arbitration in respect of strikes relating to essential services in the strict sense of the term. It trusts that the Government will find it possible in the near future to adopt the measures necessary for this purpose.

Haiti (ratification: 1979)

In its earlier comments, the Committee addressed the following discrepancies between the national legislation and the Convention.

- the necessity of obtaining the approval of the Government to establish an association of more than 20 persons (section 236 of the Penal Code);
- the wide powers conferred on the Government to supervise the trade unions (section 34 of the Decree of 4 November 1983);
- the prohibition of strikes in the event of compulsory arbitration (sections 185, 190, 199 and 200 of the Labour Code);
- the prohibition of strikes lasting longer than 24 hours, and lightning strikes and go-slows lasting more than one hour (section 206 of the Code);

- the need for a statutory right to organise for public servants, even if section 35(3) and (4) of the 1987 Constitution provides constitutional guarantees of the freedom of association of workers in the public and private sectors and recognises the right to strike.

The previous comments also referred to the shortcomings in the practical effect given to the Convention, pointed out by the Committee on Freedom of Association in connection with Case No. 1396 examined in March 1988 (254th Report). The case concerned repressive measures against the trade union movement in Haiti.

The Committee notes with interest from the Government's report that, as a result of the ILO mission that went to Haiti and met the competent national departments in October 1988, Decrees are in the process of being drafted to amend section 236 bis of the Penal Code (formerly section 236), section 34 of the Decree of 4 November 1983 and sections 183, 184, 190, 199 and 200 of the Labour Code, in the light of the comments made by the Committee of Experts, and to adopt a specific provision on the right to organise of public servants.

The Committee has also read the 262nd Report of the Committee on Freedom of Association on Case No. 1396 (approved by the Governing Body at its February 1989 Session) and notes that there have been certain developments in the freedom of association situation.

The Committee expresses the firm hope that statutory or regulatory provisions in keeping with the requirements of the Convention will shortly be adopted, and requests the Government in its next report to provide information on all developments concerning the effect given to the Convention in law and in practice.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

#### Honduras (ratification: 1956)

The Committee notes the Government's report for the period between 30 June 1987 and 30 June 1988.

The Committee recalls that its previous observations once again noted that various points in the Labour Code in force needed to be amended in order to bring them into full conformity with the provisions of the Convention, namely:

- the amendment of section 2 of the Labour Code, so as to extend the right to join trade unions expressly to workers in agricultural or stock-raising enterprises not regularly employing more than ten workers, with a view to bringing this provision into conformity with Article 2 of the Convention;
- the amendment of section 472 of the Labour Code, which is inconsistent with Article 2 of the Convention in not permitting the existence in a given enterprise, institution or establishment of more than one works union and in providing that, where there is already more than one union, only the one with the greatest number of members shall remain in existence;
- the amendment of section 510 of the Labour Code, which is inconsistent with Article 3 in requiring that union officers shall, at the moment of election, be normally engaged in the

- occupation or function characteristic of the union and have exercised it for more than six months during the preceding year;
- the bringing into conformity with Article 6 of section 537 of the Code, which provides that federations and confederations are not entitled to call strikes, and section 541, which provides that the leaders of federations and confederations shall have been engaged in the corresponding occupation or function for more than one year before election;
  - the amendment of provisions that require a majority of two-thirds at the general assembly of a trade union in order to call a strike (sections 495 and 563 of the Labour Code);
  - the need for government authorisation or six months' notice for any suspension or work stoppage in public services that do not depend directly or indirectly on the State (section 558 of the Labour Code). This provision is open to criticism in so far as it applies to certain services - such as transport or services connected with petroleum - that are not essential services in the strict sense of the term, that is to say, services whose interruption would endanger the life, personal safety or health of the whole or part of the population;
  - the power of the Minister of Labour and Social Security to end a dispute between employers and workers on the application of either party in services for the production, refining, transport and distribution of petroleum (section 555(2) of the Code).

The Committee also notes the information in the Government's report that it convened a tripartite commission of representative organisations of employers (the Honduran Private Enterprise Council - COHEP) and of workers (Confederation of Workers of Honduras - CTH and the National Workers' Federation of Honduras - FESITRANH) in order to consider the observations of the Committee of Experts.

The Government's report indicates that, with regard to the amendment of section 2 of the Labour Code in order to bring it into conformity with Article 2 of the Convention, the parties left this point in suspense until they reached an agreement between themselves. As for the observation regarding section 472 of the Labour Code, the Government reports that there was consensus between the parties to retain this section in force since, according to the Government, when the Labour Code was drafted, the organisations of workers and employers demanded this provision, in view of the fact that the financial structure of enterprises in Honduras was and remains limited and aspirations to human advancement could be illusory if a multiplicity of workers' organisation with differing aims and interests competed in collective bargaining, and this resulted in section 472. With regard to section 510 of the Labour Code, the Government points out that this was analysed with great care, particularly by the trade union representatives, who opposed its amendment. There was also opposition to the amendment of sections 537 and 541 of the Labour Code, which are contrary to Article 2 of the Convention.

The Government requests clarifications on the amendments to sections 495, 563 and 558 and, finally, indicates that there was agreement on a new formulation for section 555(2) of the Labour Code.

The Committee notes these statements and is bound to recall that it has been pointing out the need to amend sections 2, 472, 510, 537, 541 and 555(2) of the Labour Code since 1971.

With regard to sections 495 and 563 of the Labour Code (the requirement for a two-thirds majority in the general assembly of a trade union to call a strike), the Committee recalls that legislative restrictions on the right to strike should not be such as to make it impossible to call a strike in practice. A simple majority of voters (excluding workers who have not participated in the vote) of a particular negotiating unit should be sufficient to be able to call a strike.

With regard to section 558 (the need for government authorisation or six months' notice for any suspension or work stoppage in public services that do not depend directly or indirectly on the State), the Committee reiterates its observation of 1986 on this point, namely, that this provision is open to criticism in so far as it applies to certain services - such as transport or services connected with petroleum - that are not essential services in the strict sense of the term, that is to say, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

The Committee regrets that the Government's report does not contain information on the situation regarding the draft Labour Code of 1981, which has been the subject of observations by this Committee (see, in this connection, the observation of 1986 by the Committee of Experts). It also regrets that there has been no progress regarding the points in the current labour legislation which are not in full conformity with the Convention.

The Committee trusts that the Government will examine attentively the observations that it has made and expresses the firm hope, once again, that it will take the necessary measures to give full effect to the Convention and requests it to report any progress achieved in this respect.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

#### Hungary (ratification: 1957)

The right of workers, without distinction whatsoever, to establish organisations of their own choosing to further and defend their interests (Articles 2, 3 and 10 of the Convention). In its previous comments the Committee noted that under the terms of the Labour Code of 1967, as amended, and of Decree No. 34 of 1967, issued thereunder, the National Council of Trade Unions (SZOT), referred to by name in the legislation (sections 8, 12 and 17), exercised the exclusive function of trade union representation at the higher level (the expressing opinions and giving advice to the Council of Ministers concerning regulations respecting the living and working conditions of employees, supervising the protection of the safety and health of workers and operating the social insurance scheme, among other functions). It requested the Government to take steps to guarantee to



workers who may wish to do so, the possibility of establishing trade unions outside the existing trade union structure.

The Committee notes with interest the Government's statements in its report to the effect that sections 8 and 12 of the Labour Code have been amended by Act No. XI of 1987, which came into force on 1 January 1988. These provisions no longer refer by name to the National Council of Trade Unions and make reference only to trade unions in general. Another provision refers to "trade union bodies at the workplace" and this expression, according to the Government, means "any trade union" and not "a certain trade union". Furthermore, the Government indicates that a Decree issued under the Labour Code of 1967 is no longer in force and that section 17 of the Labour Code has been amended by section 9(6) of Legislative Decree No. 5 of 1984 to transfer the operation of social insurance to the State.

Finally, the Government states that during the period covered by the report two independent trade unions were registered, namely the Democratic Trade Union of Scientific Workers and the Democratic Trade Union of the Cinema. The Committee welcomes this information.

In addition, the Committee has been informed that the Government envisages the adoption of legislative reforms, including the reform of the Constitution. In this regard:

- (a) the Committee hopes that the new Constitution will guarantee workers and employers the right to establish free organisations, to organise their administration and to formulate their programmes in full freedom and without interference from the public authorities, in order to further and defend the interests of their members;
- (b) the Committee also hopes that it will be possible to provide for the right of workers to call strikes as one of the means available to them to further and defend their economic, social and occupational interests.

It requests the Government to supply information in its next report on developments in the situation.

#### Jamaica (ratification: 1962)

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

In the comments that it has been making for several years, the Committee has requested the Government to amend certain provisions of the national legislation in order to bring them into conformity with the requirements of the Convention, namely: the need to amend sections 9 and 10, paragraphs 1, 2, 4, 5 and 8, of the Labour Relations and Industrial Disputes Act No. 14 of 1975, as amended in 1978 (sections 11A and 15(iii)), which empower the Minister to submit an industrial dispute to compulsory arbitration and to terminate any strike in the so-called essential services (which are too broadly defined) and in other services if the strike is liable seriously to jeopardise the interests of the nation.

The Committee notes with regret the information supplied by the Government in its latest report to the effect that the Government has decided to extend rather than reduce the list of essential services in order to include overseas telecommunication services and telephone services. The Committee also notes the Supreme Court ruling that section 11A of the Act does not give the Minister unlimited discretionary power, but that his power stems from considerations concerning the national interest and that the Minister must exercise it in order to secure industrial peace and not merely to satisfy some narrow personal interest.

The Committee recalls that the Minister of Labour should only be able to have recourse to the courts in order to end a strike in the following circumstances:

- (1) in the event of strikes in essential services in the strict sense of the term, namely those in which the strike would endanger the life, personal safety or health of the whole or part of the population; or
- (2) in the event of an acute national crisis.

The Committee urges the Government to indicate in its next report the measures taken to amend its legislation in order to bring it into conformity with the Convention, in view of the fact that these matters have been the subject of its comments for many years.

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

#### Japan (ratification: 1965)

The Committee notes the Government's reports on the application of the Convention and the comments submitted by the General Council of Trade Unions of Japan (SOHYO). It also notes the discussions that took place in the Conference Committee in 1987.

The comments made by the Committee in its previous observations dealt with, on the one hand, the prohibition of strikes by public servants (which are enforceable by disciplinary sanctions) and, on the other hand, the denial to fire-fighting personnel of the right to organise in trade unions.

1. On the first point, the Committee notes the statement by the Government representative to the Conference Committee in 1987 to the effect that the Government had not taken a rigid and inflexible attitude with regard to this issue and nor would it do so in the future. As it does not appear from the Government's report that there have been any developments in the situation in this respect, the Committee is bound to reiterate its previous conclusions, namely that the principle whereby the right to strike may be limited or prohibited in the public service or in essential services, whether public, semi-public or private, would become meaningless if the legislation defined the public service or essential services too broadly. In the Committee's opinion, such a prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Moreover, if

strikes are restricted or prohibited in the public service or in essential services, appropriate guarantees must be afforded to protect workers who are thus denied one of the essential means of defending their occupational interests. Restrictions should be offset by adequate, impartial and speedy conciliation and arbitration procedures in which the parties concerned can take part at every stage and in which the awards should in all cases be binding on both parties. Such awards, once rendered, should be rapidly and fully implemented. The Committee has also pointed out that penal sanctions should only be imposed where there are violations of strike prohibitions which are in conformity with the principles of freedom of association. In these cases, the sanctions should be proportional to the offences committed, and penalties of imprisonment should not be imposed in the case of peaceful strikes. The Committee once again requests the Government to re-examine the situation regarding the right to strike and penal sanctions in the light of the above principles and to continue supplying information on any development concerning the application of these principles.

2. With regard to the denial to fire-fighting personnel of the right to organise in trade unions, the Committee notes that, according to SOHYO, the Government has taken no steps to continue discussions on this subject with the parties concerned in the country. The Government has therefore, according to SOHYO, maintained its position of not recognising the right of fire-fighting personnel to organise in trade unions. With reference to the reports of the Committee on Freedom of Association of 1954 and 1961, referred to in the Government's previous report, SOHYO considers that the conclusions adopted by that Committee on that occasion do not deal principally with the situation of fire-fighters and it refers to a 1973 report of the Committee on Freedom of Association in which it points out that the terms of Convention No. 87 do not permit the exclusion of this category of workers from the right to organise in trade unions. SOHYO also states that, contrary to the Government's statements, the workers' organisations concerned have never approved the Government's position on the denial to fire-fighting personnel of the right to organise in trade unions.

In its report, the Government refers once again to the 1954 and 1961 reports of the Committee on Freedom of Association which, in its opinion, deal with the situation of fire-fighters, and it refers to a national agreement concluded by a tripartite commission in 1958. It reaffirms that, in its opinion, the legislation forbidding the right to organise in trade unions of fire-fighting personnel is not in violation of Convention No. 87. The Government is therefore examining this question as a domestic issue in a long-term perspective. It has accordingly exchanged opinions on several occasions with the parties concerned (eight times in 1988) and in particular with workers' organisations. The issue has also been examined at the Inter-Ministerial Conference on Public Employees' Problems.

While noting these explanations, the Committee is bound to recall the position that it has constantly adopted in this respect, namely that it does not consider that the functions of this category of workers are of such a nature as to warrant their exclusion from the right to organise under Article 9 of the Convention. In the

Committee's opinion, it would not be in conformity with the Convention to deny the right to organise to any category of worker other than the armed forces and the police. However, the Committee emphasises once again that the right to organise does not necessarily imply the right to strike and that the fire-fighting services must be considered as an essential service in the strict sense of the term in which the right to strike may be subject to prohibition.

The Committee hopes that the discussions between the parties concerned can be continued on the basis of the principles and considerations set out by the Committee so that the issue of the right to organise of fire-fighting personnel can be resolved at the national level.

#### Kuwait (ratification: 1961)

The Committee takes note of the Government's report.

The Committee has been referring for several years to a number of discrepancies between the Labour Code (Law No. 38 of 1964) and the Convention:

- there must be at least 100 workers to establish a trade union (section 71 of the Law) and at least ten employers to form an association (section 86);
- non-Kuwaiti workers must have resided five years in Kuwait before they may join a trade union (section 72);
- at least 15 members must be Kuwaiti before a union may be established (section 74);
- a certificate of good reputation and good conduct must be obtained before a person may join a trade union (section 72);
- a certificate must be obtained from the Minister of the Interior stating that he has no objection to any of the founder members before a trade union may be established (section 74);
- not more than one trade union may be set up for a given establishment or activity (section 71);
- trade unionists who are not of Kuwaiti nationality may not vote, except to elect a representative whose only right is to express their opinions to the trade union leaders (section 72);
- the authorities have wide powers of supervision over books and records (section 76);
- the assets of the trade union revert to the Ministry of Social Affairs and Labour in the event of dissolution (section 77);
- trade unions are prohibited from engaging in any political or religious activity (section 73);
- trade unions may federate only if they represent the same occupation or industries producing similar goods or providing similar services (section 79);
- organisations and their federations are prohibited from forming more than one general confederation (section 80).

In its previous observation, the Committee noted that a draft Labour Code repealing several provisions which are contrary to the Convention was being prepared, namely:

- sections 71 and 74 laying down that there must be at least 100 workers to establish a trade union and 15 Kuwaiti workers before a union may be established;
- section 72 granting non-Kuwaitis the right to join trade unions after five years' residence;
- section 72 laying down that all workers must deposit a certificate of good reputation and good conduct before being allowed to join a trade union;
- section 74 requiring that a certificate must be obtained from the Minister of the Interior stating that he has no objection to any of the founder members before a trade union may be established;
- section 77 establishing that the assets of the trade union revert to the Ministry of Social Affairs and Labour in the event of dissolution;
- section 73 prohibiting trade unions from engaging in any political or religious activity.

The Committee notes with regret that the Government's report contains no information on the adoption of these provisions. It requests the Government to indicate in its next report the measures taken to bring its legislation into conformity with the Convention on these points.

Furthermore, the draft Code still contains a number of provisions which contravene the Convention on the following points:

- trade union unity laid down by sections 71, 79 and 80 of the Labour Code, which authorise only a single trade union, a single federation for a given activity and a single national confederation of such organisations and federations;
- the prohibition imposed on foreign workers from voting or standing for election to trade union office, except to elect a representative to express their opinions to the trade union leaders (section 72 of the Labour Code);
- the wide powers of supervision of the authorities over the books and registers of a trade union (section 76 of the Labour Code);
- the restriction on the free exercise of the right to strike (section 88 of the Labour Code).

1. With regard to the single trade union system, in its last report, the Government indicates again that the purpose of such a structure is to avoid the dangers of proliferation of trade unions and to serve the interests of the workers.

The Committee can only recall that the principle set forth in Article 2 of the Convention, that workers should be able to constitute organisations of their own choosing, is not intended as an expression of support either for the idea of trade union unity or for that of trade union pluralism. If workers choose to group together in a single trade union system, legislation should not impose such a system but should allow pluralism to be possible in the future (in this connection, see paragraphs 136 and 137 of the General Survey of 1983 on Freedom of Association and Collective Bargaining). The Committee requests the Government to amend its legislation to ensure that workers, should they wish to do so, are able to set up unions outside the established trade union structure in order to safeguard their occupational interests.

2. As regards the prohibition imposed on foreign workers from voting or standing as candidates in trade union elections, except to elect a representative to express their opinions to the trade union leaders, the Government again indicates in its report that this provision is necessary because of the instability of foreign labour.

The Committee stresses that the right of workers' organisations to elect their representatives in full freedom (Article 3 of the Convention) is limited by the restrictions imposed on foreign workers by section 72 of the Labour Code, and that the legislation should be made more flexible in order to permit non-Kuwaiti workers to have access to or hold trade union office, at least after a reasonable period of residence in Kuwait [in this connection, see paragraphs 159 and 160 of the General Survey].

3. With regard to the wide powers of supervision of the authorities at all times over books and records of trade unions, in its last report the Government explains that such supervision is confined to examining the management of trade union expenditure, including the subsidy paid by the Government, in the interests of the workers.

The Committee takes notes of this statement, but recalls that under Article 3 of the Convention, workers' organisations must have the right to organise their administration without any interference from the public authorities and that, accordingly, supervision of union finances should not normally go beyond a requirement for the organisation to submit periodic financial returns [see paragraph 188 of the General Survey].

4. With reference to section 88 of the Labour Code under which compulsory arbitration may be imposed at the request of one of the parties in order to settle a labour dispute and end a strike, in its report the Government explains that the purpose of this provision is to settle collective disputes as speedily as possible. The Government considers that, since the arbitration board is composed of a Chamber of the Court of Appeal, the equity of its decisions is guaranteed for all.

The Committee takes note of these statements, but recalls that the right to strike is one of the essential means available to workers' organisations for the promotion and protection of the interests of their members. It requests the Government to revise its legislation in order to ensure that compulsory arbitration with a view to ending a strike cannot be imposed except in the case of strikes in essential services in the strict sense of the term or in the event of acute national crisis.

The Committee therefore requests the Government to provide information in its next report on developments with regard to the draft Labour Code and on the measures under consideration to remove from the legislation any provision prescribing trade union unity, to enable foreign workers to participate in or stand for elections to trade union office, to limit the supervisory powers of the authorities in the management of trade union organisations and to remove the excessive restrictions imposed on the exercise of the right to strike.

Lesotho (ratification: 1966)

The Committee takes note of the Government's report.

In its earlier comments, the Committee noted certain discrepancies between the legislation and the Convention concerning the following points:

- suspension of Act No. 24 concerning human rights;
- the banning of the right to strike of workers in the banking sector (Essential Services Arbitration Act (No. 34) of 1975).

1. With reference to its previous observation, the Committee notes that Act No. 24 of 1983 concerning human rights, section 2 of which recognises the right to peaceful assembly and association and the right to express and disseminate opinions, is still in force, as is shown by the text of a judgement of April 1988 in which the Government was declared guilty of having infringed the provisions of this Act (CIV/APN/111/88).

The Committee none the less observes that the Suspension of Political Activities Order (No. 4) of 1986 provides that no person shall take part in the formation of political parties, propagate political ideas, take part in any public meeting or procession of a political nature, under penalty of a fine or of imprisonment for up to two years, or both, and that a state of emergency has been proclaimed on several occasions, most recently on 24 August 1988. Furthermore, Emergency Powers Order No. 4 of 1988 lays down in section 4 that for so long as a state of emergency remains in force, the Minister may make such regulations as are, in his judgement, necessary for securing public safety, the defence of Lesotho, the maintenance and restoration of public order, the suppression of mutiny, rebellion and riot, the prevention and suppression of crimes, and for maintaining supplies and services essential to the life of the community.

Recalling that civil liberties - such as freedom of assembly and of meeting, freedom of speech, opinion and expression - are essential to the exercise of trade union rights, the Committee asks the Government to indicate whether the state of emergency has been lifted and to communicate any regulations adopted under this emergency legislation, restricting the civil liberties without which the recognition of the right to organise remains without effect.

2. In the past, the Committee has requested the Government to amend the provisions of the Essential Services Arbitration Act (No. 34) of 1975, as amended in 1982, which lay down that any dispute in the banking sector, considered to be an essential service, is subject to compulsory arbitration, thereby depriving workers in this sector of the right to have recourse to strikes.

The Government again states in its report that it has taken note of the Committee's concern in this matter and stresses that the matter is under consideration.

The Committee therefore recalls that, while workers engaged in essential services may be deprived of the right to strike subject to appropriate, impartial and rapid conciliation and arbitration procedures, such services should be limited to those whose interruption would endanger the life, personal safety or health of the whole or part of the population. In the opinion of the Committee, the banking sector does not fall within this definition.

The Committee expresses the firm hope that the Government will take the necessary steps to remove restrictions on the exercise of the right to strike of workers in the banking sector and requests the Government in its next report to indicate any progress made in this respect.

#### Madagascar (ratification: 1960)

The Committee notes the information supplied by the Government. It recalls that its previous comments concerned the trade union rights of seafarers and public servants, the privileges granted to members of trade unions belonging to a revolutionary organisation and the right to requisition.

#### Trade union rights of seafarers

For several years, the issue of the trade union rights of seafarers has been the subject of its comments, since the Labour Code, which provides for and regulates the trade union rights of workers, is not applicable to seafarers (section 1 of the Code).

The Government indicated in the past that in the absence of provisions to this effect in the Maritime Code of 1966, the Labour Code applies with regard to trade union rights.

The Committee then requested the Government to adapt its legislation so that the trade union rights of seafarers were explicitly recognised.

In its last report, which arrived in November 1987, the Government once again indicates that seafarers, as all other workers, enjoy trade union rights and it adds that seafarers are members of trade unions, including the Fivondronan'ny hpiasa Malagasy (FMM) and the Sendika Revolisionera Malagasy (SE.RE.MA).

The Committee also notes the Mercantile Marine Code of 1960, as amended in 1962, and incorporated since 1966 into the Maritime Code, and notes that seafarers and shipowners may conclude collective agreements to determine their wages (section 3.5.03) and that an order to be issued by the Maritime Administrative Authority is to establish the procedures to be followed in the event of maritime collective industrial disputes (section 3.8.02). Furthermore, Act No. 70.002 of 23 June 1970 respecting individual and collective disputes in the merchant navy and its implementing Order No. 3012-DGTP/SMM of 1970 set out the machinery for settling collective disputes and provide that a strike is legal when it is called after an arbitration decision has been challenged.

These provisions mean that the trade union rights are recognised for seafarers without the principle of freedom of association being explicitly recognised for them.

The Committee therefore requests the Government to include a provision in the legislation to explicitly guarantee the trade union rights of seafarers.



Requisitioning of persons

In its previous comments, the Committee noted that Act No. 69-15 of 16 December 1969 empowers the Minister responsible to resort to the requisitioning of persons when a state of national necessity is proclaimed (section 20), or in the event of a threat to a sector of economic life in order, in particular, to safeguard the interests of the nation (section 21).

The Committee noted, from the information supplied by the Government, that there has been no proclamation of a state of national necessity since 1972. It also noted, on the basis of the information supplied by the Government, that in the past this Act has made it possible to call upon striking workers to take up work again.

The Committee once again points out that the right to strike should only be limited or prohibited in essential services in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the case of public servants acting in their capacity as agents of the public authority or in the event of an acute national crisis.

The Committee is of the opinion that the conditions giving the right to requisition appear to have too broad a scope to be compatible with the Convention and it requests the Government to modify the legislation to this effect and to communicate any requisition order that has been issued during the period covered by the report.

Trade union rights of public servants

In its previous comments, the Committee noted that by virtue of Act No. 79.014 on the general conditions of service of public servants, trade union rights are recognised for them within the framework of Ordinance No. 76.008 of 20 March 1976 issuing the regulations of the Malagasy Revolutionary Organisations.

The Committee noted that organisations established under the terms of this Ordinance must receive the approval of the Minister of the Interior in order to exercise their functions (sections 8 and 9) (contrary to the provisions of Article 2 of the Convention), that the State reserves at any moment the right to supervise these organisations (section 24) (contrary to the provisions of Article 3), and that these organisations are liable to dissolution by administrative authority (section 25) (contrary to the provisions of Article 4).

The Committee trusts that the Government will take the appropriate measures to ensure that public servants can establish organisations without prior authorisation (Article 2), that their organisations can freely organise their activities without interference by the public authorities which would restrict this right (Article 3) and that they shall not be liable to be dissolved or suspended by administrative authority (Article 4), and it requests the Government to supply information in this respect in its next report.

Privileges granted to trade unions belonging  
to a revolutionary organisation

The Committee noted, from the information supplied by the Government, that since the adoption of Ordinance No. 76.008 of 26 March 1976, trade union organisations established under the former regime and workers' organisations belonging to, or established voluntarily, in revolutionary associations coexist under the terms of this Ordinance. In this respect, the Government indicates that there are six large central revolutionary associations and three other traditional independent trade union central organisations, without political allegiance, which, in the same way as other revolutionary associations, have sections in the various sectors of public and private activity and may establish base-level trade unions without any discrimination.

The Committee also noted that Ordinance No. 78.006 of 1 March 1978 issuing the Charter of Socialist Undertakings, only recognises for workers who are members of trade unions belonging to a revolutionary organisation the right to be elected to works committees, thereby applying a distinction between trade union organisations that is of such a nature as to jeopardise the right of workers to join the trade union of their choosing since, as emphasised by the Committee in paragraph 146 of its 1983 General Survey on Freedom of Association and Collective Bargaining, workers will be more inclined as a result of this measure to join the trade union best able to serve them.

In the absence of information on these matters in the Government's last report, the Committee once again requests the Government to indicate whether, since 1976, workers have established trade union organisations in accordance with the provisions of the Labour Code, which belong to Malagasy revolutionary organisations as set out in Ordinance No. 76.008 of 1976, and to supply statistical data in this respect.

The Committee also requests the Government to take steps to amend the legislation, particularly Ordinance No. 78.006 of 1978, in order to give effect to the right of workers to join organisations of their own choosing without interference by the public authorities through the granting of privileges to certain organisations in a way which might jeopardise this right.

Malta (ratification: 1965)

Referring to its earlier comments on the compulsory disputes settlement system (sections 27 and 34 of the Industrial Relations Act, 1976), the Committee notes the reply of the Government stating that compulsory arbitration has existed in this country since 1949, that it constitutes a means of promoting the quick settlement of industrial disputes without protracted industrial action, that unions and employers have so far always respected the awards of the Industrial Tribunal, and that the latter's effectiveness and credibility would be seriously impaired if its decisions were not binding on both parties. The Government also states that it is carefully studying the observations of the Committee and that they will be given due weight

when introducing a Bill in Parliament to amend the Industrial Relations Act.

The Committee points out that binding arbitration procedures whether or not preceded by a conciliation step must be designed to facilitate bargaining between the two sides. This means that it should be for the parties to decide whether or not they wish to refer any matters in dispute to binding arbitration. However, given that section 27 of the Industrial Relations Act 1976 empowers the Minister, when the conciliation efforts have not produced a settlement, to refer a dispute to the Industrial Tribunal at the request of any of the parties, and since the award of the tribunal is binding and entails the prohibition of recourse to strikes, the Committee can only insist that such prohibitions or interruptions of strikes should be confined: (a) to public servants acting in their capacity as agents of the public authority; (b) to services whose interruption would endanger the life, the personal safety or health of the whole or part of the population, or (c) in situations of acute national crisis.

The Committee can only insist that the Government should re-examine the situation in the light of its comments and take the necessary measures in the near future to bring its legislation into conformity with Article 3 of the Convention, and requests to keep it informed of developments in that respect.

#### Mauritania (ratification: 1961)

The Committee notes that the Government's report has not been received. It notes, however, the information supplied by the Government to the Conference Committee in June 1987.

The Committee recalls that the divergencies between the national legislation and the Convention relate to the single-trade-union system established in the legislation and the prohibition of a strike where a collective dispute has been referred to compulsory arbitration, even where this does not affect an essential service in the strict sense of the term. For several years, the Committee has been asking the Government:

- to repeal the provisions of Act No. 70-030 of 23 January 1970 that amend certain provisions of Book III of the Labour Code:
  - section 1: providing that persons carrying on the same occupation, similar crafts or allied trades associated with the preparation of given products or belonging to the same profession may establish only "one occupational association" per class of persons as defined above and that any worker or employer may freely join the trade union of his occupation;
  - section 2: providing that that any natural person or physical entity may freely join the trade union of his occupation;
- the amendment of the provisions of Book IV of the Labour Code (as amended by Act No. 74-149 of 11 July 1974):
  - sections 39, 40 and 45 empowering the Minister of Labour, where an objection to the recommendations of the Mediation Board has been notified, taking into account the

circumstances and the effects of the dispute, to submit the dispute to compulsory arbitration;

- section 48 prohibiting a strike after a decision of the Minister to resort to arbitration.

1. As regards the question of the single-trade-union system, the Government stated to the Conference Committee in 1987 that nothing in the legislation prohibits unions from creating unions or confederations other than the Trade Union Federation of Mauritania since, although the legislation provides for only one trade union per occupation, those unions can in turn form other central trade union organisations. Furthermore, the Government adds that the current system is the expression of the wish of the workers and it is not for the Government to impose a different situation if the workers are satisfied with the current trade union structure.

While noting these statements, the Committee is once again bound to note that Book III of the Labour Code, as amended, by providing in section 1 that one occupational association may be established per occupation and, in section 22, read in conjunction with sections 1 and 2, that trade unions can only be established by occupation, does not permit workers or their base-level organisations to establish, respectively, organisations and federations of their own choosing, contrary to Articles 2, 5 and 6 of the Convention.

The Committee draws the Government's attention to the fact that the purpose of the Convention is not to express support either for the idea of trade union unity or for that of trade union pluralism. However, even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure, which is not permitted by the legislation when it establishes a single-trade-union system.

In its previous observation, the Committee noted that sections 226, 228 and 229 of the draft Labour Code of 1984 provided that persons carrying on the same occupation, similar crafts or allied trades may establish an occupational association, although the draft omitted to add, as the 1979 draft drawn up with the assistance of the ILO had provided, that any worker or employer must be able to join freely an association of his own choosing within his occupation.

It also referred to the difficulties in trade union life noted by the Committee on Freedom of Association in Case No. 1088 of 1982 which continued to exist.

The Committee therefore requests the Government to amend the legislation to enable workers who so wish, to freely establish and join associations of their own choosing, as set out in Article 2 of the Convention, which, as already indicated by the Committee, would contribute to finding a solution to the problems in question.

2. With regard to the prohibition on strikes after a dispute has been referred to compulsory arbitration, the Committee notes the Government's statement to the effect that strikes are not really a solution to the crucial problems of the social partners. According to the Government, consultation should prevail and recourse to strikes should only occur when the possibility no longer exists for the workers to obtain satisfaction for their legitimate claims. Referral

to compulsory arbitration with the possibility of appeal should avoid recourse strikes.

The Committee once again draws the Government's attention to the fact that the provisions of Book IV respecting the settlement of disputes, which are taken up in the draft Code of 1984 (sections 292, 293, 298 and 301), by empowering the Minister (after taking into account, *inter alia*, the circumstances and effects of the dispute) to submit the dispute to arbitration by the Labour Court (whose decision is without appeal except for the power of review on points of law), are such as to restrict the exercise of the right to strike, which should only be restricted or forbidden in the case of public servants engaged in the administration of the State or in essential services, in the strict sense of the term, that is those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national crisis.

The Committee requests the Government to indicate in its next report the measures that have been taken or are envisaged to amend the legislation in order to limit restrictions on the right to strike to the cases mentioned above.

3. In its previous observations, the Committee noted that section 6 of Book III of the Labour Code does not permit the establishment of trade unions grouping together workers from the public and private sectors. The Committee takes due note of the Government's explanations in this respect to the effect that trade unions representing public employees and those representing private sector workers may freely affiliate with the Trade Union Federation of Mauritania.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Mexico (ratification: 1950)

The Committee notes the Government's report. The Committee recalls that on several occasions it has pointed out that the following provisions of the Federal Act on state employees of 1963 are not in conformity with the Convention:

- the prohibition of the coexistence of two or more unions in the same state body (sections 68, 71, 72 and 73 of the Federal Act on state employees);
- the prohibition of a worker in the service of the State from leaving the union to which he belongs (section 69);
- the prohibition of the re-election of trade union officers (section 75);
- the prohibition of unions of public servants from joining trade union organisations of workers or peasants (section 79);
- the extension of the restrictions applicable to trade unions in general to the single Federation of Unions of Workers in the Service of the State (section 84).

Concerning the prohibition of the coexistence of two or more unions in the same state body, the Government indicates that the Federation of Unions of Workers in the Service of the State (FSTSE) considers that under section 73 of the Federal Act on state employees

it is possible, when a trade union organisation is already registered as a result of the will of the workers for another to exist as long as a recount is undertaken to determine which of the organisations has the largest membership and if the results show that that organisation represents a majority of the workers it shall represent their occupational interests and be registered, while the other shall be de-registered.

In the opinion of the FSTSE, to validate the permanent coexistence of various workers' representative organisations in the same body would be equivalent to justifying the "pulverisation" of trade union organisations and dividing workers in order to reduce the strength of the trade union movement to the prejudice of the common interests that it represents.

The Committee notes the information supplied by the Government and the opinion of the FSTSE, and wishes to point out that it is not necessarily incompatible with the Convention for the legislation to establish a distinction between the most representative trade union and the other trade unions, provided that this distinction is limited to the recognition of certain rights (particularly in regard to representation for the purposes of collective bargaining and consultation by governments) to the most representative trade union. The possibility of such a distinction does not imply, however, that the existence of other trade unions, which some of the workers concerned may wish to join, or the activities of these trade unions may be prohibited. The Committee emphasises that minority organisations should be allowed to function and at least have the right to make representations on behalf of their members and to represent them in the case of individual grievances [see paragraph 141 of the 1983 General Survey of the Committee of Experts]. The Committee also regrets to note the provisions of section 23 of the Act issued under clause XIII bis, subsection B, section 123, of the Constitution, which gives legal effect to the trade union monopoly of the National Federation of Banking Unions.

With regard to the prohibition on workers in the service of the State from leaving the union to which they belong (section 69), the FSTSE considers that this section is not in opposition to Convention No. 87, since the Convention does not expressly provide for the right of unionised workers to leave the trade union to which they belong.

In this connection, the Committee reiterates that the public authorities must refrain from legislative interventions which limit the right of workers to join the trade union organisation that they consider to be appropriate (Article 2 of the Convention) and the right to give up their membership of that trade union.

With regard to the prohibition on the re-election of trade union officers (section 75), the FSTSE considers that this prohibition on the re-election of officers in no way infringes the right of workers to freely elect their trade union leaders, since the trade union leader who holds office is legally prevented from holding the same office in the following period, which in no way implies that the actual right of free election is restricted.

While noting these statements, the Committee wishes to point out that under the terms of Article 3 of the Convention, it must be left to the by-laws of workers' organisations to deal with elections and

that, irrespective of the type of prohibition on the re-election of trade union officers (absolute prohibition, prohibition of re-election when the persons concerned have held office previously, or after a certain number of consecutive terms), any legislation which prohibits or restricts re-election to trade union office is incompatible with the Convention [in this connection, see paragraphs 165 and 166 of the General Survey].

With reference to the prohibition on unions of public servants from joining organisations or central trade unions of workers or peasants (section 79), the Government states in its report that this provision in no manner infringes the right of public servants' trade unions to belong to any central organisation such as the FSTSE. The trade unions of workers in the service of the State are organisations made up of employees of the federal public administration, who cannot be considered similar to members of workers' or peasants' trade unions in view of the public tasks for which the various departments of the Federal Government are responsible, namely, non-profit-making services, which implies that there is no similarity between trade unions of workers in the service of the State and the trade unions of workers employed in the private sector or of peasants and there would therefore be no legal or functional purpose behind the trade unions of workers in the service of the State being able to join the organisations or central trade unions of workers or peasants.

While noting the Government's repeated statements, the Committee wishes once again to point out that the provisions of Article 5 of the Convention provide that, without any exceptions, "workers' ... organisations shall have the right to establish and join federations and confederations".

With regard to the extension of the restrictions applicable to trade unions in general to the single Federation of Trade Unions for Workers in the Service of the State (section 84), the Committee notes the Government's statements in its report to the effect that the previous point raised in the observation is also related to the system under which only one central trade union organisation, such as the FSTSE, exists to which trade unions of workers in the service of the State may affiliate. Furthermore, the FSTSE recognises that with the adoption of the conditions of employment of workers in the service of public authorities in 1938, workers in the service of the State were recognised for the first time in Mexico as a category of worker. At that time it was recognised that the State, through its officials, had the nature of an employer and that, since this new category of worker was composed of all workers in the service of the Federal Government, special provision was made for them to have full rights to establish one trade union for each state body in order to unify all the workers so that they could better defend their common interests. As a consequence, irrespective of the state body in which they are employed, there are numerous terms of employment that are agreed upon at the general level for public servants. It is therefore indispensable that one single higher organisation should participate in negotiations and represent this category of worker. This system has fully guaranteed the rights of public servants, which would not be the case if various higher organisations were allowed to exist, since the uniformity of

terms of employment for this category of worker would be ended, to the detriment of the workers themselves and the public administration.

The Committee wishes to reiterate its previous comments concerning this point and to emphasise that, under the terms of the Federal Act on state employees, the Federation of Unions of Workers in the Service of the State is the only central organisation recognised by the State (section 78) and that it is governed by the provisions relating to trade unions in this Federal Act (section 84). In these circumstances, the Committee wishes to point out that, although for the workers it is in general advantageous to avoid a multiplicity of competing organisations, the imposition by law of a system of trade union unity at the level of federations is incompatible with the right of workers' organisations to establish federations and confederations (Article 5 of the Convention) and it refers to its earlier comments relating to the restrictions applicable to trade unions in general [see paragraph 138 of the General Survey].

The Committee once again expresses the hope that the Government will re-examine the legislation in the light of the principles of the Convention and will supply information on any measure that has been adopted or is under consideration to bring the Federal Act on state employees into conformity with the requirements of the Convention.

#### Mongolia (ratification: 1969)

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

With reference to its previous comments, the Committee points out that the existence of a single-trade-union system in the country results from the very terms of its legislation. In the first place, sections 4 and 185 of the Labour Code confer trade union functions (collective bargaining, representation of workers' interests, solution of labour problems, etc.) solely on the trade union committees mentioned, which excludes the possibility of workers setting up any other trade union organisation that can promote and defend their interests. The Committee also noted that section 82 of the Constitution names the People's Revolutionary Party of Mongolia as the leader and guide of all state bodies and other organisations of the working masses. In the opinion of the Committee, this provision implies that no mass organisations, particularly trade unions, would have any possibility of operating outside the Party framework.

1. Trade union unity. The Committee notes the views advanced by the Government according to which the fact that no legislative provision prohibits or prevents the establishment of trade unions is sufficient to ensure the application of Article 2 of the Convention. The Government adds that the trade union system corresponds to the specific economic and social conditions prevailing in the country at the time when the trade union movement emerged and that sections 4 and 185 of the Labour Code protect trade union rights and ensure the participation of trade unions in the administration of society and the State. It also



specifies that the trade union rights referred to apply to all trade unions whether they exist now or will be established in the future. In the Government's opinion, little is achieved merely by ensuring under the law that workers' organisations have the right to draw up their constitution and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and the legislation must therefore consolidate the legal foundations of trade union activity - sections 4 and 185 were envisaged for this purpose. The Government also states that the current trade union system is considered by the workers to be one of their most important achievements and that the Central Council of Mongolian Trade Unions and the central committees are responsible for dealing with essential issues affecting the vital interests of all workers.

However, the Committee considers that although the legislation does not in theory prevent a trade union from being constituted, the provisions of the Labour Code, which specifically and exclusively confer essential trade union functions on the Central Council of Mongolian Trade Unions and on the trade union committees (sections 4, 183 and 185 of the Code) are in themselves an obstacle to other trade union organisations being able to exercise in practice activities of a trade union nature. In its General Survey of 1983 on Freedom of Association and Collective Bargaining, the Committee emphasised that, even in a case where a *de facto* monopoly exists as a consequence of all the workers having grouped together, legislation should not institutionalise this factual situation, for example, by designating the single central organisation by name, even if the existing trade union so requests (see paragraph 137 of the General Survey).

The Committee is once again bound to draw the Government's attention to the fact that it should be possible for workers' organisations to be set up, where this is so desired, outside the existing trade union structure, to defend their members' interests and to formulate their programmes, as envisaged in Article 3. The Committee points out that the principles laid down in the Convention are aimed at ensuring that workers are able, both in theory and practice, to establish freely organisations of their own choosing to represent their interests.

2. Political ties. With regard to the ties between the People's Revolutionary Party of Mongolia and the trade unions, the Committee notes from the Government's reports that the Party constantly supports the trade unions in their activities since these organisations have the common background of having been established and developed principally as working class organisations. According to the Government, as a result of the fact that the Party plays an essential role in social development for the good of the whole of the population and supports the workers' struggle in a planned and scientific manner corresponding to the objectives of national development and the ideals of the working class, it is normal for the Party's programme to be followed and supported by the masses and social pressure groups, including the trade unions. Consequently, the Government

considers that the provisions of section 82 should be viewed in the context of the situation as it describes it and that it is an internal political matter which is not dealt with by the Convention.

In the first place, the Committee wishes to emphasise that it recognised in paragraph 195 of its General Survey of 1983 on Freedom of Association and Collective Bargaining that the participation of trade unions in economic and social policy-making bodies, in order to achieve the objective of promoting working conditions, means that trade unions must be able to devote attention to matters of general interest, i.e. "political" in the broadest sense of the word. However, the Committee referred in paragraph 196 of the above Survey to the 1952 resolution concerning the independence of the trade union movement to point out that the political relations of trade unions with political parties or their political activities intended to further the achievement of their economic and social objectives should not be of such a nature as to compromise the freedom and independence of the trade union movement.

The Committee stresses this point, since the links between the trade union organisation and the political party are in this case imposed by legislation, namely the Constitution of the State, contrary to the provisions of Article 3, under which organisations shall have the right to organise their activities in full freedom.

The Committee therefore requests the Government to reconsider the situation in the light of its comments in order to give full effect to the provisions of the Convention.

Furthermore, the Committee reiterates its request concerning the regulations respecting the rights of the trade union committees to which the Government referred in 1977. It urges the Government to attach a copy of them to its next report.

#### Netherlands (ratification: 1950)

The Committee notes the information supplied by the Government in its report and by the Confederation of the Netherlands Trade Union Movement (FNV), the Federation of Christian Trade Unions (CNV) and the Federation of Middle and Senior Staff Personnel (MHP) in their joint communication dated 14 March 1988.

The Committee recalls that in 1985 the Parliament adopted new legislation relating to conditions of employment in the "trend-following" or national insurance and subsidised sectors (the WAGGS Act). In its 1987 observation the Committee requested the Government to supply detailed information on the practical operation of this new legislation in its next report.

The Committee notes that a copy of an Interim Report on the Evaluation of the WAGGS Act was transmitted to the Office on 19 February 1988 and that an English translation of the final report of the review was transmitted to the Office on 17 June 1988. The Committee records its thanks to the Government for its co-operation in this matter.

The Committee notes that in their letter of 14 March 1988 the FNV, CNV and MHP expressed a number of concerns about both the content and the practical application of the 1985 legislation, and alleged that it constituted an impermissible interference with the rights guaranteed by Article 3 of the Convention. The Committee has also taken note of the Government's response to these allegations.

#### The WAGGS legislation

According to section 2(1) of the 1985 Act, the legislation applies to the conditions of employment in force between such workers and employers and categories of employers as may be designated in accordance with section 2(2). Essentially, this means employers whose labour costs are met (wholly or partly) out of grants from public funds, or out of social insurance funds. Section 2(3) of the Act also contemplates that the Minister of Social Affairs and Employment may conclude "a settlement concerning the payment of costs" with certain employers - this constitutes the so-called "budgeted sector".

Section 4(1) of the Act requires the Minister to "promote" annual, centralised, discussions on "the development of conditions of employment and consequent labour costs" of workers in the trend-following sector. This entails the Minister informing all employers, employer organisations and worker organisations whom (s)he considers appropriate of her/his "provisional view" of the bargaining parameters which are to be set for the coming year. This is to be done at least two months before the Government presents its annual budget to the Parliament.

The relevant worker organisations are then given an opportunity to "express their standpoint" on the Minister's provisional view (section 4(3)). After that, the Minister invites the employers to participate in "consultations ... to see whether agreement can be reached as to the standards which are to be set by virtue of section 5" (section 4(4)). The Minister is obliged to present a report on these discussions, and her/his conclusions thereon, to the Parliament (section 4(6)). At least 20 days after this report has been submitted, the Minister, acting with the agreement of any other relevant ministers, is required to "set standards with regard to the financial scope for the development of labour costs to be made available within the framework of cost coverage and setting of rates of contribution resulting from the modification of the conditions of employment" (section 5(1)). In setting these standards the Minister is obliged to take account of: the effect of wage increases in the private sector; the Government's views on appropriate public expenditure levels, and the extent to which the development of labour costs has departed in previous periods from the pre-determined standards for that year.

Once the parameters have been set, the employers/employer organisations and worker organisations are then free to enter into negotiations on the terms and conditions of employment which are to apply over the next year.

Section 4(1) of the Wage Determination Act, 1970, requires the parties to a collective agreement to notify the Minister "of its conclusion and of any amendments thereto". The Minister is then required to "inform the parties in writing as soon as possible of the

date on which the notification is received". The 1985 Act uses this provision as a means of securing compliance with the pre-determined bargaining parameters in the trend-following sector. It does this by stipulating (section 6(1)) that an agreement "shall not enter into force until six weeks have elapsed" after the transmission of the section 4(2) notice by the Minister. This six-week period can be extended by up to four further weeks by written notice. Within this six/ten-week period the Minister, acting in agreement with any relevant ministers, may make a written declaration to the parties that their agreement "will meet with objections if the labour cost development resulting therefrom will not, according to reasonable expectation, conform to the standards set on the subject" (section 7(1)). The effect of such a declaration is to prevent the agreement becoming operative "for the time being", and the terms and conditions of employment of those covered by the agreement remain as they were before it was concluded (section 7(2)). Once a declaration has been issued, the Minister is required to promote the holding of further consultations between the parties (section 7(3)). These consultations are to take place not later than three weeks after the making of the declaration. After these consultations, the parties to the agreement may make a joint, written declaration to the effect that "they still deem desirable the coming into operation" of the agreement (section 7(4)). The Minister is obliged immediately to affirm the receipt of this affirmation, and the agreement is to enter into force on the day following its transmission.

If the Minister, and any other relevant minister, are of the joint opinion that the operation of an agreement which has been affirmed by the parties in accordance with section 7(4) creates either a threat to the level of service provided by the employer, or a danger that maintenance of the necessary level of service would entail "an unjustified increase in costs at the public expense" then (s)he may "order that those conditions of employment shall apply ... which were effectively in force immediately before his decision came into effect" (section 10(1)). In other words, the Minister can freeze the terms and conditions of employment of workers covered by the agreement. Before exercising these powers the Minister must first notify both houses of the Parliament (section 10(4)). The "freeze" does not become operative until ten days after service of this notice.

Section 11 makes similar provision in relation to the "budgeted sector".

Even where there has been no freeze under section 10, a cost overrun in any given year may be taken into account in setting the parameters for the next year (section 5(3)). In addition, grants, etc., which are intended to cover labour and/or operating costs are calculated on the basis of the parameters laid down under section 5 (section 12), rather than upon costs actually incurred (or budgeted).

#### The Committee's analysis

The Committee has now conducted a detailed examination of the legislation in the light of the information on its practical operation set out in the Review Report.

The Committee recalls that Article 3(1) of the Convention provides, *inter alia*, that workers' and employers' organisations shall have the right to organise their activities and to formulate their programmes, whilst Article 3(2) enjoins the public authorities to refrain from any interference which would restrict these rights, or impede the lawful exercise thereof. The Committee has consistently taken the view that the right freely to participate in collective bargaining is an important part of the activities in which such organisations may engage in order to protect and to promote the interests of their members. Indeed, as was indicated in the preliminary work for the adoption of the Convention on freedom of association, "one of the main objects of the guarantee of freedom of association is to enable employers and workers to combine to form organisations independent of the public authorities and capable of determining wages and other conditions of work by means of freely concluded collective agreements" [Freedom of Association and Industrial Relations, Report VII, International Labour Conference, 30th Session, Geneva, 1947, page 52].

It follows that interference in the bargaining process by the public authorities (through legislative or other means) is, in principle, not in conformity with the guarantees provided by the Convention. Nevertheless, the Committee has recognised that some degree of interference with the autonomy of the parties may be warranted in certain limited circumstances - namely for compelling reasons of national economic interest. However the Committee has also made clear that any such restrictions should be imposed only as an exceptional measure and only to the extent necessary, without exceeding a reasonable period; further, they should be coupled with appropriate guarantees for the protection of workers' standards of living [General Survey, 1983, paragraph 315].

The Committee notes from the Report on the Review of the WAGGS legislation that both employer and worker organisations have expressed concerns about the timing of the annual parameter-setting process under sections 4 and 5 of the Act, and about their lack of impact upon the outcome of that process. The Committee notes with interest that the Government has undertaken to amend the legislation to permit earlier consultation with the parties, and asks the Government to keep it informed of developments in this regard.

The Committee notes that section 6 of the Act requires that agreements in the trend-following sector must be submitted to the Minister before they become operative. It also notes that section 7 enables the Minister to delay the commencement of an agreement pending consultations with the parties, but that the parties retain the right by virtue of section 7(4) to reaffirm their agreement notwithstanding any concerns raised by the Minister. The Committee is of the view that these provisions are not inconsistent with the approach set out at paragraph 314 of its 1983 General Survey:

It might also be prescribed that a collective agreement would come into force only a reasonable length of time after being filed with the competent public authority. If this authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognised as being desirable in the general interest, the case

could be submitted for advice and recommendation to an appropriate consultative body, on which the workers' and employers' organisations were represented; this body could indicate to the parties the considerations of general interest that might call for further examination by them of the agreement in question, provided always, however, that the final decision on the matter rested with the parties to the agreement.

In this respect, the 1985 Act appears to the Committee to constitute a marked improvement upon its predecessors.

Sections 10 and 11 of the Act raise more difficult issues. These provisions enable the Minister to override any "declaration" by the parties under section 7(4), and to "freeze" the operation of an agreement where (s)he is of the opinion that it creates either a threat to the level of service provided by the employer or a danger that maintenance of the necessary level of service would entail an unjustified increase in costs at the public expense. The Committee notes that to date these powers have never actually been used in practice. However, the Committee is of the view that if the Government were to impose a freeze on the basis of sections 10 and 11 that would constitute an interference with the rights which are protected by Article 3 of Convention No. 87 - unless that interference could be shown to be justified on the basis of compelling reasons of national economic interest, and that the legislation incorporated the safeguards which are considered essential even where interference with the right to negotiate is permissible.

The Committee recalls that the so-called Temporary Act which preceded the WAGGS Act operated for a period of six years. The Committee notes that the 1985 legislation has already been in operation for a period of three years, and that in May 1988 the Government announced that it would be extended at least to the end of 1992. A measure of this nature cannot be regarded as "exceptional", as remaining in force for only a "reasonable period", or as operating only to the extent necessary to protect the national economic interest.

The Committee notes that according to the report of the review of the legislation, the earnings gap between the trend-following and market sectors has widened appreciably during the currency of the WAGGS Act. This inevitably raises doubts as to whether the Act contains adequate safeguards to protect the living standards of those to whom it applies. The three federations who have directed observations to the Committee clearly feel that it does not. Employers in the trend-following sector also appear to be unhappy about the overall effect of the legislation - as is evidenced by their stated desire to narrow the earnings gap between employees in this sector and those in the market sector if they were permitted to do so.

The Committee has commented upon this legislation, and its predecessor, several times. The matter has been discussed by the Committee on the Application of Conventions and Recommendations of the Conference on a number of occasions. The Committee considers that it must now ask the Government to repeal sections 10 and 11 of the WAGGS Act, and that employers and workers in the trend-following sector be permitted freely to conclude agreements on terms and conditions in this sector. In making this observation the Committee is mindful of the fact that the Wage Determination Act 1970 (as amended) gives the

government powers to intervene in the bargaining process in the face of compelling reasons of national economic interest. It is also mindful of its 1984 observation to the effect that even before the Temporary Act became operative the Government had ready access to indirect means of encouraging responsible bargaining in this sector.

Nicaragua (ratification: 1967)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report. It also notes the interim conclusions of the Committee on Freedom of Association in various cases and as regards a complaint submitted under article 26 of the Constitution of the ILO by several Employer delegates to the 73rd Session of the Conference in 1987 (see the 258th, 261st and 264th Reports of the Committee, approved by the Governing Body in May 1988, November 1988 and February-March 1989). Finally, the Committee examined the report submitted by the representative of the Director-General following the study mission carried out in Nicaragua in September-October 1988.

The Committee recalls that its previous comments concerned the effects of the state of emergency on the exercise of trade union rights and the need to amend certain legislative provisions in order to implement the Convention.

On the first point, the Committee, having noted that the state of emergency had been lifted, requested the Government to supply practical information on the effects of this suspension on the return to normal trade union life. It appears from the report of the representative of the Director-General and from the Reports of the Committee on Freedom of Association that, despite the lifting of the state of emergency, a number of restrictions imposed by the legislation and particularly by the General Provisional Act on means of communication of 1979, as amended, are still excessively severe. In particular, by virtue of section 3 of this Act, it is forbidden, under penalty of temporary or permanent suspension, to publish, distribute, circulate, exhibit, disseminate, show, transmit or sell writings which compromise or endanger the internal security of the country or its national defence and writings which compromise or endanger national economic stability. Indeed, newspapers and oral news channels have been suspended on the basis of this provision. The Committee therefore requests the Government to take the necessary measures to adopt legislation giving full guarantees of freedom of expression so that employers' and workers' organisations can express their opinions on the economic and social situation with a view to defending the interests of their members.

With regard to the right to strike, which was suspended during the state of emergency, the Committee notes with interest that this right can once again be exercised. It notes, from the information gathered by the representative of the Director-General, that 60 strike actions were recorded during 1988 although certain trade union organisations reported pressure and repressive measures exercised against strikers. The Committee points out in this respect that the right to strike is one of the essential means available to workers and

their organisations to further and defend their economic and social interests and that this right must not only be recognised by legislation but it must also be possible to exercise it without hindrance in practice.

The Committee also pointed out in its previous observations that certain provisions or omissions from the legislation were not in accordance with the Convention, and it referred in particular to the need to:

- guarantee, by a specific provision, the right of public servants, self-employed workers in the urban and rural sectors and persons working in family workshops to associate in defence of the occupational interests of their members;
- abolish the requirement of an absolute majority of the workers of an enterprise or work centre for the formation of a trade union (section 189 of the Labour Code);
- amend the provision on the general prohibition of political activities by trade unions (section 204(b) of the Code);
- amend the obligation placed on trade union leaders to present to the labour authorities the registers and other documents of a trade union on application by any of the members of that union (section 36 of the Regulations on Trade Union Associations);
- lift the excessive limitations on the exercise of the right to strike, requiring a majority of 60 per cent for calling a strike, prohibiting strikes in rural occupations when the produce may be damaged if it is not immediately available, and enabling the authorities to end a strike that has lasted 30 days through compulsory arbitration if no settlement has been reached after the date authorised for the strike (sections 225, 228 and 314 of the Code).

With regard to the issue of the right to organise of certain categories of workers, it appears from the report of the representative of the Director-General that public servants benefit in practice from the right to join organisations which are given legal personality and conduct their activities. The Committee requests the Government to recognise formally in law the trade union rights thus recognised in practice.

With regard to the general prohibition on the political activities of trade unions, the Committee notes the Government's statement to the representative of the Director-General that there is no reason for this prohibition.

The Committee also recalls that, in previous statements, the Government had stated its intention of amending section 189 of the Labour Code in order to recognise the possibility of trade union pluralism within the enterprise; of amending section 36 of the Regulations on Trade Union Associations in order to relax the supervision of the books and registers of trade unions and of amending sections 225 (the majority required to call a strike) and 314 (compulsory arbitration after a strike has lasted 30 days) in the manner desired by the Committee.

More generally, the Committee notes that the drafts of the Labour Code will be debated by the National Assembly at its next session and that the Government has undertaken to request ILO assistance for the formulation of this Code. The Committee expresses the firm hope that



the new Code will be adopted in the very near future, after consulting all the employers' and workers' organisations and the ILO, and that it will eliminate all the divergencies with the Convention raised by the Committee for many years.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Nigeria (ratification: 1960)

The Committee notes from the Government's report that the Senate Committee on Labour, the purpose of which was to review all labour laws adopted during the previous military regime, has been replaced by the National Labour Advisory Committee. This new tripartite body is currently continuing the review of labour laws, and particularly the provisions of the Trade Unions Decree (No. 31) of 1973, as amended by Decrees Nos. 22 of 1978 and 17 of 1986, which were not in accordance with a number of Articles of the Convention.

In this connection, the Committee recalls that for several years its comments have been concerned with numerous discrepancies between the national legislation and the Convention on a number of matters:

1. The single-trade-union system laid down by the legislation under section 33(1) and (2) of the Trade Unions Decree (No. 31), as amended in 1978 and 1986, under which any registered trade union is compulsorily affiliated to the Nigerian Labour Congress, the only central organisation, which is designated by name, and under section 3(2) of Decree No. 31 which provides for the establishment of one trade union for each category of workers in accordance with a pre-established list and which establishes a too high minimum number of members for the creation of a trade union (50 workers).

2. The non-recognition of the right to organise of certain categories of workers under section 11 of the above Decree, whereas only the armed forces and the police may be excluded from the provisions of the Convention.

3. The broad powers of the Registrar to supervise the accounts of trade unions at any time under sections 42 and 43 of the above Decree.

4. The possibility of restricting the exercise of the right to strike through the imposition of compulsory arbitration by virtue of various provisions of the Trade Disputes Decree (No. 7) of 1976 beyond essential services in the strict sense of the term.

#### Single-trade-union system

With regard to the single-trade-union system set forth by law, the Government explains once again that it responded to the desires of the workers to amalgamate the many trade unions and the four central organisations which had existed at the time when it gave its agreement to this amalgamation. It adds that in several establishments, particularly medical and educational establishments, in some industries and in the public sector there is more than one union per establishment.

While noting these statements, the Committee understands that this situation reflects the structure established through the legislation, which provides for trade union unity for each occupational category according to a pre-established list, and for the grouping of trade unions in federations in a pyramid structure and for a single central organisation designated by name.

The Committee emphasises that, although the objective of the Convention is not to express support either for trade union unity or for trade union pluralism, the principle set forth in Article 2 of the Convention implies that pluralism should be possible in all cases. It is for the workers themselves to join together in a single trade union structure if they consider that it is in their interests, but the law must not institutionalise this factual situation. Workers must be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure.

However, the Convention does not prevent a distinction being established between the most representative trade unions and other trade unions provided that this distinction is limited to the recognition of certain rights - principally in regard to representation for the purposes of collective bargaining, consultation by governments, or designating representatives to international organisations - to the most representative trade unions, determined according to objective and pre-established criteria. However, in all circumstances, minority organisations should be allowed to formulate their programmes, to have the right to make representations on behalf of their members and to represent them in the case of individual grievances [see paragraphs 136, 137 and 141 of the 1983 General Survey on Freedom of Association and Collective Bargaining].

In view of the fact that the law imposes a single-trade-union system in favour of a single central organisation that is designated by name, contrary to the terms of the Convention, the Committee once again requests the Government to indicate the measures that it has taken to give effect to the Convention on this point.

#### Recognition of the right to organise of certain categories of workers

The Committee notes that employees in minting establishments and in the Central Bank of Nigeria may establish joint consultative committees, but still do not appear to have the right to organise themselves in trade unions or to join a trade union, by virtue of section 11 of the above Decree, whereas these employees are covered by the Convention. The Committee once again requests the Government to indicate in its next report the measures that it has taken or that it envisages taking to give these workers the right to organise.

#### The right of trade union organisations to organise their administration

With regard to the wide powers of the Registrar to supervise the accounts of trade unions, the Government indicates once again that the powers of the Registrar are limited to enforcing probity and the capability of trade union officials to manage the funds of trade

unions. In this connection, it emphasises that many petitions from trade union members have been made to the Government for it to intervene and prevent mismanagement of the funds.

The Committee points out that supervision of union finances should not normally go beyond a requirement for the organisation to submit periodic financial returns, and that investigatory measures should be restricted to cases of presumed irregularities that are apparent from annual financial statements or from complaints reported by members of the trade union [see paragraph 188 of the General Survey].

The Committee therefore requests the Government to re-examine sections 42 and 43 of Decree No. 31 in the light of its comments in order to guarantee trade union organisations the right to organise their administration without any interference by the public authorities which would restrict this right, in accordance with Article 3.

#### Recourse to compulsory arbitration

With regard to the restrictions on the right to strike which may result from the imposition of compulsory arbitration (Decree No. 7 of 1976), the Government states that the legislation in question is intended to bring to an end a dispute before it becomes uncontrollable and to prevent workers and their families, to whom no pay is given during strikes, being without resources for a long period. However, the Government repeats its previous statements to the effect that, in practice, workers have on various occasions called a strike without it taking action.

The Committee recalls that the exercise of the right to strike should be one of the means available to workers and their organisations for the promotion and defence of their interests, and that restrictions or bans on strikes should be imposed only on public servants acting in their capacity as agents of the public authority or in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population, or in the event of an acute national emergency for a limited period [in this connection see paragraphs 200, 214 and 226 of the General Survey].

The Committee expresses the firm hope that the Government will examine attentively the conclusions and observations that it has set out above and requests it to indicate in its next report the measures that have been taken to suppress the single-trade-union system that is imposed by law, to grant the right to organise to all workers other than those in the armed forces and the police, to limit the powers of the authorities concerning the supervision of trade union finances and to remove the excessive legal restrictions on the exercise of the right to strike.

#### Norway (ratification: 1949)

The Committee notes the information set out in the Government's report. The Committee also notes the conclusions of the Committee on

Freedom of Association in Case No. 1389 (251st Report of the Committee, approved by the Governing Body at its 236th Session (May-June 1987)) and in Case No. 1448 (262nd Report of the Committee, approved by the Governing Body at its 242nd Session (February-March 1989)).

Both of these cases involved complaints against legislative proscription of strike action in Norway. The Committee recalls that the Committee on Freedom of Association had to deal with very similar issues in Case No. 1099 (217th Report of the Committee, approved by the Governing Body at its 220th Session (May-June 1982)) and in Case No. 1255 (234th Report of the Committee, approved by the Governing Body at its 226th Session (May-June 1984)). In all four cases the Committee on Freedom of Association determined that the legislation in question was inconsistent with the principles of freedom of association.

The Committee has always taken the view that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests (General Survey, 1983, paragraph 200). Any substantial interference with this right may impair the capacity of trade unions to further and defend the interests of their members and to organise their activities (General Survey, 1983, paragraph 226).

The Committee has nevertheless recognised that the right to strike may be attenuated in certain circumstances. It has, for example, accepted that, subject to appropriate safeguards, strike action may be proscribed in relation to public servants acting in their capacity as agents of the public authority, or in relation to essential services in the sense of those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [General Survey, 1983, paragraph 214]. It has also accepted that the right to strike may be suspended for a limited period in situations of acute national crisis [General Survey, 1983, paragraph 206].

In its report, the Government states that the right to strike is recognised in Norway as an integral part of the right to free collective bargaining. It also acknowledges that on occasion the exercise of this right must inevitably cause inconvenience to third parties and to society as a whole. The Government goes on to point out that the supervisory bodies of the ILO have recognised that in some circumstances such consequences are so serious in nature as to justify the imposition of restrictions on the right to strike. In Norway such restrictions are not embodied in any permanent legislative enactment. Instead, each individual dispute is assessed on its merits. If the Government, after a thorough evaluation of the consequences of a strike, finds that they are of such a nature as to endanger the life, personal safety or health of the whole or part of the population, then it submits a Bill to Parliament proposing that the matter be referred to the National Wages Board for final arbitration. When the Parliament is not sitting, section 17 of the Constitution permits the King to attain the same objective by means of an ordinance. Such ordinances can remain in force only until the Parliament next meets.

According to the Government there is a broad political consensus as to the appropriateness of this course. This is reflected in the

fact that in the few cases where the Parliament has adopted such measures, it has done so by a large majority.

In its report, the Government indicates that this procedure has been utilised on seven occasions since 1982, four of them in the oil industry.

As regards the effects of disputes in the oil industry, the Government refers to information provided in relation to Cases Nos. 1255 and 1389. In the Government's view this information established that intervention was justified by reason of the widespread economic dislocation which would result from a prolonged dispute in the oil industry, and by reason of the safety problems which could be engendered, or exacerbated, by a protracted work stoppage.

In its report, the Government also provides detailed information relating to the circumstances which in its opinion justified legislative intervention in the public sector (1984 and 1986) and in the chemical industry (1985).

The Committee recognises that these disputes may have involved a substantial measure of social or economic dislocation. However, as the Government itself has acknowledged, such disruption is an inevitable incident of the exercise of the right to strike (see also General Survey, 1983, paragraph 199). The Committee reiterates that it is only where the dislocation constitutes a danger to the life, personal safety or health of the whole or part of the population or in a situation of acute national crisis that the public interest justifies curtailment of the right to strike.

The Committee also reminds the Government that in both Cases Nos. 1255 and 1389 the Committee on Freedom of Association found that the legislative interventions in question were not consistent with the principles of freedom of association. The Committee can only endorse these findings, and again draw the attention of the Government to the fact that it has consistently stated that legislative interference with the right to strike is justified only in relation to public servants acting in their capacity as agents of the public authority and in relation to essential services stricto sensu.

In addition, these prohibitions may also seriously erode the efficacy of the entire collective bargaining system.

The Committee would point out, however, that conciliation and arbitration procedures are not necessarily incompatible with the requirements of the Convention. They must, however, be designed to facilitate bargaining between the two sides. This in turn requires that it must be for the parties to decide whether or not they wish to refer any matters in dispute to binding arbitration. The discretionary powers assumed by the Government to introduce legislation which refers disputes for binding arbitration against the wishes of one or both of the parties is not consistent with this principle.

In the light of all of these considerations the Committee requests the Government not to have recourse to legislative intervention in relation to industrial disputes involving public servants who are not acting in their capacity as agents of the public authority, workers in the oil industry, and in other non-essential sectors.

Pakistan (ratification: 1951)

The Committee notes the Government's report and the information that it supplied to the Conference Committee in June 1988 and the subsequent discussion by the Committee. It also notes the 254th Report of the Committee on Freedom of Association regarding Cases Nos. 1332 and 1383 (paragraphs 21 and 27) approved by the Governing Body in March 1988.

The Committee also notes the observations made by the Pakistan National Federation of Trade Unions concerning the right to organise and to bargain collectively of certain groups of workers in Pakistan. These observations were forwarded to the Government for comment on 4 November 1988.

The Committee recalls that in the past it has identified divergencies between the Convention and legislative provisions which deny certain workers the right to establish union organisations, restrict the right to strike, permit the supervision of trade union funds by the Registrar and limit the right of representation of minority unions.

Trade union rights - Pakistan International Airlines Corporation

The Committee noted on previous occasions that Martial Law Regulation No. 52 of 1981 that was referred to in the context of Cases Nos. 1075 and 1175 of the Committee on Freedom of Association, completely prohibited trade union activities in the Pakistan International Airlines Corporation (PIAC). The Committee notes that, during the examination of Case No. 1332 regarding the same issue, the Committee on Freedom of Association observed that, in spite of the lifting of martial law and the repeal of Regulation No. 52, an amendment to the PIAC Act has in practice had the same effect as the above Regulation and deprives the employees of the PIAC of their trade union rights. The Committee shares the opinion of the Committee on Freedom of Association and considers that the amendment to the Pakistan International Airlines Corporation Act, which deems all PIAC employees to be civil servants and therefore denies them the right to establish unions and to carry out union activities, infringes Articles 2 and 3 of the Convention.

In its report, the Government concedes that there has been a departure from the requirements of the Convention in respect of the employees of the PIAC. It seeks to justify this upon two grounds: first, that the number of employees concerned constitute but a small fraction of the total industrial labour force estimated at 10.95 million who enjoy the right of freedom of association and right to organise, and secondly that the safety of the travelling public would be imperilled if employees of PIAC were accorded the right to organise. This latter proposition is justified by reference to the danger of "exploitation" by (unspecified) vested interests and "unscrupulous elements in the name of trade union activity".

The Committee notes the Government's comments. It feels bound to point out, however, that it has never regarded the fact that only a small proportion of the workforce are denied the right of freedom of

association as justification for that denial. Furthermore, the Committee does not see any necessary connection between trade union activity and danger to the travelling public.

#### Trade union rights - senior public servants

The Committee has expressed its concern on many occasions about the exclusion of public servants of Grade 16 and above from the scope of the Industrial Relations Ordinance. The Committee again notes the Government's statement in its report to the effect that it is not in the public interest to accord the right of freedom of association to such employees, but that they are permitted to form associations of their own. The Committee notes the information furnished by the Government pertaining to the Economists and Planners Group. However, it feels that this information is not sufficient to enable it to form a decided view upon whether the exclusion of these workers from the scope of the Ordinance is inconsistent with the Convention. Accordingly, the Committee has submitted a Direct Request to the Government which seeks further information on these points.

#### Export processing zones

Section 25 of the Export Processing Zones Authority Ordinance 1980 provides that the Government may exempt any Export Processing Zone (EPZ) from "the operation of all or any of the provisions of any law for the time being in force". The Committee notes that on the basis of this provision the Government has entirely exempted all EPZs from the scope of the Industrial Relations Ordinance 1969. This deprives workers in EPZs of the right to establish and join trade unions which is embodied in section 3 of the Ordinance, and denies them access to the procedures relating to collective bargaining, joint consultation etc. which are set out elsewhere in the Ordinance. In addition, section 4 of the Export Processing Zone (Control of Employment) Rules 1982 purports to deprive all workers in EPZs of the right to strike, or to take other forms of industrial action.

The Committee recalls that Article 2 of the Convention protects the right of workers and employers, without distinction whatsoever, to establish and to join organisations of their own choosing, and that Article 3 recognises the right of such organisations to draw up their constitutions and rules, to elect their representatives, to organise their administration and activities and to formulate their programmes. Section 25 of the 1980 Ordinance, and section 4 of the 1982 Rules are not consistent with these protections.

In its most recent report, and on a number of earlier occasions, the Government has indicated that these exclusions were introduced in response to conditions laid down by multinational organisations before they were prepared to invest in Pakistan. The Committee is mindful of the economic difficulties with which the Government is confronted, but feels bound to recall the importance it attaches to the full enjoyment by workers without distinction whatsoever of the trade union rights provided for by the Convention. The Committee also recalls that the Tripartite Declaration of Principles concerning Multinational

Enterprises and Social Policy, which was adopted by the Governing Body of the ILO in November 1977, states that (at paragraph 45):

Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organise and bargain collectively.

#### Recourse to strikes

The Committee again notes that section 32(1) of the Industrial Relations Ordinance 1969 permits the calling of a strike after conciliation proceedings have failed. However, this is subject to sections 32(2) and 33(1) of the Ordinance. The first of these enables the Government to prohibit any strike or lockout where it has lasted for more than 30 days, or where the Government is satisfied that continuance of the strike or lockout is causing serious hardship to the community or is prejudicial to the national interest. Section 33(1) enables the Government to prohibit any strike or lockout, before or after its commencement, where the dispute is of "national importance" or involves "public utility services". According to the Schedule to the Ordinance, these latter include: the generation, production, manufacture or supply of electricity, gas, oil or water; public conservancy or sanitation; hospitals and ambulance services; fire-fighting services; postal, telegraph and telephone services; railways and airways; ports; watch and ward staff and security services maintained in any establishment.

The Committee has emphasised on a number of occasions that a discretionary power to prohibit strikes or lockouts in cases of "hardship" or in the "national interest" is liable to result in a very broad prohibition of the right to strike. The same is true of prohibitions which apply to "public utilities". In the opinion of the Committee such prohibitions should be confined to essential services in the strict sense of the term. As indicated at paragraph 214 of its General Survey of 1983, the Committee believes that these include only services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's view that, in the context of the developing world, transport, communications, ports and petroleum and gas undertakings should be regarded as "public utilities". The Committee can only reiterate that strikes are one of the essential means available to workers to promote and protect their occupational interests and that it considers that certain of the limitations and restrictions such as those embodied in sections 32(2) and 33(1) of the Industrial Relations Ordinance go beyond those usually considered by the Committee to be admissible. The Committee therefore urges the Government to ensure that, in accordance with Article 3, unions can organise their activities and formulate their programmes and that, in accordance with Article 10, they can further and defend the interests of their members.



Supervision of trade union funds

The Committee has noted on many occasions that section 8 of the Provincial Industrial Relations Rules gives the Registrar far-reaching powers of entry and inspection in relation to the accounting requirements which are imposed upon registered unions by sections 7B, 13 and 21 of the Industrial Relations Ordinance 1969.

The Committee notes the Government's assurance that the supervision of union funds does not normally go beyond a requirement that the union produce a certificate issued by an authorised auditor appointed by the union itself. It also notes that there have never been any complaints of undue interference in this context from either workers or from trade unions, and that the actions of the Registrar are subject to judicial review.

The Committee refers again to paragraph 188 of its General Survey of 1983, where it points out that vesting an administrative authority (such as the Registrar) with broad discretionary powers to examine the books and other documents of an organisation creates a grave danger of interference with the guarantees provided by the Convention. It is obviously appropriate that such powers should be subject to judicial review. However, the Committee points out that the existence of such a review procedure does not of itself constitute a sufficient protection of the rights guaranteed by the Convention since it does not alter the nature of the powers conferred upon the Registrar in the first place [see General Survey, 1983, paragraph 117].

Bearing these considerations in mind, the Committee requests the Government to keep it informed of any practical problems which may arise from the continued operation of these provisions especially in the form of complaints by registered unions of undue interference.

Right of representation of minority unions

On previous occasions, the Committee has noted the fact that workers in minority unions could not be represented by the union they had joined in relation to individual grievances. The Committee has repeatedly drawn the Government's attention to the fact that, by virtue of the right of workers to join organisations of their own choosing, as set forth in Article 2 of the Convention, the members of trade unions should have the right, as regards their individual claims, even if their union is a minority one, to be represented by their own organisation for the defence of their occupational interests.

The Committee notes that in its report the Government states that, in practice, collective bargaining agents represent all workers for all purposes, and expresses the view that formal recognition of minority unions would lead to dissension within the workplace which could have an adverse impact upon productivity. The Committee also recalls that, by virtue of the Industrial Relations Ordinance, individual workers do have a right of access to the labour courts in respect of alleged violations of individual rights. In this context, the Committee asks the Government to provide further information as set out in the direct request.

In view of the fact that the Committee has been commenting on all of these issues for many years, it expresses the firm hope that the

Government will make every effort to take the measures that are necessary to give full effect to the Convention, and that it will do so in the near future.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Panama (ratification: 1958)

The Committee notes the Government's report, the written information supplied by the Government to the Conference Committee in 1988 and the observations submitted by the World Confederation of Organisations of the Teaching Profession (WCOTP), raising objections to a number of the provisions of Decree No. 26 of 28 March 1988 relating to the right of association, and the Government's reply in this respect.

The Committee notes that, according to the Government, Decree No. 26 relating to the right of association does not apply to trade unions or employers' associations, since they are regulated by special legislation (the Labour Code). The Committee observes in this connection that section 1 of the above Decree provides that "organisations or associations regulated by special laws ... shall be governed by their specific provisions". Since the Convention applies only to organisations of employers and workers and not to other types of associations or organisations, the Committee considers that the WCOTP's comments do not require further examination.

In the comments that it has been making since 1973, the Committee has pointed out on many occasions that various provisions of the 1971 Labour Code are not in conformity with the Convention:

- the requirement of too high a number of members to establish an occupational organisation (50 workers or ten employers) (section 344);
- the prohibition of more than one union per undertaking (section 346);
- the requirement that 75 per cent of union members shall be Panamanian (section 347);
- the automatic removal from office of a trade union officer in the event of his dismissal (section 359);
- the wide powers of supervision of the authorities over the records and accounts of trade unions (section 376(4));
- the exclusion of public servants from the scope of the Labour Code and consequently from the right to organise and bargain collectively (section 2(2)).

The Committee notes that, according to the Government, the prohibition on establishing more than one trade union in an enterprise (section 346) refers to the possibility of establishing only one "works union" and does not restrict the freedom of workers to establish and join a trade union in their branch of economic activity or even a works union. Indeed, in certain enterprises in the country, workers are members of up to three trade union organisations. With regard to the requirement of a minimum of 50 workers or ten employers to establish an occupational organisation (section 344), the Committee

notes that, according to the Government, a reduction in the number of 50 workers would result in trade union pluralism, which would affect the unity of the trade union movement. The Committee wishes to emphasise, in this connection, that the requirement of a minimum of 50 workers may seriously jeopardise and make it impossible to establish workers' organisations in small enterprises, and that the number of employers (ten) required to establish employers' organisations (a matter to which the Government did not refer) is clearly excessive.

With reference to the requirement that 75 per cent of the members of a trade union be Panamanian (section 347), the Government states that one of the matters of greatest concern to trade unions is the award of work permits to foreigners, which they claim displaces Panamanian workers, and the proliferation of fictitious marriages. The Committee wishes to point out that questions such as the percentage of foreigners in the total number of members are better dealt with in trade union by-laws than by legislation, and that the Convention guarantees the right of workers' organisations to draw up freely their constitutions and rules without interference by the authorities.

With regard to the automatic removal from office of a trade union officer who has been dismissed (section 359), the Government notes that this provision applies only to officers of works unions and that it does not prevent officers of federations or confederations from continuing in office. The Committee points out that, under the terms of Article 3 of the Convention, workers' organisations have the right to elect their representatives in full freedom and that it is therefore for these organisations to decide by whom they shall be represented.

The Committee notes that the Government's statements indicate that section 376(4) (which lays down wide powers of supervision of the authorities over the records and accounts of trade unions), is not a binding provision, that it is not applied in practice and that the trade unions have repeatedly refused to supply such information. The Committee once again emphasises that the powers of supervision over the internal administration of trade unions laid down in section 376(4) are excessive and requests the Government, in view of the fact that this provision is not applied in practice, to take steps to amend the legislation on this point.

Finally, the Government indicates that the Ministry of Labour and Social Welfare has delayed the submission to the National Assembly of the draft legislation to amend the provisions of the Labour Code which have been criticised by the Committee since the draft legislation requires new examination and that this could be carried out with the assistance of the ILO, but cannot take place at the present time due to the current circumstances of the country and its serious economic crisis. The Committee notes this information, but has to point out that, under the terms of Article 1 of the Convention, each Member of the International Labour Organisation for which the Convention is in force undertakes to give effect in practice to its provisions. Consequently, and in view of the fact that it has been making these comments since 1973, the Committee trusts that the Government will take the necessary measures to comply in the near future with the obligations deriving from the Convention.

Furthermore, with reference to the Committee's comments concerning the exclusion of public servants from the scope of the Labour Code and consequently from the right to organise and to bargain collectively, the Government states that the draft Decree to extend the provisions of Book III of the Labour Code to public employees has been set aside, since it is hoped that next year the Legislative Assembly will discuss a Bill to regulate administrative careers, which would recognise the rights to associate, bargain collectively, strike and go to arbitration for public servants. The Government adds that, in practice, strikes occur in the public sector without reprisals being taken by the authorities. The Committee notes this information and emphasises that the Convention applies to all employees and public servants, with the sole possible exception of the armed forces and the police, and it trusts that the Bill referred to by the Government will recognise the guarantees set out in the Convention for public employees and public servants in the near future.

The Committee hopes that it will be possible to bring the legislation into conformity with the Convention in the near future and requests the Government to report any progress achieved in this respect.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Paraguay (ratification: 1962)

The Committee takes note of the information provided by the Government in its report.

The Committee wishes to recall that in the comments it has been making for a number of years, it has pointed out the need to clarify the legal situation and adopt adequate measures to dissipate any doubts with regard to the right to organise and to collective bargaining of workers in public bodies and autonomous enterprises producing goods or supplying services for the public, and to recognise expressly the right of public servants to associate not only for cultural and social purposes (section 31 of Act 200) but also for the purposes of furthering and defending their occupational and economic interests. The Committee has also drawn the Government's attention to the need to repeal section 36 of Act No. 200, which prohibits public servants from adopting collective resolutions against the measures taken by the competent authorities.

The Committee also notes that the Committee on Freedom of Association made recommendations to the Governing Body, in November 1988, concerning Case No. 1341 (Paraguay), regarding the denial to public employees of the right to organise in trade unions and the restrictions on their freedom to negotiate their conditions of employment collectively. The Committee joins the Committee on Freedom of Association in requesting the Government to amend Act No. 200 on the conditions of employment of public servants (sections 31 and 36) so as to include specific legislative provisions guaranteeing the right to organise of public employees and to introduce machinery for the settlement of collective disputes in the public service, in which

the persons concerned will have confidence. As regards the ban on strikes by doctors and nurses employed in a public hospital, the Committee joins the Committee on Freedom of Association in requesting the Government to adopt specific provisions to compensate, by introducing adequate conciliation and arbitration procedures, for the fact that there is no right to strike in this essential service [see the 259th Report, paragraph 516(e) and (f), approved by the Governing Body at its 241st Session, November 1988].

The Committee also wishes to recall the comments it has made on sections 353 (the requirement of three-quarters of the members to call a strike) and 360 (services in which strikes are prohibited) of the Labour Code, and sections 284 (submission of collective disputes to compulsory arbitration) and 291 (dismissal of the workers who have ceased work during the procedure) of the Code of Labour Procedure, as well as section 285 of the Labour Code (prohibition on trade unions from receiving subsidies or economic assistance from foreign or international organisations).

The Committee notes with regret from the Government's last report, that the proposals for the amendment and repeal of sections 31 and 36 of Act No. 200 have not yet been approved and that no further action has been taken on the comments on sections 353 and 360 of the Labour Code and sections 284 and 291 of the Code of Labour Procedure.

The Committee requests the Government to indicate whether the judicial appeal available in cases where the Ministry of Justice and Employment decides to dissolve a trade union (section 308 of the Labour Code), has a suspensive effect and, if not, what measures it envisages taking to remedy this situation.

In these circumstances, the Committee expresses the firm hope that the legislation and practice will be amended in the near future so as to be in full conformity with the Convention. The Committee urges the Government to provide information in its next report on all measures taken to give full effect to the Convention.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

#### Philippines (ratification: 1953)

1. The Committee notes the information contained in the reports submitted by the Government. The Committee also notes the conclusions of the Governing Body's Committee on Freedom of Association concerning Case No. 1444 [262nd Report of the Committee, February-March 1989, paragraphs 268-310].

2. In its 1986 observation the Committee drew the attention of the Government to a number of provisions of the Labour Code which were not consistent with the requirements of the Convention. Some of these matters were subject to amendment by Executive Order No. 111 which was issued by the President in December 1986.

However, the Committee noted that remedial action was still required in relation to a number of issues including:

- (i) the requirement of a majority of union members in a bargaining unit for the calling of a strike (section 264(f));

- the Committee considers that a simple majority of the voters - excluding those workers not taking part in the vote - of a bargaining unit should be sufficient to call a strike;
- (ii) the requirement of 20 per cent membership as a precondition of registration (section 234(c));
  - (iii) the broad scope of the concept of "disputes affecting the national interest" including restriction on the right to strike in non-essential services for purposes of sections 264(g) and (i) and 265(a);
  - (iv) the power to dismiss strikers under section 265(a);
  - (v) the number of unions required in order to establish a federation or national union (section 237(a));
  - (vi) the prohibition of aliens from engaging in trade union activities (section 270);
  - (vii) the penalties for engaging in illegal strikes (section 273(a));
  - (viii) the deportation of aliens (section 273(b));
  - (ix) the extent of the powers of inquiry into the financial affairs of trade unions set out in section 275; and
  - (x) section 164 of the revised Penal Code (as amended by Presidential Decree 1834) relating to illegal strikes (sentence of penal servitude for life for organisers or leaders, and imprisonment for participants in strike pickets or collective actions deemed to be for propaganda purposes against the Government).

The Committee notes with interest that at the present time there are two Bills before the Parliament (Senate Bill No. 530 and House Bill No. 11524) which deal, inter alia, with: national interest disputes; trade union activity by aliens; penalties for engaging in illegal strikes and inquiries into the financial affairs of trade unions. The Committee also notes with interest that these Bills are largely the fruits of the work of the Tripartite Review Committee which was established on the instructions of the President in December 1987. However, the Committee can only regret that these changes are not yet law, and that the Government has not provided any information as to when this is likely to occur. The Committee would also point out that the proposed changes relating to national interest disputes and penalties for engaging in illegal strikes do not appear to meet the concerns expressed by the Committee in its earlier observations. With regard to compulsory arbitration and penal sanctions - which should only be imposed where there are violations of strike prohibitions which are in conformity with the principles of freedom of association and which should be proportionate to the offences committed - penalties of imprisonment should not be imposed in the case of peaceful strikes. The Committee regrets that the draft Bills do not appear to make any attempt to deal with: the 20 per cent membership requirement; the dismissal of strikers; the establishment of federations or national unions; the deportation of aliens; or section 164 of the Penal Code as amended.

The Committee points out that it has made observations on all of these matters on a number of occasions. The Committee on Freedom of Association has drawn attention to the need for legislative change in Case No. 1323 [241st Report of the Committee, November 1985,

paragraphs 341-374], in Case No. 1353 [246th Report of the Committee, November 1986, paragraphs 184-196] and in Case No. 1444. Accordingly, the Committee urges the Government to introduce remedial legislation as a matter of priority. It also asks the Government to keep it informed of progress as regards Senate Bill No. 530 and House Bill No. 11524.

Finally, the Committee would again remind the Government that the resources of the International Labour Office are at its disposal for any assistance that may be needed in formulating amendments which will give effect to the Convention.

Poland (ratification: 1957)

Further to its previous comments, the Committee notes the Government's reports as well as the verbal and written information furnished to the Conference Committee on the Application of Standards in June 1988 and the discussion which followed.

The Committee notes in particular that, in order to support economic reform, the Government has established a National Council for the revision of the labour legislation, which is to prepare for 1990 a new draft labour code on the basis of comparative law and ILO standards. In addition, a group of experts has been established within the Ministry of Labour and Social Affairs to examine how to achieve complete conformity between national legislation and ratified ILO Conventions in the human rights field, and in particular those concerning freedom of association.

In addition, the Committee notes that a Round Table has been convened, bringing together representatives of all the social and political forces in the country which are in favour of respect for the Constitution. One of the committees of the Round Table is dealing with questions related to trade union pluralism. A resolution adopted on 18 January 1989 by the Central Committee of the Unified Polish Workers' Party provides that the work of the Round Table will achieve an agreement on the conditions, the means and the schedule of introduction of trade union pluralism, and to the opening of the possibility of creating new trade unions, including Solidarity. According to the indications communicated by the Government, the committee on trade union pluralism has recognised that it will be necessary to amend the legislation on trade unions, in particular as concerns the establishment of unions, the choice of trade union structures, trade union rights in the agricultural sector, the scope of trade union legislation and the resolution of labour conflicts including the right to strike. Finally, the Committee notes that work is continuing with a view to the creation of tripartite Polish committee on co-operation with the ILO.

The Committee notes these developments with interest. It hopes that the discussions and work now going on will permit the adoption of in the very near future of new trade union legislation which will comply with the comments the Committee has made on trade union unity, denial of trade union rights to officials in prison establishments and limitations on the right to strike, thus assuring the full application of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Romania (ratification: 1957)

The Committee notes the Government's report and the information that it supplied to the Conference Committee in June 1987 and the subsequent discussions.

The Committee recalls that its previous comments, of which a number had been raised for several years, concerned the following points:

- section 164 of the Labour Code, which provides that trade unions are occupational organisations set up by virtue of the right of association laid down in the Constitution and which operate on the basis of the by-laws of the General Confederation of Trade Unions, of the unions set up for each branch of activity and of the trade union organisations in enterprises;
- section 26 of the Constitution, which provides that the Romanian Communist Party guides the activities of mass organisations;
- section 165 of the Labour Code, which lays down that trade unions shall mobilise the masses in order to carry out the programme of the Romanian Communist Party; and
- sections 113(2), 116, 119, 122 and 153 of the Labour Code, which entrusts a trade union organisation which is expressly named in the legislation, that is the General Confederation of Trade Unions, with the exclusive duty to represent the workers before the higher State bodies (the Council of Ministers, Ministries of Labour and Health, etc.).

The Committee noted that a single trade union system, imposed by law, whether directly or indirectly, is in contradiction with the principles of the Convention and it requested the Government to take measures to ensure that all workers who wish to do so have the right to establish trade union organisations of their own choosing in full freedom outside the existing trade union structure and without interference by the public authorities, in accordance with Articles 2 and 3 of the Convention.

In its report, the Government once again supplies the information that it provided in its previous reports, namely that sections 2 and 17 of Act No. 52 respecting occupational trade unions recognise the right of all individuals, working in the same occupation or in similar occupations, to freely establish occupational unions without prior authorisation. It explains once again that section 164 of the Labour Code means that the trade union of a specific unit (whether it be an enterprise, establishment or institution) operates on the basis of its own by-laws and not on the by-laws of a branch union or of the General Confederation of Trade Unions. Similarly, each central branch union organisation operates on the basis of its own by-laws and not on the by-laws of the General Confederation of Trade Unions. It states that Romanian legislation does not require a trade union in a specific unit or a central branch union organisation to join a higher trade union organisation, or that any trade union organisation should establish the by-laws of another trade union.



With regard to the links between the Party and the trade unions, the Government considers that Article 3(2) of the Convention concerns the public authorities and not political parties. It explains that, in its country, the public authorities are the Grand National Assembly, the State Council and the Council of Ministers. In the Government's opinion, the references by the Committee to sections 26 of the Constitution and 165 of the Labour Code, which concerned the role of the Party as the leading political force, went beyond the legal aspects of the question and dealt with problems which are not covered by the Convention. In the Government's view, the leading role of the Party, which is enshrined in the Constitution, consists of determining the fundamental aims and orientation of social development. The relationship between the Party and social organisations, including trade unions, are able to amplify the role of the latter in directing the social, political and economic life of the country. The Government concludes, however, by indicating that the Committee's observations will be taken into consideration in future proposals for the amendment of the labour legislation.

The Committee notes all these explanations. It nevertheless considers it necessary to point out once again that section 164 of the Labour Code, in its current form, would not appear to permit a trade union to formulate its own by-laws in complete independence from the General Confederation of Trade Unions. As formulated, this provision would appear to oblige first-level trade unions and branch-level trade unions to establish their by-laws on the basis of the by-laws of the General Confederation of Trade Unions. In this connection, the Committee recalls that it has been requesting the Government to amend its legislation so as clearly to recognise the right of workers and their organisations freely to formulate their by-laws and their programmes in accordance with Article 3 of the Convention.

With regard to the links between the Party and the trade unions, the Committee points out that relations between trade unions and political parties must stem from freely-taken decisions and not be imposed by law. The Government's argument, which consists of emphasising that the Convention does not deal with relations between trade unions and political parties, would not appear to be tenable, as any relation in this field that is laid down by law would be contrary to the Convention since, in such a case, the State, as legislator, would be restricting the right of trade union organisations to organise their activities and formulate their programmes, while Articles 3 and 8(2) of the Convention expressly lay down that it shall refrain from doing so.

Since 1979, the Committee has been pointing out to the Government that these provisions would appear to make it legally impossible to establish organisations that are independent of the Party. It once again requests the Government to clarify the legislation by eliminating the provisions which formally place the organisations in a situation of dependence on the Party.

The Committee trusts that the Government will re-examine its legislation in the light of the above comments and requests it to supply information on any development in the situation as regards the preparation of the new trade union legislation referred to in its previous reports.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

Senegal (ratification: 1960)

The Committee notes the information supplied by the Government in its report.

For several years the Committee's comments have been related to section 1(4) of Act 65-40 of 22 May 1965 concerning seditious associations, which permits the dissolution by decree of associations or groups whose activities would be such as to disrupt, by unlawful means, the functioning of the constitutional order.

In its previous observation, the Committee noted that a bill on this subject excluded workers' and employers' occupational organisations from the scope of Act 65-40 in respect of administrative dissolution. The bill was to be submitted to the Minister of the Interior for his comments.

In its report, the Government indicates that, although the Minister of the Interior expressed reservations of such a nature as to take all value from the prepared text, discussions are continuing between the Ministries of Labour and the Interior.

While noting this statement, the Committee recalls that this provision of Act 65-40, to the extent that it could be applied to occupational organisations, would be contrary to Article 4 of the Convention, which forbids any dissolution of a workers' organisation by administrative authority. It therefore trusts, as the Government emphasises, that it will be possible to find a solution to this matter and requests the Government to indicate the progress that has been achieved in its next report.

Seychelles (ratification: 1978)

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

The Committee takes note of the report of the Government and of the statutes of the National Workers' Union. It observes no new information in addition to the general statements that were made in the first report (1979) submitted since the accession of the country to independence has been supplied on the application of the Convention.

The Committee considers that it would be useful to recall the obligation on all States Members under article 22 of the Constitution of the ILO to transmit detailed reports on the effect given to ratified Conventions and to use as a basis the report forms adopted for the purpose by the Governing Body.

With reference to its previous comments, the Committee would point out that, after the voluntary dissolution of all trade unions, the "National Workers' Union", representing all categories of workers, was set up in 1979. Under the constitution of the "Seychelles People's Progressive Front",

promulgated as a schedule to the national Constitution in 1979, the Union functions under the direction of the Front (section 4); for example, the consent of the Front is necessary for every decision, it must also approve the expenditure of the Union, and it receives 25 per cent of the total amount of union dues (section 12 of the constitution of the Front). The Committee has noted that the law in force provides for the existence of only one trade union organisation, mentioned by name and placed under the direction of a political party, as is confirmed by the comments of the National Workers' Union, and thus establishes a system of trade union monopoly, which is contrary to the Convention.

The Committee recalls that it has already pointed out in the General Survey on Freedom of Association and Collective Bargaining, which it submitted to the 69th (1983) Session of the International Labour Conference, particularly in paragraphs 132 to 138, that trade union unity imposed directly or indirectly by law is in conflict with express standards of the Convention (Article 2) and that trade unions should have the right to organise their activities and to formulate their programmes in full freedom, and also to draw up their constitutions and elect their representatives in full freedom. The Committee feels bound to emphasise, in reply to the statement of the Government that the socialist development of the country will be carried out in accordance with the doctrine of the party, which advocates the support of a single national trade union organisation, that, even in a situation where, at some point in the history of a nation, all workers have preferred to unify the trade union movement, they should, however, be able to safeguard their freedom to set up, should they so wish in the future, unions outside the established trade union structure.

Lastly, the Committee considers it useful to recall that the resolution on the Independence of the Trade Union Movement (adopted by the International Labour Conference at its 35th Session, 1952) stresses, in particular, that governments should not seek to transform the trade union movement into a political instrument which they could use to achieve their political aims.

The Committee requests the Government to take appropriate measures to ensure that the legislation guarantees the above-mentioned rights.

#### Swaziland (ratification: 1978)

The Committee notes the Government's report.

1. In its previous observations, the Committee noted that section 12 of the Decree of 1973 laid down considerable restrictions on the right of meeting and demonstration of trade unions.

The Committee notes with interest, from the Government's report, that, in a ruling by the labour tribunal, the right to hold meetings for trade union purposes without prior authorisation from the police has been recognised for workers.

The Committee hopes that the Government will take steps to amend section 12 of the Decree of 1973 to bring it into conformity with this ruling and it requests the Government to supply information on the progress achieved in this respect.

2. For several years, the Committee has been noting discrepancies between the 1980 Industrial Relations Act and certain provisions of the Convention:

#### Article 2 of the Convention

- the exclusion of prison staff from the enjoyment of the right of association (section 83(c) of the Act of 1980);
- the obligation upon workers to organise within the context of the industry in which they exercise their activity (sections 2(1) and (2) of the Act of 1980);
- the power of the labour commissioner to refuse to register a trade union if he is of the opinion that the interests of the workers are fully, or substantially, represented by a trade union that has already been registered (section 23(3) of the Act of 1980), even though, by virtue of section 24(1)(d), an appeal may be made against such a refusal before the labour tribunal;
- the obligation for an occupational organisation or federation to obtain authorisation before affiliating with any international organisation (section 34(1) of the Act of 1980);

#### Article 3 of the Convention

- the prohibition upon federations to carry on political activities and limitation of their activities to providing advice and services (section 33 of the Act of 1980);
- prohibition of the right to strike in essential services, including, in particular, the postal, radio and teaching sectors (section 65(6) of the Act of 1980);
- the power of the Minister to refer any dispute to compulsory arbitration if he is of the opinion that a current or pending strike constitutes a threat to the national interest (section 63(1) of the Act of 1980).

In the absence of any new information in the Government's report on these points, the Committee is therefore bound to point out once again that:

- the Convention applies to all workers, without distinction whatsoever, with the exception of members of the armed forces and the police, who alone may be excluded in accordance with Article 9 of the Convention;
- the right of workers to establish and join organisations of their own choosing without previous authorisation cannot be restricted directly or indirectly by law;
- the right to affiliate with international organisations without previous authorisation is recognised for workers' organisations and federations under the terms of Articles 6 and 2 of the Convention;
- under the terms of Article 6 of the Convention, federations and confederations or workers' organisations are accorded identical

rights to those of lower-level organisations, in particular, in accordance with Article 3 of the Convention, the right to formulate their programmes without interference to restrict this right by the public authorities;

- the right to strike is one of the means available to workers' organisations for defending the interests of their members (Article 10 of the Convention) and for furthering their activities (Article 3 of the Convention). The only admissible restrictions on this right may affect public servants acting in their capacity as agents of the public authority and workers employed in essential services, that is services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee requests the Government to indicate in its next report the measures that have been taken in order to bring the legislation into conformity with the Convention on all the points raised above.

#### Syrian Arab Republic (ratification: 1960)

With reference to its previous comments, the Committee notes from the Government's brief report that a committee made up of representatives of the Ministry of Social Affairs and Labour, the General Federation of Workers' Unions, the General Federation of Peasants' Associations, the General Federation of Craftsmen and the Chamber of Industry has been formed to examine its comments and that the conclusions of this committee will be communicated to the ILO.

The Committee recalls that the discrepancies between the national legislation and the Convention concern the following:

- Legislative Decree No. 84 of 1968 concerning trade unions (section 7);
- Legislative Decree No. 250 of 1969 (section 2) and Law No. 21 of 1974 concerning peasants' co-operative associations (sections 26-31) which impose a single trade union system;
- section 25 of Legislative Decree No. 84 restricting the trade union rights of non-Arab foreign workers;
- sections 32, 35, 36, 44, 49(c) of Legislative Decree No. 84 and sections 6 and 12 of Legislative Decree No. 250 of 1969 restricting the free administration and independence of the management of trade unions;
- section 160 of the Agricultural Labour Code of 1958 prohibiting strikes in the agricultural sector.

1. The single trade union system. The law provides (Legislative Decree No. 84 of 26 June 1968, Legislative Decree No. 250 of 1969 and Law No. 21 of 1974) that only one trade union can be set up for the same occupation within the same "mouhafazat" (section 3). The unions in a "mouhafazat" can only group themselves into one federation of workers in the "mouhafazat" (section 5) and all can group themselves into the General Federation of Workers of Syria (section 7). In addition, only when this Federation has taken a decision can the occupations which may constitute groups of unions and the occupational groups which may constitute unions be determined (section 4), and the

General Federation has the right to dissolve the management committee of any trade union (section 49(c)).

The Committee has recognised, in paragraph 136 of its General Survey on Freedom of Association and Collective Bargaining of 1983, that Article 2 of the Convention which guarantees workers the right to constitute and join organisations of their choice is not intended as an expression of support either for the idea of trade union unity or for that of trade union pluralism; pluralism, however, should remain possible in all cases. The Committee therefore asks the Government to ensure that workers wishing to form unions other than occupational associations (which they are entitled to set up) outside the established structure that is directly linked to the General Federation of Trade Unions, may do so in conformity with Article 2.

2. Restrictions on the trade union rights of non-Arab foreign workers employed in the Syrian Arab Republic. Section 25 of Legislative Decree No. 84 only entitles such workers to form or join trade unions if they have been resident in Syria for one year and only if there are reciprocal rights. In the past, the Government has stated that reciprocal clauses are a matter of State sovereignty but that, in practice, every worker may belong to a union.

The Committee recalls that section 25 should be amended to ensure that all workers, without distinction whatsoever are entitled to join a trade union.

3. The wide powers of intervention of the authorities in trade union finances.

- The need for the prior consent of the General Federation of Workers' Unions and the approval of the Ministry for the acceptance of gifts, donations and legacies (section 32 of Legislative Decree No. 84).
- The obligation on unions to allocate a certain percentage of their income to the higher trade union bodies (section 36 of Legislative Decree No. 84 and section 12 of Legislative Decree No. 250).
- Financial supervision by the Ministry at all levels of the trade union organisation (section 35 of Legislative Decree No. 84).

Referring to the requirement of prior consent, the Government stated previously that it would not be logical for a trade union to accept a gift from a person or organisation if this was not in the interests of national objectives or if there were a risk of threat to the sovereignty of the country. The Government added, with regard to the obligation to allocate a certain percentage of trade union income to higher trade union bodies, that this concerned legally financed assistance. Finally, as regards the ministerial powers of supervision of trade union finances, the Government affirmed that this law was designed merely to ensure that the accounts are properly kept and should not affect the manner in which the trade unions use their funds nor the objectives of the unions. The instructions issued by the Ministry in 1968 concern the verification of funds and financial statements and the bodies dealing with financial management.

The Committee took note of these explanations but stressed the need for legislation to be brought into line with Article 3 of the Convention that guarantees workers' organisations the right to organise their administration without interference by the public

authorities. It recalled that supervision of union finances should not normally go beyond a requirement for the periodic submission of financial reports. On the other hand, if the administrative authority has a discretionary power to inspect the books and other documents of organisations or to carry out investigations and demand information at any time, there exists a serious risk of interference in trade union affairs. It therefore requested the Government to provide detailed information concerning the authority of the Ministry in this connection and the manner in which it is exercised.

4. Necessity to spend six months in an occupation before being eligible for trade union office (section 44 of Legislative Decree No. 84). The Government stated that this provision is designed to ensure that trade union leaders are competent and trained.

The Committee has indicated in paragraph 158 of its General Survey that provisions of this type may prevent qualified persons, such as pensioners or full-time union officers, from carrying out union duties. It therefore requests the Government to make its legislation more flexible by admitting as candidates persons who have previously been employed in the occupation concerned and by exempting from the occupational requirement a reasonable proportion of the officers of organisations, so as to allow the candidature of persons outside the profession.

5. Prohibition of strikes in the agricultural sector (section 160 of the Labour Code of 1958). The Government stated previously that a draft law had been prepared to repeal this provision.

In the opinion of the Committee, it is most important that legislation should not deprive agricultural trade unions of the right to strike, as this is an essential means by which they may promote and defend the occupational interests of their members.

The Committee trusts that the Government will examine the above conclusions and observations closely, and requests it, in its next report, to give full particulars of the measures taken or contemplated to remove the single trade union system imposed by law, grant trade union rights to all workers including foreigners, and remove excessive restrictions on the right of workers' organisations to elect their representatives freely and to organise their administration and activities without interference by the public authorities, including with regard to the exercise of the right to strike.

#### Togo (ratification: 1960)

For several years, the Committee's comments have related to the provisions of Ordinance No. 77-4, of 4 March 1977, and of Decree No. 77-66, of 14 March 1977, which provide for the compulsory deduction of trade union dues for the National Confederation of Workers of Togo (CNTT), designated by name in the legislation.

While recognising that the 1974 Labour Code, in section 4, places no obstacle in the way of trade union pluralism, the Committee emphasised that legal provisions designating a particular central organisation which benefits from a union security system are similar in their results to those establishing trade union monopoly. In this

connection, it referred to paragraphs 144 and 145 of its 1983 General Survey on Freedom of Association and Collective Bargaining.

In reply to the Committee's question concerning the possibility under the law for a central organisation other than the CNTT that came into existence to benefit at its own request from the deduction of its members' union dues after their agreement has been obtained, the Government indicates that in these circumstances there would be no problem since the current system of deductions is the result of the will of the workers. It adds that were a schism to occur within the CNTT there would be no obstacle for another central organisation to receive contributions from its members following their agreement. These statements coincide with those of the CNTT in the comments noted by the Committee in its previous observations.

Furthermore, on the question of the consequences of a refusal by workers who are members of the CNTT to pay their union dues, the Government indicates that there are no provisions covering this point but that, since the current deduction system for trade union dues received the prior assent of the workers, they are free to stop paying their dues. The Government, as a consequence, would only have the option of noting the situation.

While observing, as the Government states, that the principle of the compulsory deduction of trade union dues for the CNTT, which is designated by name, was introduced into the law following the agreement of the members of the CNTT, which is itself recognised by the workers as the only central organisation capable of defending the interests of its members, the Committee is of the opinion that the legislation respecting the compulsory deduction of trade union dues, in its current form, does not leave the possibility for another central organisation, that came into existence, to benefit from the current system and has the effect of limiting the principle of trade union pluralism that is recognised in the national legislation.

The Committee requests the Government to take steps to amend the legislation on this point. In this connection, one solution that could be envisaged by the Government would be the adoption of a provision making it possible, without naming them, for representative trade union organisations (according to the current law or practice) to request, following the agreement of their members, to benefit from the deduction of trade union dues.

The Committee requests the Government to indicate in its next report the measures that have been taken to bring the legislation into conformity with the Convention.

#### Trinidad and Tobago (ratification: 1963)

For several years now, the Committee has been requesting the Government to take steps to amend its labour legislation to bring it in line with the Convention. Provisions in breach with the Convention have been thoroughly documented in numerous comments of the Committee, as far back as 1969 in some instances. In its 1988 observation, the Committee reiterated the need to:

- amend provisions that afford a privileged position to registered associations, without providing objective and pre-established



criteria for determining the most representative association (sections 24(3) of the Civil Service Act, 28 of the Fire Service Act and 26 of the Prison Service Act);

- amend section 59(4)(a) of the Industrial Relations Act, as amended in 1978, so as to enable a simple majority of the voters in a bargaining unit (excluding those workers not taking part in the vote) to call a strike;
- amend section 65 of the same Act to ensure that any resort to the Court by the Ministry of Labour to end a strike is limited to cases of strikes in essential services in the strict sense of the term, that is to say, those in which the strike would endanger the life, personal safety or health of the whole or part of the population, or in cases of acute national crisis.

The Committee notes the adoption in 1987 of an amendment to section 61 of the Industrial Relations Act under which one party may now request the Minister, when a period of three months of continuing industrial action has elapsed, to refer an unresolved dispute to the Court for final determination. The Committee must point out that binding arbitration procedures, whether or not preceded by conciliation, must be designed to facilitate bargaining between the two sides, which means that it should be for the two parties to decide whether or not they wish to refer any matter in dispute to binding arbitration. Moreover, since this new provision entails the prohibition of recourse to strikes, the Committee insists that such prohibitions of strikes should be confined to: (a) public servants acting in their capacity as agents of the public authority; (b) services whose interruption would endanger the life, personal safety or health of the whole or part of the population; or (c) situations of acute national crisis.

The Committee also notes that the Government is still carefully considering the implications of amendments to sections 59(4) and 65 of the Industrial Relations Act, that it has appointed a high-level review committee to undertake a global review of all the Service Acts and regulations and pledged to keep it informed of developments in this matter. The Committee therefore requests the Government to indicate:

- the exact terms of reference of the review committee;
- whether a timetable and a deadline have been set for the submission of its report; and
- whether employers' and workers' organisations will have an opportunity to submit representations to that committee.

The Committee strongly hopes this latest initiative will be followed in the near future by implementing legislation along the lines it has been suggesting for many years and urges the Government to indicate in its next report the measures taken to bring its legislation into conformity with the Convention.

#### Tunisia (ratification: 1957)

The Committee takes note of the Government's report. It has also taken note of the report of the Committee on Freedom of Association concerning complaints against Tunisia (Case No. 1327) approved by the

Governing Body at its 236th and 239th Sessions, May-June 1987 and February-March 1988, respectively.

1. In its previous observation, the Committee urged the Government to take measures in accordance with the recommendations of the Committee on Freedom of Association with a view to re-establishing in full a trade union situation in conformity with the guarantees laid down by the Convention.

Reintegration of dismissed workers. The Committee notes with interest from the Government's report that the agreement of 25 May 1988 between the UGTT and the Government provides for the reintegration of all public sector workers dismissed for trade union activities and that section 1 of Act No. 88-98 of 18 August 1988 provides an amnesty for persons sentenced for offences committed while they were members of a trade union organisation. The Decree drawing up the list of persons covered by this amnesty is in the process of being published.

The Committee requests the Government to keep it informed of the implementation of measures to reintegrate and grant an amnesty to the persons concerned.

Normalisation of trade union activities. The Committee notes that a National Trade Union Commission whose membership covers all the different leanings was set up on 1 May 1988 with a view to renewing the basic structures and holding an extraordinary congress of the UGTT, in conformity with the principles of freedom of association. To facilitate the work in process, the Government has authorised, by means of Circular No. 62 of 15 August 1988 issued by the Prime Minister, the convening of congresses on the premises of public enterprises and the use of the meeting rooms of such enterprises for this purpose. In addition, Circular No. 66 of 22 August 1988 issued by the Prime Minister authorises public administrations and enterprises to withhold trade union dues at source upon request of public employees and agents wishing to join the UGTT. The Committee also notes that the dialogue between the Government and the workers has been resumed and that the workers were associated, through the UGTT National Trade Union Commission, with the drafting of the national Pact signed on 7 November 1988 and that the number of their representatives on the Economic and Social Council has increased from six to ten in accordance with Basic Act No. 88-12 of 7 March 1988.

The Committee requests the Government to continue to provide information on the measures taken to improve trade union life and on the work of the above National Trade Union Commission.

2. In its previous observation, the Committee expressed the hope that the Bill to revise the Labour Code would be adopted in the near future so as to bring the provisions of the Labour Code concerning the right to strike, which have been the subject of comments for several years, into conformity with the Convention, namely:

- sections 376 bis and 387 of the Code which prescribe that the central trade union organisation must give its approval for a strike to be called;
- sections 384 to 386 of the Code which provide for the ability to impose compulsory arbitration to end a strike that may affect the national interests;

- section 389 which provides for the ability to requisition workers where a strike is considered to be such as to affect the vital interests of the nation.

The Committee notes from the Government's report that the above Bill, which has been the subject of broad consultations, is to be examined item by item by the Council of Ministers before being adopted by the Chamber of Deputies. Thus, after examining the Bill concerning the representation of staff in enterprises, the Council of Ministers is to address the question of aligning national legislation with international labour standards.

In this context, the Committee wishes to recall that, while the proposed amendments to the provisions of the Labour Code on which it has already given its opinion in previous comments, tend towards a better application of the Convention, the proposed amendment whereby an absolute majority of the workers concerned is needed to call a strike should be modified so that the decision to have recourse to a strike may be taken by a simple majority of the voters in an enterprise (excluding workers not participating in the ballot). The Committee again draws the Government's attention to the need to amend section 389 of the Code in order to confine the authorities' power to requisition workers to cases in which a strike would affect essential services in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee trusts that it will be possible for the Bill relating to the above provisions to be re-examined in the light of its comments and to be adopted in the near future. It requests the Government to provide information on the progress made in harmonising its legislation with the Convention.

#### Ukrainian SSR (ratification: 1956)

The Committee notes the Government's report on the application of the Convention.

To the extent that the Committee's comments that are addressed to the Government of the USSR deal with situations and texts that are similar to those of the Ukrainian SSR, the Committee asks the Government to refer to the comments that it has made in respect of the Government of the USSR under this Convention.

#### USSR (ratification: 1956)

The Committee notes the Government's report and the debate and the comments at the Conference Committee in 1987.

It recalls that its comments dealt with the system of trade union monopoly, the links between the Communist Party and the trade unions and the right to meet being made subject to prior authorisation.

1. The right of workers to establish organisations of their own choosing without previous authorisation

In the comments that it has been making since 1960, the Committee has pointed out that any congress, conference or meeting, under the terms of Order No. 908 of 15 May 1935, was subject to prior authorisation. It considered that this Order could give the public authorities the possibility of opposing the establishment of a new organisation or a new federation or confederation by, for example, refusing authorisation for a constitutive assembly of an occupational organisation to meet.

In its previous reports, the Government on many occasions indicated that the provisions of this Order had never been applied to occupational organisations and that they were considered to have fallen into abeyance.

The Committee requested the Government to supply information on any change in the legislation in this respect.

In its last report, the Government indicates that Order No. 908 of 15 May 1935 has ceased to apply to the holding of congresses, conferences and meetings of co-operative organisations, trade unions and other social organisations, by virtue of Order No. 391 of the Council of Ministers of the USSR of 29 March 1988, and it supplies a copy of this Order which expressly provides in its title that Order No. 908 of 15 May 1935 partially ceases to be in force and, more specifically in the text itself, that Order No. 908 of 15 May 1935, "concerning authorisation for holding congresses, conferences and meetings" organised by co-operative organisations, trade unions and other social organisations is no longer in force.

The Committee notes with satisfaction the contents of Order No. 391 of 29 March 1988.

2. The right of workers to establish organisations of their own choosing outside the existing trade union structure

In its previous comments, the Committee noted several provisions of the Labour Codes of the federated republics and the regulations issued thereunder which establish the pre-eminence of the local factory or works trade union committee for the representation of workers, to the exclusion, in practice, of any other trade union organisation which might wish to act in defence of the occupational and economic interests of the workers in a factory or works, particularly in the RSFSR:

- section 7 of the Labour Code of 1971, which provides that collective agreements are concluded in the name of the employees by the local factory or works trade union committee with the administration of the enterprise or organisation concerned;
- section 230 of the Code, which deals with the rights of the local factory or works trade union committee and its relations with the management of an enterprise, institution or organisation, including: that of representing the interests of the workers in an enterprise, institution or organisation in the fields of

production and work and of organising socialist competition jointly with the management and of promoting a communist attitude towards work;

- sections 231, 233, 234 and 235 of the Code, which deal with the powers and functions of the trade union committee; and
- the Decree of the Presidium of the Supreme Soviet, issuing regulations respecting the rights of the local factory or works trade union committee, of 27 September 1971, which describes in detail the powers of these committees.

In its previous reports, the Government indicated that the Fundamental Principles Governing Labour Legislation of the USSR and the provisions of the Labour Codes of the federated republics do not prohibit the establishment of trade unions other than existing trade unions.

The Committee considered that, if a trade union were established outside the existing trade union structure, it would be impossible for it to exercise trade union activities to defend the occupational and economic interests of its members, since the 1971 Regulations respecting the rights of local factory and works trade union committees (and certain provisions of the Labour Code of the RSFSR) attribute these functions to the trade union committees of enterprises, institutions and organisations, which are bodies of the existing trade union structure, and it requested the Government to re-examine the legislation in order to guarantee workers, who so wish, the right to establish trade unions of their own choosing outside the existing trade union structure, in accordance with Article 2 of the Convention, and to indicate whether initiatives had been taken by workers to establish organisations that are independent of the existing trade union structure and, if this is the case, to indicate the results.

During the discussion in the Conference Committee in 1987 and in its last report, the Government once again stated that neither the Constitution, nor the Fundamental Principles Governing Labour Legislation, nor the Labour Code of the RSFSR restrict the number of occupational organisations in an enterprise. The State does not intervene in the internal workings of trade unions, which act in accordance with their by-laws, and the legislation does not provide for the registration of these by-laws. In the USSR, the trade unions participate in the management of the State since the legislation recognises their right to legislative initiative and to participate in the formulation of legislation. The new Act of 30 June 1987 on state enterprises (amalgamation), together with reforms in economic management, associates them more closely through workers' collectives in the management of enterprises on a new basis of collaboration between workers and management.

With regard to the 1971 Regulations, the Government indicates once again that no provision prohibits the establishment of trade unions. The Government emphasises the fact that the national legislation does not impose trade union monopoly; however, workers in the USSR are of the opinion that the unity of the trade union movement is the most important achievement of the workers and that the existence of several trade union organisations competing within the same country is prejudicial to the workers' struggle for their rights. The Government repeated its previous declarations to the

effect that trade union unity in the USSR had happened immediately after the socialist revolution in 1917. It admits, however, the need to improve trade union legislation and announces that proposals have been made to adopt a special law on trade unions to define the rights of workers, the functions, duties and role of trade unions and to empower them to reject any Government decision that is contrary to the interests of the workers and has been taken without the agreement of the trade unions, thereby giving the trade unions the role of a counterbalance to technocratic powers. The Government also supplied statistical data on the increase in the functions of trade unions and indicates in reply to the Committee's observation on this point that it has no information available on whether initiatives have been taken by workers to establish workers' organisations that are independent of the existing trade union structure.

The Committee notes these statements and this information and observes that the new Act on state enterprises of 1987 grants the work collectives - which includes workers, work-team leaders, foremen, specialists and representatives of management and the Party, trade union, young communists and other public organisations - greater independence in the management of the enterprise. It also notes that Decree No. 8430-XI of the Presidium of the Supreme Soviet of the USSR of 4 February 1988 introduces the self-management system for work collectives, and gives the works trade union committee greater power of control over the dismissal of managerial-level employees in the enterprise.

While noting these measures, the Committee points out that the principles of Convention No. 87 do not have the effect of supporting either trade union unity or trade union pluralism. The purpose of the Convention is to make trade union pluralism possible in all cases. In the Committee's opinion, the national legislation, and particularly the 1971 Regulations, which attribute trade union functions solely to the bodies of the existing trade union structure, restrict the possibility of other organisations, should they be established outside this structure, exercising trade union functions to further and defend the interests of their members and are liable to restrict the interest of workers in establishing other trade union organisations outside this structure.

The Committee notes the Government's reaffirmed wish to pursue dialogue and trusts that it will take into account the Committee's comments, in the context of its enterprise reforms, and that it will be possible to take measures to lift the legislative restrictions and recognise the rights and functions necessary to defend and further the interests of the members of any trade union that might be established outside the existing structure.

### 3. The leading role of the Communist Party

In its previous comments, the Committee noted that under the terms of the Constitution - and in particular of section 6, under which the Communist Party of the Soviet Union is the leading and guiding force of Soviet society and the nucleus of its political system, of all state organisations and social organisations - that the Party determines the general perspectives of the development of society

within which trade unions must act, which, contrary to the provisions of Article 3 of the Convention, does not guarantee trade unions the right to exercise their activities freely and in full independence.

In its report, the Government emphasises once again the fact that the relations between the Party and the trade unions do not affect the application of the Convention since this relationship is of a political and not a legal nature. The Government points out that the Party and the trade unions have common objectives and that the role of the Party, as the historic guide of the trade union movement, is to increase the role of trade unions in all spheres of activity in the country without the Party exercising trade union activities. The Government points out that section 7 of the Constitution provides that trade unions participate in managing the State and in deciding political, economic and social matters in accordance with the functions accorded to them by the law. Trade unions act in full independence and the statutes of trade unions adopted at the XVIIIth Congress contain no provisions that give the Party the right to restrict the freedom or activities of trade unions, which are independent, non-political, mass organisations.

The Committee notes these statements and observes that the principle laid down in section 6 of the Soviet Constitution is taken up again in section 6 of the 1987 Act on state enterprises (amalgamation) which provides that the Party organisation in the enterprise is the political nucleus of the work collective, that it functions within the framework of the Constitution of the USSR and that it guides the work of the entire collective and its self-management bodies, trade unions, young communists and other public organisations, and that it supervises the activities of management.

The Committee is therefore once again bound to draw the Government's attention to the importance of the independence of trade unions, which is an indispensable condition to enable them to play the role of defending and promoting the interests of their members. In the Committee's opinion, the relationship established by the national legislation between the Party and trade union organisations is contrary to Article 3 of the Convention since the State, as the legislator, through this provision restricts the rights of such organisations to organise their activities and formulate their programmes.

The Committee hopes that it will be possible to re-examine these matters in the light of its comments. It requests the Government to report on any measures that have been taken or are envisaged to ensure that the legislation is in conformity with the Convention with regard to the right of workers to establish trade union organisations outside the existing trade union structure, should they so wish, and the right of workers' organisations to organise their activities and formulate their programmes in full independence and without interference from the public authorities.



United Kingdom (ratification: 1949)

1. The Committee notes the information set out in the Government's report, and the observations of the Trades Union Congress (TUC) which were contained in a letter dated 13 January 1989. The Committee also notes the information supplied by a Government representative to the Conference Committee in 1988 and the subsequent discussion thereon, together with the further comments of the Committee on Freedom of Association in relation to Case No. 1261 [259th Report of the Committee, approved by the Governing Body in November 1988, paragraph 14].

2. Dismissal of workers at Government  
Communications Headquarters (GCHQ)

The Committee notes with regret that 13 employees at GCHQ have now been dismissed because of their refusal to give up membership of the union of their choice. The Committee notes that the Government remains of the view that Convention No. 87 cannot be examined in isolation from Conventions Nos. 98 and 151, and that Article 1(2) of the latter takes precedence over Convention No. 87. The Committee must again remind the Government that the supervisory bodies of the ILO have consistently taken the view that this is not the case, and that Article 2 of Convention No. 87 guarantees to all workers without distinction whatsoever, including public servants, the right freely to establish and to join organisations of their own choosing.

The Committee also notes that the Government considers that the functions carried out by the staff of GCHQ are in many cases identical with those carried out by members of the armed forces working in the same field. In support of this proposition the Government refers to the decision of the European Commission of Human Rights in Case No. 11603/85. The Government seems to suggest that this means that the civilian workforce at GCHQ should be regarded as falling within the scope of the "armed forces" exemption in Article 9 of the Convention. In this connection the Committee must point out that it has always taken the view that the armed forces and the police are the only categories of workers which, in accordance with the Convention, may be excluded from the guarantees provided therein [General Survey, 1983, paragraph 89]. For these purposes, only workers who are recognised under national law or regulations as forming part of the army or the police can be regarded as coming within the scope of the exemption. This does not appear to be the case in relation to civilian employees at GCHQ.

The Committee notes with regret that the Government still feels that no useful purpose would be served by renewed negotiations with the relevant trade unions. The Committee remains of the view that such negotiations offer the most appropriate means of providing a resolution to this issue which is consistent with the requirements of the Convention. In the light of the foregoing, the Committee can only: (1) urge the Government to reconsider its position on the usefulness of further negotiations; and (2) reiterate that workers at GCHQ are entitled to join the organisation of their own choosing in accordance with Article 2 of the Convention.



### 3. Article 3 of the Convention

#### (a) General

The Committee notes that the Employment Act of 1988 received the Royal Assent on 26 May 1988. It thus became the fourth major piece of industrial relations legislation in the United Kingdom since 1980 (the others being the Employment Act of 1980, the Employment Act of 1982 and the Trade Unions Act of 1984).

This clearly suggests that the Government has engaged in a systematic attempt to restructure industrial relations law in the United Kingdom. The first and second measures in this legislative programme were principally concerned with the regulation of certain forms of strikes and other industrial action (notably, picketing and "secondary action"), and with union security arrangements. The Acts of 1984 and 1988 were more concerned with the internal rules and practices of trade unions.

The Committee fully recognises that the reform of the law on labour relations is both legitimate and necessary in order to ensure that the industrial relations system operates in an equitable and efficient manner, and that it adequately reflects current social and economic needs. Legislative change cannot, therefore, be criticised simply because it attempts to alter the status quo. However, where the position of organisations of employers and workers is altered to their disadvantage, then it is incumbent upon the Committee carefully to examine those changes in order to ensure that they are not incompatible with the guarantees provided by the Convention.

Given the nature and scale of legislative change in recent years, the Committee considers that it is now appropriate to examine the overall effect of the Acts of 1980, 1982, 1984 and 1988, and to consider whether they are consistent with the requirements of the Convention, with special reference to Article 3.

In carrying out this examination, the Committee has taken note of the complaint presented to the Committee on Freedom of Association by the Trades Union Congress (supported by the International Confederation of Free Trade Unions), the National Union of Mineworkers and the International Mineworkers' Organisation. This complaint (Case No. 1439) was contained in communications dated 22 February, 14 September, 2 November and 20 December 1988. The Committee has also taken note of the Government's response to this complaint as set out in communications dated 23 March 1988 and 16 January 1989. The Committee further notes that, at its meeting in February-March 1989, the Committee on Freedom of Association decided to adjourn its consideration of Case No. 1439 pending the examination of the relevant legislation by this Committee [262nd Report of the Committee on Freedom of Association, paragraph 9].

#### (b) Overall impact of the legislation

The Committee considers that there is no incompatibility between Article 3 and a number of aspects of the legislation which were challenged by the complainants in Case No. 1439: (i) the election of union officers; (ii) the removal of union trustees; (iii) union

members' right of access to their union's accounting records; (iv) political expenditure by trade unions; (v) exclusion or expulsion from a union where a union membership agreement is in operation; (vi) access to the courts for union members who have a grievance against their union; (vii) ballots in respect of industrial action; and (viii) the role, as presently defined, of the Commissioner for the Rights of Trade Union Members.

The Committee does, however, consider that a number of other aspects of the legislation are not compatible with the requirements of the Convention. These relate to: the concept of "unjustifiable discipline" as set out in section 3 of the 1988 Act; section 8 of the 1988 Act concerning the indemnification of trade union members and officials; the erosion of legislative protection against civil liability for industrial action; and dismissals in connection with strikes and other industrial action.

The Committee is also concerned that certain of the provisions which it considers not to be incompatible with the requirements of the Convention - notably those relating to the Commissioner for the Rights of Trade Union Members - could be applied in a manner which would be inconsistent with the letter or the spirit of the Convention. Accordingly, it asks the Government in its future reports to provide information as to the practical operation of these provisions.

(c) "Unjustifiable discipline" and  
section 3 of the 1988 Act

The Committee notes that section 3(1) of the 1988 Act provides that all members or former members of a union have the right not to be "unjustifiably disciplined" by that union. "Discipline" for these purposes includes being expelled from the union or a branch or section thereof; the imposition of a fine; deprivation of, or denial of access to, the benefits, services or facilities which would otherwise be available by virtue of union membership; or being subjected to "any other detriment" (section 3(5)).

The grounds upon which disciplinary action would be regarded as "unjustified" are set out in section 3(3). They relate principally to disciplinary measures imposed because of: a refusal to participate in industrial action; encouraging or assisting another person to refuse to participate in industrial action; and complaining that a union or an official thereof has acted, or proposes to act, in an unlawful manner.

The Committee recalls that one of the basic rights which is guaranteed by Article 3 of the Convention is the right of organisations of workers and employers to draw up their constitutions and rules free from any interference which would restrict this right or impede the lawful exercise thereof. It is clear that provisions which deprive trade unions of the capacity lawfully to give effect to their democratically determined rules are, *prima facie*, not in conformity with this right. Section 3 of the 1988 Act clearly has this effect, and on that basis is not in conformity with Article 3.

The Committee, nevertheless, considers that the right of organisations to draw up their constitutions and rules must be subject to the need to respect fundamental human rights and the law of the

land (bearing in mind that Article 8(2) of the Convention stipulates that the law of the land shall not be such as to impair the guarantees provided for in the Convention). This means that it would not be inconsistent with the requirements of the Convention to require that union rules must not discriminate against members or potential members on grounds of race or sex. The same is true for provisions (such as section 3(3)(c) of the 1988 Act) which state that unions may not discipline members who, in good faith, assert that their union has breached its own rules, or the law of the land. However, the Committee is also of the view that the nature and extent of legislative incursions upon union autonomy must be limited to that which is absolutely necessary in order to achieve these objectives - otherwise the rights guaranteed by Article 3 would be deprived of all practical effect. It follows that proper respect for the guarantees provided by Article 3 requires that union members should be permitted, when drawing up their constitutions and rules, to determine whether or not it should be possible to discipline members who refuse to participate in lawful strikes and other industrial action or who seek to persuade fellow members to refuse to participate in such action. Section 3 of the Act should be amended so as to take account of this view.

(d) Indemnification of union members  
and officials

The Committee notes that section 8 of the 1988 Act makes it unlawful for the property of any trade union to be applied so as to indemnify any individual in respect of any penalty which may be imposed upon that individual for an offence or for contempt of court. This prohibition applies even in the face of an express provision in the rules which permits indemnification, and where the offence or contempt was committed on the express instructions of the union itself.

The Committee has consistently taken the view that legislative provisions which are intended to ensure sound administration and the honest and efficient management of union funds and other funds and assets are not incompatible with the Convention [General Survey, 1983, paragraphs 182 and 183]. However, such provisions should not be of such a character as to deprive unions of the right to draw up their constitutions or rules and to organise their administration and activities free of interference by the public authorities - nor should they deny trade unions the right to utilise their funds as they wish for normal and lawful trade union purposes. Section 8 of the 1988 Act appears to do both of these things, and as such is not compatible with the guarantees provided by Article 3 and should be repealed.

(e) "Immunities" in respect of civil  
liability for strikes and other  
industrial action

The Committee has always considered that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests as guaranteed by Articles 3, 8 and 10 of the Convention [General Survey, paragraph 200]. It has also taken the

view that restrictions relating to the objectives of a strike and to the methods used should be sufficiently reasonable as not to result in practice in an excessive limitation of the exercise of the right to strike [General Survey, paragraph 226. See also paragraphs 218-220.].

The Committee notes that the common law renders virtually all forms of strikes or other industrial action unlawful as a matter of civil law. This means that workers and unions who engage in such action are liable to be sued for damages by employers (or other parties) who suffer loss as a consequence, and (more importantly in practical terms) may be restrained from committing unlawful acts by means of injunctions (issued on both an interlocutory and a permanent basis). It appears to the Committee that unrestricted access to such remedies would deny workers the right to take strikes or other industrial action in order to protect and to promote their economic and social interests.

It is most important, therefore, that workers and unions should have some measure of protection against civil liability. There has been legislative recognition of this imperative since 1906 in the form of a series of "immunities" (or, more accurately, "protections") against tort action for trade unions and their members and officials. The current version of the "immunities" is to be found in the Trade Union and Labour Relations Act 1974.

The scope of these protections has been narrowed in a number of respects since 1980. The Committee notes, for example, that section 15 of the 1974 Act has been amended so as to limit the right to picket to a worker's own place of work or, in the case of a trade union official, the place of work of the relevant membership, whilst section 17 of the 1980 Act removes protection from "secondary action" in the sense of action directed against an employer who is not directly a party to a given trade dispute. In addition, the definition of "trade dispute" in section 29 of the 1974 Act has been narrowed so as to encompass only disputes between workers and their own employer, rather than disputes between "employers and workers" or "workers and workers" as was formerly the case.

Taken together, these changes appear to make it virtually impossible for workers and unions lawfully to engage in any form of boycott activity, or "sympathetic" action against parties not directly involved in a given dispute. The Committee has never expressed any decided view on the use of boycotts as an exercise of the right to strike. However, it appears to the Committee that where a boycott relates directly to the social and economic interests of the workers involved in either or both of the original dispute and the secondary action, and where the original dispute and the secondary action are not unlawful in themselves, then that boycott should be regarded as a legitimate exercise of the right to strike. This is clearly consistent with the approach the Committee has adopted in relation to "sympathy strikes":

It would appear that more frequent recourse is being had to this form of action [i.e. sympathy strikes] because of the structure or the concentration of industries or the distribution of work centres in different regions of the world. The Committee considers that a general prohibition of sympathy strikes could lead to abuse and that workers should be able to take such action

provided the initial strike they are supporting is itself lawful. [General Survey, paragraph 217.]

Other changes to the definition of "trade dispute" in the 1974 Act also appear to impose excessive limitations upon the exercise of the right to strike: (i) the definition now requires that the subject-matter of a dispute must relate "wholly or mainly" to one or more of the matters set out in the definition - formerly it was sufficient that there be a "connection" between the dispute and the specified matters. This change appears to deny protection to disputes where unions and their members have "mixed" motives (for example, where they are pursuing both "industrial" and "political" or "social" objectives). The Committee also considers that it would often be very difficult for unions to determine in advance whether any given course of conduct would, or would not, be regarded as having the necessary relation to the protected purposes; (ii) the fact that the definition now refers only to disputes between workers and "their" employer could make it impossible for unions to take effective action in situations where the "real" employer with whom they were in dispute was able to take refuge behind one or more subsidiary companies who were technically the "employer" of the workers concerned, but who lacked the capacity to take decisions which are capable of satisfactorily resolving the dispute; and (iii) disputes relating to matters outside the United Kingdom can now be protected only where the persons whose actions in the United Kingdom are said to be in contemplation or furtherance of a trade dispute relating to matters occurring outside the United Kingdom are likely to be affected in respect of one or more of the protected matters by the outcome of the dispute. This means that there would be no protection for industrial action which was intended to protect or to improve the terms and conditions of employment of workers outside the United Kingdom, or to register disapproval of the social or racial policies of a government with whom the United Kingdom has trading or economic links. The Committee has consistently taken the view that strikes that are purely political in character do not fall within the scope of the principles of freedom of association. However, it also considers that trade unions ought to have the possibility of recourse to protest strikes, in particular where aimed at criticising a government's economic and social policies [General Survey, paragraph 216]. The revised definition of "trade dispute" appears to deny workers that right.

The Committee considers that the overall effect of legislative change in this area since 1980 is to withdraw protection from strikes and other forms of industrial action in circumstances where such action ought to be permissible in order to enable workers and their unions adequately to protect and to promote their economic and social interests, and to organise their activities [General Survey, paragraphs 200 and 226]. Accordingly, it would ask the Government to introduce amendments which enable workers to take industrial action against their "real" employer and which accord adequate protection of the right to engage in other legitimate forms of industrial action such as protest strikes and sympathy strikes, as guaranteed by Articles 3, 8 and 10 of the Convention.

(f) Dismissals in connection with industrial action

The Committee considers that it is inconsistent with the right to strike as guaranteed by Articles 3, 8 and 10 of the Convention for an employer to be permitted to refuse to reinstate some or all of its employees at the conclusion of a strike, lock-out or other industrial action without those employees having the right to challenge the fairness of that dismissal before an independent court or tribunal. The Committee on Freedom of Association has adopted a similar approach [see Digest of Decisions and Principles of the Committee on Freedom of Association, 3rd edition, 1985, paragraphs 442, 444, 445, 555 and 572].

In this connection, the Committee notes that common law strikes and most other forms of industrial action constitute a repudiatory breach of the individual worker's contract of employment. This has the consequence that the employer may lawfully treat the employment relationship as at an end without more ado. This happens only infrequently in practice. But it can happen, and the Committee is aware that there have been a number of situations in recent years where employers have used the fact that their employees were on strike as an excuse for dispensing with the services of their entire workforce, and recruiting a new one.

The Committee also notes that a lock-out would also constitute a repudiatory breach of the contracts of employment of the workers concerned. However the common law does not provide a means whereby those workers could obtain reinstatement in their employment, no matter how arbitrary or unreasonable the employer's behaviour had been. Furthermore, it would be in only very exceptional circumstances that such workers could obtain other than nominal damages at common law.

It is clear, therefore, that the common law does not accord workers who have been dismissed in connection with a strike, lock-out or other form of industrial action the right to present a complaint against that dismissal to a court or other authority independent of the parties concerned. The same is true of statutory provision relating to unfair dismissal - subject to the limited measure of protection which is afforded to those who are subjected to "discriminatory dismissal" within the meaning of section 62 of the Employment Protection (Consolidation) Act 1978 (as amended by section 9 of the 1982 Act). The Committee considers that this latter provision does not provide adequate protection for the purposes of the Convention: (i) because it still permits an employer to dismiss an entire workforce, even where the employer has initiated a lock-out or has provoked a strike through entirely unreasonable behaviour; and (ii) because an employer can re-hire on a discriminatory basis so long as there is a gap of three months between the dismissal of the "victimised" workers and the re-hiring. Consequently, the Committee asks the Government to introduce legislative protection against dismissal, and other forms of discriminatory treatment such as demotion or withdrawal of accrued rights, in connection with strikes and other industrial action so as to give effect to the principles set out above.

(g) Complexity of the legislation

Finally, the Committee feels bound to express its concern at the volume and complexity of legislative change since 1980. This leads the Committee to the conclusion that some reconsideration of the form and content of the legislation would be advantageous. The Committee is reinforced in this view by four considerations in particular:

- (i) Whilst it is true that most of the legislative measures under consideration are not incompatible with the requirements of the Convention, there is a point at which the cumulative effect of legislative changes which are in themselves consistent with the principles of freedom of association may nevertheless, by virtue of their complexity and extent, constitute an incursion upon the rights guaranteed by the Convention.
- (ii) The effect of piecemeal reforms, often introduced in order to achieve quite narrow objectives, has been to generate uncertainty in some areas of the law. This in turn may lead to unintentional breaches of the Convention and may inhibit lawful industrial action.
- (iii) The inherent flexibility of the common law system further exacerbates these difficulties, given that the exact scope of the law, and the impact of statutory provisions upon it, may not be clear until the matter has been determined by a court of law.
- (iv) Many of the recent changes have had as one of their principal aims the prevention of abuse of industrial power by trade unions. They have also sought to give clearer protection to the "rights" of the individual. The legislation appears to demonstrate a lesser concern for the "rights" of trade unions. The Committee considers that a more positive statement of these rights would be of advantage.

The Committee trusts that the Government will give positive consideration to these points, and asks it to indicate in its next report whether it has taken, or is contemplating taking, measures to codify, clarify and simplify its legislation concerning industrial relations.

Yemen (ratification: 1976)

The Committee notes the Government's report.

For several years, the Committee has been noting a number of discrepancies between the legislation and the Convention, concerning the following points:

Article 2 of the Convention

- The exclusion of public servants, employees and manual workers employed in the State administration and certain agricultural workers from the scope of the Labour Code (section 3).
- Prior authorisation for the establishment of a trade union (section 154 of the Labour Code; section 57 of the Regulations



respecting the model statutes of the general trade union of manual and non-manual employees).

- Single trade union structure (sections 129, 138 and 139 of the Labour Code and sections 5(h), 41, 42, 43 and 47(a) of the Regulations).
- The high number of workers required to establish trade union bodies: 50 for a trade union, 50 for a trade union committee and 100 for a general trade union (sections 21, 137, 138 and 139 of the Labour Code and section 55 of the Regulations).

#### Article 3 of the Convention

- Interference by the public authorities in: (a) the financial administration of trade unions (sections 132(2) and (4) and 133(13) and (14) of the Labour Code); (b) trade union activities (section 145(2) of the Labour Code and section 34 of the Regulations); (c) the formulation of their constitutions and rules (section 150 of the Labour Code and section 62 of the Regulations).
- The prohibition on political activities (section 132 of the Labour Code) and restrictions on the activities of trade unions to support their claims (section 16 of Ministerial Order No. 42 of 1975 concerning the procedures for the settlement of industrial disputes).

#### Article 4 of the Convention

- The dissolution of a trade union by administrative authority (section 157 of the Labour Code).

#### The right to organise of public servants and certain agricultural workers

With regard to public servants employed in the administration of the State who are excluded from the scope of the Labour Code, the Committee notes with interest that Act No. 49 of 1977 concerning the terms and conditions of employment of state employees has been amended by Act No. 1 of 1988 respecting the public service and that trade union organisations exist in all provinces. In this connection, the Committee notes that trade unions have been established in various public establishments.

The Committee recalls that the Convention applies to all workers, without distinction whatsoever, with the exception of the armed forces and the police (Article 9 of the Convention) and requests the Government to indicate whether the right to organise is recognised for all public servants, particularly those engaged in the administration of the State and the staff of teaching establishments. It also requests the Government to continue supplying information on the development of the unionisation process by indicating, in particular, the number of workers and sectors covered by this process, and it requests it to supply the text of Act No. 1 of 1988.

With regard to the agricultural workers who are excluded from the scope of the Labour Code, the Committee notes that, according to the



Government, they are organised into associations with the role of supplying their members with the assistance that they need, while at the same time seeking to further the interests of the national economy, in accordance with Act No. 11 of 1963 respecting associations.

The Committee requests the Government to indicate the legislative provisions which guarantee agricultural workers the right to organise and requests it to supply the text of Act No. 11 of 1963 and the text of the by-laws of the agricultural workers' associations mentioned by the Government with its next report.

#### Prior authorisation for the establishment of a trade union

For several years the Committee has been noting that the establishment of a trade union is subject to obtaining authorisation from the competent authorities, whose role is, among other things, to ascertain the allegiances of the persons submitting the application and make sure that they have not been accused of jeopardising the security of State or sentenced for dishonourable acts, in accordance with section 154 of the Labour Code.

The Committee also notes that section 57 of the Regulations is more restrictive than the Labour Code, since the examination of the application deals with whether the applicant has been sentenced for a crime or a dishonourable offence.

The Committee requests the Government to indicate under which provisions of the Labour Code and the Regulations the authorities make their decision. It also requests the Government to indicate the offences covered by section 57 of the Regulations.

#### The unitary structure of the trade union organisation

In its previous comments, the Committee noted that the trade union organisation set up by the legislation resulted in a single trade union structure by providing for: the existence of only one trade union committee per occupation and per enterprise and for only one branch of a general union per occupation and per town, gathered together in one federation (sections 129, 138, 139 and 158 of the Labour Code and sections 41 and 43 of the Regulations); the establishment of only one federation in the Republic (section 5(h) of the Regulations); and the supervision of base-level trade unions by higher trade union bodies (sections 42 and 47(a) of the Regulations). It also noted that authorisation for the creation of a trade union committee was only given if there were at least 50 workers in the enterprise or in the same occupation and that this figure was raised to 100 for the establishment of a trade union (sections 2, 137 and 138 of the Labour Code and section 55 of the Regulations).

While it is not for the Committee to favour either trade union unity or trade union pluralism, the principle set forth in Article 2 of the Convention, under which all workers shall have the right to establish and join organisations of their own choosing, implies that trade union pluralism should be possible. In the Committee's opinion,

by only permitting the establishment of one trade union under the above conditions, the legislation does not observe this principle.

The Committee therefore requests the Government to take measures in order to guarantee workers the right, should they so wish, to establish trade unions outside the existing trade union structure.

#### Interference by the public authorities

For several years, the Committee has been noting that the legislation empowers the public authorities to intervene in the activities of trade unions, particularly by making a number of financial operations subject to prior authorisation by the Minister (section 132(2), (4) and (6) of the Labour Code), by imposing the allocation of trade unions' funds for certain items of expenditure (section 133(13) and (14) of the Labour Code), by providing for the supervision of the constituent assemblies of trade unions by a representative of the labour administration (section 145(2) of the Labour Code and section 34 of the Regulations) and by empowering the labour administration to amend at any time the rules of a trade union (section 150 of the Labour Code and section 62 of the Regulations).

The Committee points out that under the terms of Article 3 of the Convention, workers' organisations have the right to organise their administration, elect their representatives in full freedom and draw up their constitutions and rules without the public authorities interfering to restrict this right or impede the lawful exercise thereof.

The Committee therefore requests the Government to amend the above provisions in order to bring the legislation into conformity with the Convention in this respect.

#### Political activities and restrictions on trade union action to support their claims

In its previous comments, the Committee noted that trade unions were not authorised to undertake political activities (section 132 of the Labour Code) and that by virtue of section 16 of Ministerial Order No. 42 of 1975, any action to support a claim could be stopped if, in the Minister's opinion the dispute was becoming important.

In its report, the Government emphasises that the workers and their trade unions participate in the various political activities of the country on the same basis as the rest of the population. It also indicates that Order No. 42 of 1975 has been amended by Ministerial Order No. 4 of 1986 respecting the procedural rules before arbitration committees, in such a way that these orders, read in conjunction with the Labour Code, guarantee all the rights and obligations of the social partners.

While noting this information, the Committee points out that the right of trade union organisations to organise their activities and formulate their programmes implies that these same organisations can turn their attention to problems of general interest, and therefore of a political nature in the widest sense of the term, and publicly demonstrate their opinion concerning economic and social policy with the purpose of defending the interests of their members. In this

context the Committee also points out that the right to call a strike is one of the essential means which ought to be available to these organisations to defend the interests of their members (Article 10 of the Convention), and that the official disputes settlements procedure must not be such as to limit the exercise of the right to strike.

The Committee therefore requests the Government to supply information on the rights and duties of workers' organisations in relation to the right to strike. It also requests the Government to supply a copy of Ministerial Order No. 4 of 1986.

#### Dissolution by administrative authority

For several years, the Committee has been noting that section 157 of the Labour Code empowers the Council of Ministers to dissolve a trade union, contrary to the terms of Article 4 of the Convention.

The Committee points out that the dissolution of a trade union is an extremely serious step which must therefore be accompanied by the appropriate legal protection. Furthermore, in accordance with the principles set forth in Article 4 under which workers' organisations cannot be dissolved by administrative authority, it should be possible to appeal to the judicial authorities before a decision taken by the administrative authority takes effect and the judicial authorities should also be competent to examine the basis of the case and study the grounds for the dissolution or suspension of an organisation.

The Committee therefore requests the Government to take the necessary steps to give effect to the Convention on this point.

The Committee notes that the Government is currently undertaking the amendment of the Labour Code in order to bring it into conformity with international conventions and adapt it to the country's economic and social development.

The Committee trusts that the Government will take account of its comments and requests it to indicate in its next report the measures that have been taken to bring the legislation into conformity with the Convention on these various points.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Australia, Bangladesh, Barbados, Benin, Bolivia, Burkina Faso, Canada, Central African Republic, Chad, Colombia, Costa Rica, Dominica, Egypt, Gabon, Guinea, Kuwait, Mali, Mexico, Nigeria, Pakistan, Portugal, Romania, Saint Lucia, Senegal, Switzerland, Venezuela, Yemen.

### **Convention No. 88: Employment Service, 1948**

#### Sierra Leone (ratification: 1961)

The Committee notes from the reply of the Government to its earlier comments that the draft Employment Service Regulations to

which the Government has been referring for a number of years is still under consideration.

The Committee trusts that the new provisions will be adopted very shortly and that the next report will contain the information previously requested on: (a) the setting up of national, and where necessary regional and local, advisory committees ensuring the participation of employers' and workers' representatives in equal numbers in the organisation and operation of the employment service and in the development of the general policy of this service, in accordance with Articles 4 and 5 of the Convention; and (b) the determination of the functions of the employment service in accordance with Article 6 of the Convention.

\* \* \*

In addition, a request regarding certain points is being addressed directly to Colombia.

#### **Convention No. 89: Night Work (Women) (Revised), 1948**

A request regarding certain points is being addressed directly to the United Arab Emirates.

#### **Convention No. 91: Paid Vacations (Seafarers) (Revised), 1949**

##### Brazil (ratification: 1965)

1. The Committee refers to its observations over many years in which it has pointed out that, under Article 3, paragraphs 2 and 3, of the Convention, there should be entitlement to a proportionate holiday and corresponding remuneration when a seafarer leaves his engagement after completion of from one to six months' service; and, under Article 4, annual holidays are to be given by mutual agreement at the first opportunity as the requirements of the service allow. The Committee pointed out that, in order to give full effect to the above provisions of the Convention, the relevant provisions of the Consolidated Labour Laws needed to be adapted.

2. The Government states in its report that most maritime workers currently enjoy periods of vacations with pay of 30 days under collective agreements, and that certain employers grant two periods of vacation of 20 days, one for each six months of work. In this connection, the Committee notes with interest that the collective agreements between certain shipowners and seafarers' organisations which the Government has transmitted contain provision for longer annual paid vacations than laid down in the Convention.

3. However, the Government indicates that, under the terms of section 136 of the Consolidated Labour Laws, the annual holidays to which employees are entitled should be taken at the period most convenient to the employer and that this is a general standard

applicable to all workers (including, it would seem, the maritime workers covered by the above-mentioned collective agreements).

4. The Committee can only once again express the hope that, when the current legislation is revised as anticipated, the positive measures needed to correct the discrepancies in the legislation will be adopted in favour of all workers covered by the Convention. The Committee would be grateful if the Government would also indicate how the application of the provisions of the Convention is ensured in respect of seafarers and shipowners not covered by collective agreements.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Cuba, Djibouti, Finland, Guinea-Bissau, Norway, Poland, Tunisia.

Information supplied by Iceland in answer to a direct request has been noted by the Committee.

#### **Convention No. 92: Accommodation of Crews (Revised), 1949**

Iraq (ratification: 1977)

The Committee notes that the Government's report has not been received. It hopes a detailed report in the form approved by the Governing Body will be provided, and that it will include information on the matters raised over a number of years and referred to once again in a detailed direct request.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Denmark, Egypt, Iraq, Israel, Italy, Poland, Portugal, Spain, United Kingdom.

#### **Convention No. 94: Labour Clauses (Public Contracts), 1949**

Mauritania (ratification: 1963)

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

The Committee notes the Government's intention to make a positive response in the near future to the Committee's previous comments. The Committee once again expresses the hope that the draft Decree of 1979, which was to ensure conformity between the legislation and the Convention, will be adopted in the near future. The Committee would therefore be grateful if the

Government would indicate the measures which have been taken or are contemplated with a view to the adoption of the above Decree.

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

Mauritius (ratification: 1969)

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

With reference to its previous comments, the Committee noted that the amendments to the Labour Act, 1975, intended to apply the Convention have not yet been adopted and that the matter is still under consideration. It trusts that the necessary measures will be taken in the very near future to give effect to the Convention, and hopes that the Government will be able to indicate that progress has been made in this regard.

Philippines (ratification: 1953)

In earlier comments, the Committee noted that in spite of the adoption of a Ministry of Labour and Employment Order of 16 February 1983, which was to ensure compliance with the Convention, specimen copies of public contracts supplied by the Government continued to show that effect was not given to the requirements of the Convention. The Committee furthermore noted that provisions of the Department of Public Works and Highways Order, No. 9 of 1981, which had also been referred to by the Government, fell short of the requirements of the Convention both as regards their scope of application and the guaranteed working conditions; indeed, this Order only applies to contracts awarded by the Ministry of Public Works and Highways, while the Convention covers a wider range of public contracts; furthermore the Order merely requires compliance by the contractors with labour laws, while under Article 2, paragraph 1, of the Convention, public contracts shall include clauses ensuring to the workers concerned conditions of work not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on by collective agreements or by arbitration award or by national laws or regulations.

The Committee notes from the Government's report that its comments have been brought to the attention of the legislature, but that no progress has yet been made to expand the application of the Convention.

The Committee hopes that the necessary measures will soon be adopted in consultation with the organisations of employers and workers concerned, as required by Article 2, paragraph 3, to ensure that all public contracts covered by Article 1, paragraph 1(c), and awarded by any government body, will contain clauses providing to the workers concerned the conditions specified in Article 2, paragraph 3, and that the Government will indicate the action taken.

The Committee hopes that the information on the number of public contracts and workers covered as required by Point V of the report form will also be communicated.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Turkey (ratification: 1961)

The Committee notes with satisfaction the adoption of Decree No. 19970, which came into force on 1 November 1988, respecting the general specifications concerning conditions of employment on public works contracted out. It requests the Government to supply information on the points raised in a request that is being addressed directly to it.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Brazil, Grenada, Saint Lucia, Turkey.

**Convention No. 95: Protection of Wages, 1949**

Afghanistan (ratification: 1957)

Referring to comments made for a number of years, the Committee notes with interest the adoption of the Labour Code. It is addressing a request directly to the Government in this connection.

Côte d'Ivoire (ratification: 1960)

The Committee notes the comments made by the Trade Unions International of Chemical, Oil and Allied Workers, communicated in a letter dated 9 March 1988, concerning the application of Article 12, paragraph 2 of the Convention, to the effect that workers, members of the Union of Offshore and Onshore Workers of Côte d'Ivoire (SYNTRAOFFCI), who had been recruited by intermediary companies on behalf of oil companies, did not receive certain amounts owed as a final settlement of all wages due upon termination of their contracts in 1984.

The Committee also takes note of the Government's observations and of the documents appended to its reply dated 31 May 1988. The Government indicates that the workers in question were recruited by maritime supply companies through the intermediary of public recruitment services and were placed at the disposal of companies operating oil rigs and that the work contracts concluded with the supply companies and the wages fixed were approved by the maritime authority, in accordance with the regulations in force. The Government indicates that an ad hoc committee was set up in October 1987 to examine the claims of the workers in question, and that it established

procedures for examining every case of breach of the laws and regulations, but that the workers have refused to divulge the method used to calculate the amount which they are claiming and to submit the documents needed to check their claims (wage slips, letters of recruitment and dismissal). Finally, the Government indicates that, for the most part, the companies in question left the country several years ago and have refused to consider the complainants' claims.

The Committee requests the Government to continue to provide information on the results of the measures taken to settle the claims of the workers concerned and to transmit a copy of the decisions handed down by the Industrial Tribunal or the Court of Appeal on the disputes concerning the non-payment of certain amounts as a final settlement of all wages due.

Dominican Republic (ratification: 1973)

The Committee refers to its observation on Convention No. 105.

A. Adoption of legislation to give effect to Convention No. 95

1. In its previous comments, the Committee drew attention to the need to adopt legislative measures to give full effect to Articles 2, 3, 5, 6, 8(2), 10, 13(2), 14 and 15(b) of the Convention. Similarly, in paragraph 543 of its report, the Commission of Inquiry concerning the employment of Haitian workers on the sugar plantations of the Dominican Republic pointed out that legislative changes are required to ensure the observance of the Convention, particularly in order to prohibit wage payments in the form of negotiable vouchers, to require the payment of wages directly to the worker, to establish a general prohibition on employers limiting the freedom of the worker to dispose of his wages, to regulate the assignment of wages and to provide for information of workers regarding the conditions governing their wages and deductions from wages. The Government has already reported draft legislation to apply Articles 2 and 3 of the Convention. In the report on the direct contacts mission to the Dominican Republic and Haiti in October 1988, which was made at the request of the two Governments, it is seen that, although certain of the above points have been the subject of circulars issued by the State Sugar Board (CEA), to which reference will be made below, the mission was not able to obtain details on the progress achieved in adopting the proposed legislation, although it did obtain assurances that full details will be sent to the ILO in the months to come. In the absence of a report from the Government, the Committee once again hopes that the necessary legislation will soon be adopted and that the Government will indicate the measures that have been taken to this effect.

B. Protection of wages in sugar plantations

2. Measures to guarantee observance of the statutory minimum wage. In its previous comments, the Committee referred to the recommendations in paragraphs 533 to 536 of the report of the



Commission of Inquiry concerning, among other matters, observance by the administrations of sugar plantations of the statutory minimum wage which should be guaranteed to each worker, irrespective of his output, for a working day of eight hours, with a proportional increase for longer working days, without deductions for the periods during which regularly employed workers are prevented from working by factors that are not of their fault. This involves the adoption of more uniform and regular hours for cane-cutters, including the establishment of a reasonable limit to the working day.

The Committee notes, from the documents supplied to the direct contacts mission, that, in resolution 1/88 of 10 June 1988, the National Wages Commission established, with retroactive effect to 1 April 1988, for agricultural workers engaged in any activity, a minimum wage of RD\$12 for a working day of eight hours. In the case of piece-work employment contracts or contracts for specific tasks, the minimum wages established "shall be reasonably guaranteed". The Committee also notes that, according to the rates established on 4 April 1988 by Memorandum-Circular No. 18 of the State Sugar Board, cane-cutters henceforth earn RD\$6 per tonne, plus an incentive bonus of RD\$0.60, payable at the end of the harvest season to workers who are still at their jobs, plus a productivity bonus of RD\$0.50, payable to cane-cutters who have cut more than 28 metric tonnes in two weeks. The Commission of Inquiry and the direct contacts mission both found that very few cane-cutters can, in an eight-hour working day, cut nearly 2 tonnes of sugar-cane, with the result that, for most cane-cutters, the rates established by the CEA in April 1988 are below the minimum wage established by the National Wages Commission.

The Committee notes communication No. 2538 of 23 September 1988 by which the CEA set up a commission to study the structure of cane-cutting and transporting rates for the 1988-89 harvest, which was to study, among other matters, wage rates as a function of the daily rates enforced in the agricultural sector and to include weighting according to the state of the cane, that is, whether it was green or burnt. According to the indications provided to the direct contacts mission by representatives of the CEA in October 1988, substantial wage increases, which should enable cane-cutters and gatherers to earn at least the minimum wage, were to be announced in the near future in order to attract the necessary labour. The rates in question had not yet been communicated to the ILO by the end of the harvest season.

The Committee also notes CEA Circular No. 8 of 20 October 1988 issuing instructions to the administrations of plantations regarding the conclusion of specific contracts with daily workers known as "ajusteros", who are employed by the task in other agricultural work (and lower-paid work) than sugar-cane harvesting. This Circular includes a contract form and obliges the foreman, at the worker's request, to describe the surface of a field and give the wage rates per task and by day. According to the communication by the United Workers' Organisation (CGT) of January 1989, this Circular is unknown to workers and is not applied.

The Committee hopes that the necessary measures will be taken to ensure that all workers employed in plantations are paid the statutory minimum wage. It hopes that the Government will rapidly supply full information on the wage rates established by the CEA for future

harvests; on the practical implementation of CEA Circular No. 8 of 20 October 1988, with indications of the number of contracts concluded and the daily earnings of workers employed in the various tasks; on the measures that have been adopted to ensure observance of the statutory minimum wage in plantations not belonging to the CEA and on any review of the statutory minimum wage in agriculture.

3. Weighing the sugar-cane. In its previous comments, the Committee also referred to the recommendations made by the Commission of Inquiry, in paragraph 537 of its report, that the accuracy of the weighing of the cane that has been cut should be verified by official inspection bodies outside the plantation and by the workers concerned through their representatives. The Committee notes with interest CEA Circular No. 9 of 20 October 1988 establishing a general system for weighing cane, which contains a series of rules to ensure the accuracy of weighing, without any deductions, in view of the transporter, cane-cutter or his representative and under the supervision of the central authorities of the CEA. In addition, a conversion table for weights and wage rates must be displayed in view of the workers. According to a communication by the CGT, dated 3 January 1989, this Circular is unknown to cane-cutters and is not applied. The Committee hopes that the necessary measures will be taken for the practical implementation of this Circular and that the Government will supply full information on this subject and on any other similar measures that are taken in plantations not belonging to the CEA.

4. Payment of wages in negotiable vouchers, and enterprise stores (Articles 3 and 7 of the Convention). In paragraph 538 of its report, the Commission of Inquiry recommended that the current practice in plantations belonging to the State and those of the Casa Vicini of permitting the negotiation of wage tickets by workers in favour of third parties be discontinued and that, instead, arrangements be instituted to enable the workers to receive cash advances, as is already the case at La Romana. There would be no objection to allowing workers to cash their wage tickets at stores to be established on the state-owned plantations in collaboration with the Price Stabilisation Institute, on the understanding that this would take the form of an advanced payment of wages by the employer to the worker and would be made without any deduction or discount.

The Committee notes the indications provided to the direct contacts mission by the representatives of the CEA to the effect that vouchers would be exchanged for cash each week, and not every fortnight as has happened up to now, and that while awaiting payment workers will be able to use their vouchers to buy basic products at the official price in stores operated by the CEA in collaboration with the Price Stabilisation Institute. The Committee also notes with interest a communication of the CEA of 4 October 1988 providing for the system of non-profit-making stores to be extended, both regarding sales for cash and sales covered by advanced vouchers (CEA Form No. 1) or a card for the payment of daily workers. The same communication specifies that, when cutting, gathering or transportation vouchers are presented in order to make purchases at the store, change shall be returned in cash without any deduction.

The Committee notes, however, the concern of the direct contacts mission that these efforts would be worthless if wages remained

excessively low and were paid late, so that the worker was obliged to spend his vouchers in the store to cover his needs. The Committee also notes the observation made by the direct contacts mission that a private store operating in a sugar refinery was better stocked than that of the Price Stabilisation Institute and that the latter only accepted payment in cash. The Committee hopes that the Government will supply detailed information on the implementation in practice of the system of non-profit-making stores envisaged by the CEA and the system for the payment of wages and advances, and on any other relevant measures that have been taken in private plantations.

5. Services intended for workers (Article 7). In paragraph 539 of its report, the Commission of Inquiry asked for information on both the non-profit-making stores and the implementation of the CEA's plan to grow food crops on its plantations for the benefit of the workers, and any corresponding measures on privately owned plantations. The Committee notes a communication prepared by the directorate of the CEA's social development programme on a food programme involving the production of food, fish-farming, the rearing of chickens, pigs and rabbits, the sale of beef at a low price, people's stores and the sale and distribution of flour and other food programmes; and programmes for drinking water and sanitary facilities, nutrition, health and education. The Committee hopes that the Government will supply detailed information on the progress achieved in this respect both by the CEA and also in private plantations, particularly with regard to collective or family food crops (conucos), in accordance with the recommendations made by the Commission of Inquiry in paragraphs 516 and 539 of its report. It also hopes that the Government will supply information on any measures that have been taken by the public authorities to supply to CEA sugar refineries and to refineries on private plantations the services that should not be at the expense of the employer, such as education.

6. Deferred payment of a part of wages. In paragraph 541 of its report, the Commission of Inquiry recommended the abolition of the imposed system of deferred payment of that part of cane-cutters' remuneration designated as "incentive pay" at present in operation on the plantations of the State and of the Casa Vicini, and the incorporation of the "incentive pay" in the workers' wage, to be paid regularly on the days fixed for that purpose. The retention of the "incentive pay" in the rates established by the CEA in April 1988 has been noted in point 2 above. The Committee notes the assurances given to the direct contacts mission by representatives of the CEA that, as from the 1988-89 harvest, this bonus would be abolished and its amount included in the weekly wage. The Committee hopes that the Government will rapidly supply full information on the measures that have been taken in this respect, both on CEA plantations and on those of the Casa Vicini.

7. Workers' information (Article 14 of the Convention). Reference has already been made in points 2 and 3 above to the provisions in CEA Circulars Nos. 8 and 9 of 20 October 1988 concerning the provision of information to daily workers, known as "ajusteros" performing work by the task, and to sugar-cane workers presenting cane to be weighed, regarding their wage conditions. More generally, CEA Circular No. 7 of the same date, which was addressed to the

administrators of plantations and issuing preliminary recommendations and specifications regarding the engagement of agricultural workers for the 1988-89 harvest provides, in point 1, for a publicity campaign to draw the attention of agricultural workers, both Dominicans and foreigners resident in the country, to the advantages granted to workers in the next harvest. Under point 3, each administration has to provide that the contractual conditions that are to be fulfilled, both by the plantation and by the agricultural worker under contract, including wages, living conditions in sugar refineries, medical assistance, facilities for the purchase of foodstuffs, etc., and labour discipline, are displayed in an appropriate place. According to the communication of the CGT of 3 January 1989, this Circular is unknown to the workers and is not applied.

The Committee hopes that the Government will ensure the implementation in practice of measures intended to provide information to workers in CEA plantations and other sugar plantations, and that it will provide details in this respect.

### C. Enforcement

8. In paragraph 544 of its report, the Commission of Inquiry pointed out the need for effective administrative services for the enforcement of legislation through which ratified international labour Conventions are to be applied. In relation to the employment of workers on Dominican plantations, the primary responsibility for ensuring such enforcement must rest upon the Government of the Dominican Republic. The Commission of Inquiry recommended that labour inspection services of the Ministry of Labour be developed so as to be an effective instrument for ensuring observance of labour laws and of the workers' rights on the sugar plantations.

The Committee notes, from the report of the direct contacts mission, that the supervision of all sugar production operations in its own plantations, including their labour aspects, is provided by the central State Sugar Board service. It also notes the indications supplied by the Secretary of State for Labour to the effect that he had requested additional resources in order to strengthen the ranks of labour inspectors. The Committee hopes that the Government will supply detailed information on any measures that are taken in this respect, and particularly on the activities of the inspection services of the Ministry of Labour in state and private plantations and the results obtained with regard to the observance of workers' rights, including those respecting wages.

### Iraq (ratification: 1960)

In previous comments, the Committee noted that in discussions between the Governments of Iraq and the Philippines, the Government of the Philippines agreed to consider a proposal that 5,000 Filipino workers under direct contract to the Iraqi Government be paid 40 per cent of their wages in Iraqi dinars, with the balance to be paid in dollar-denominated promissory notes payable in two years. It pointed out that this proposal would, if implemented, be in contravention of

Article 3, paragraph 1, of the Convention under which payment in the form of promissory notes or in any other form alleged to represent legal tender, shall be prohibited.

The Committee recalls that it asked the Government in previous comments to indicate the existing arrangements as regards the payment of the wages of Filipino workers in Iraq.

The Committee requests the Government to provide detailed information on the arrangements presently in force for the payment of Filipino workers concerned. It hopes that in the agreement to be reached with the Government of the Philippines, provisions will be adopted to ensure the effective payment of wages in conformity with Article 3 of the Convention, and that the Government will provide a copy of the relevant part of the Agreement.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes that the tripartite commission set up to examine the representation submitted by the Federation of Egyptian Trade Unions under article 24 of the Constitution alleging non-observance by the Libyan Arab Jamahiriya of the Protection of Wages Convention, 1949 (No. 95), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118) is continuing its work.

The Committee notes, from the Government's report, that its previous comments have been examined by the People's General Committee of the Public Service, which made observations on the following points:

Article 2 of the Convention. The Committee of Experts noted in its previous comments that agricultural workers are not covered by the legislation governing the protection of wages.

The Committee notes that the People's General Committee of the Public Service recommended that either the first section of the Labour Code, of 1 May 1970, be amended to extend the scope of the Code to agricultural workers, or that regulations be adopted governing agricultural workers. The Committee hopes that the Government will take the necessary measures for the competent authorities to adopt a decision in this respect and fill the gap that exists in the legislation.

Article 4, paragraph 1. The Committee notes that, while the People's Committee considers that payment in kind does not exist in practice, it has recommended the adoption of a text to establish at 50 per cent the proportion of wages that could be paid in kind. The Committee of Experts therefore requests the Government to ensure that the above proportion is reasonable. Furthermore, the Committee notes that the People's Committee is of the opinion that section 100 of the Labour Code which provides, among other provisions, that the cost of housing and meals provided by the employer in "remote areas" shall be determined by order of the Minister of Labour and Social Affairs, should be amended in order to bring it into conformity with the provisions of the Convention or that the question should be settled

through a decision by the Secretary of the People's General Committee of the Public Service.

The Committee requests the Government to indicate the decision that is adopted in order to give effect to this Article of the Convention.

Article 7, paragraph 2. With reference to its previous comments, the Committee recalls that section 35 of the Labour Code provides that the employer shall not compel the worker to purchase food or other commodities manufactured by him, nor to purchase provisions from any designated store. The Committee requests the Government to indicate the provisions that have been adopted or are envisaged in order to ensure that the commodities and services provided by employers are sold or supplied at fair and reasonable prices and that the stores established and services operated by the employer are not operated for the purpose of securing a profit.

Article 8, paragraph 1. The Committee notes that the People's General Committee of the Public Service has recommended the adoption of a legislative text which would provide that deductions from wages shall not exceed 25 per cent of the wage. The Committee hopes that, when this text is adopted, the Government will take into consideration the fact that Article 8 concerns deductions made by employers other than attachments or assignments. Furthermore, the provisions to be adopted should forbid any deduction that is not formally authorised by the law and these provisions should also provide for a limit to the total deductions authorised (taking into account, in particular, the fact that sections 35, 36 and 78 of the Labour Code authorise deductions which may in total amount to nearly 50 per cent of the worker's wage). The Committee requests the Government to supply the text adopted to give effect to this Article of the Convention.

#### Philippines (ratification: 1953)

In previous comments, the Committee noted that in discussions between the Governments of Iraq and the Philippines, the Government of the Philippines has agreed to consider a proposal that 5,000 Filipino workers under direct contract to the Iraqi Government be paid 40 per cent of their wages in Iraqi dinars, with the balance to be paid in dollar-denominated promissory notes payable in two years. It pointed out that this proposal would, if implemented, be in contravention to Article 3(1) of the Convention under which payment in the form of promissory notes or in any other form alleged to represent legal tender, shall be prohibited.

The Committee notes from the Government's report that discussions have been held in October 1988 to finalise the agreement between the two parties for the payment of Filipino workers in Iraq. During the meeting, the Government of the Philippines expressed the need to review and rectify the existing arrangements which were formalised in 1982, and proposed that their amendment be discussed by the Joint Committee provided for in the arrangements, while the Iraqi Government also expressed willingness to review the arrangements. The Government indicates that an accord as regards the payment of Filipino workers in Iraq has yet to be agreed upon by both countries.



The Committee recalls that it asked the Government in previous comments to indicate the existing arrangements as regards the payment of Filipino workers in Iraq. It notes that the government's report contains no reply on this point.

The Committee requests the Government to provide detailed information on the arrangements presently in force for the payment of Filipino workers concerned. It hopes that in the agreement to be reached with the Iraqi Government, provisions will be made to ensure the effective payment of wages in conformity with Article 3 of the Convention, and that the Government will provide a copy of the relevant part of the arrangements.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Portugal (ratification: 1983)

The Committee notes the information supplied in the Government's report, the explanations given by the Government representative to the Conference Committee in 1988 and the subsequent discussion regarding the delayed payment and the non-payment of wages.

The Committee notes the statement by the Government representative to the effect that during the 1980s his country had experienced a serious economic crisis and the non-payment of wages was one of the methods used by small enterprises to reduce their financial outlay. They had often abused this method, which had caused an excessive number of wages to be paid in arrears affecting a significant number of workers and had resulted in a serious social situation. The situation was now returning to normal under the influence of several factors: the improvement in the economic situation, the adoption of deterrent legislation, control by the labour inspectorate and the awareness of the population which had been heightened by the representation submitted to the Governing Body of the ILO in 1985 and the publication of information on it, dynamic action by trade union organisations and debates in Parliament on this question. The number of workers affected had decreased to some 20,000 persons, although the Government continued to be concerned over the situation of each of these workers. The Committee also notes the information supplied by the Government in its report to the effect that the wages covered by the statistics established by the general labour inspectorate include monthly wages, retroactive payments, vacations, vacation bonuses and social security contributions. The Government also states that the figures for enterprises in arrears in the payment of wages include enterprises that are active, enterprises that are stagnant and enterprises that are closed, and that no public enterprises are now affected by the phenomenon of arrears of wages.

The Committee notes the statements by the Worker member of Portugal to the effect that the problem of arrears in the payment of wages has substantially decreased, but that it still remains. The decrease in the number of workers affected (80,000 according to the CGTP-IN) was largely a result of the closure of enterprises which were no longer taken into account in the statistics submitted by the Government. Workers who are currently receiving their wages, but to

whom arrears are due, are also excluded from the statistics. The lenient attitude to which the Government representative referred was not admissible and measures had to be taken to bring an end definitively to this situation.

The Committee recalls the indications of the Commission set up to examine the representation submitted under article 24 of the ILO Constitution in 1985 on the same questions, according to which the differences noted between the figures from government sources and from trade union sources do not affect the reality of the problem of arrears in the payment of wages, whatever the causes and amplitude of the problem. The Committee notes that the Government and the CGTP-IN agree that the problem has diminished, but they are not in agreement on the size of this decrease in terms of the number of workers affected and the number of enterprises concerned.

The Committee notes that the reports of the general labour inspectorate describe the action that it has taken, in accordance with the mandate with which it has been entrusted regarding enterprises that are stagnant or which show serious signs of non-viability and viable enterprises to which delays have been allowed to enable them regularise their situation. It notes that the situation of employees of enterprises that have ceased all activity (which do not come under the category of stagnant enterprises) would not appear to be taken into account in these reports.

The Committee notes that the Government has not supplied information on the implementation of Act No. 17/86 of 14 January 1986 respecting arrears of wages. In this connection, it notes the indications in the report of the general labour inspectorate to the effect that the concept of "remuneration" set out in Act No. 17/86 above, has been interpreted in a restrictive manner as referring to the wages of the worker, since the purpose of the Act appears to be to provide workers with regular periodical payments to satisfy the needs of the worker and his family, which is normally and technically known as "basic remuneration". The Committee notes that this concept is narrower than the definition of wages contained in the Convention. The Committee requests the Government to specify the scope of the concept of remuneration used in Act No. 17/86.

The Committee requests the Government to continue supplying information on the measures that have been taken or are envisaged to resolve the problem of arrears in the payment of wages, particularly with regard to channels of appeal enabling workers to rapidly recover all of the sums which are due to them as wages and other elements of remuneration, and on the application of the sanctions set out in section 29 of Act No. 17/86 above. It requests the Government to supply detailed information on the question of the payment of wages and the various other elements of remuneration to employees of enterprises which have definitively ceased to operate.

The Committee requests the Government to indicate the progress that has been achieved to ensure that workers can be paid in any circumstances for the work that they have performed and can receive their wages at regular intervals in accordance with the provisions of the Convention, and to ensure that delays in the payment of wages are



no longer considered to be a solution to reduce the financial outlay of enterprises.

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In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Dominica, Grenada, Islamic Republic of Iran, Philippines, Portugal, Saint Lucia, Venezuela.

#### **Convention No. 96: Fee-Charging Employment Agencies (Revised), 1949**

Requests regarding certain points are being addressed directly to the following States: Djibouti, Netherlands, Panama.

#### **Convention No. 97: Migration for Employment (Revised), 1949**

Requests regarding certain points are being addressed directly to the following States: Brazil, Italy, Jamaica, Norway, Portugal, Saint Lucia, Spain, Zambia.

Information supplied by Venezuela in answer to a direct request has been noted by the Committee.

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

Argentina (ratification: 1956)

Articles 1, 2 and 3 of the Convention. The Committee notes that the new Act on Trade Union Associations (No. 23551) promulgated on 14 April 1988 contains measures for protection against acts of anti-union discrimination, unfair labour practices and acts of interference on the part of the employer, both at the time of taking up employment and in the course of the employment relationship, accompanied by civil remedies and penal sanctions.

Article 4. The Committee has taken note of the comments made by the General Confederation of Labour (CGT) raising issues related to collective bargaining, in a communication dated 9 March 1987 and the information forwarded by the Government in communications dated 29 September 1987 and 16 February 1988, and of the Government's report. The Government indicates that it has finally carried out its promise to re-establish in full the system of free negotiation between the parties, thereby implementing the collective bargaining system. To this end, during the period 1 July 1986 to 30 June 1988, the system remained in force whereby it was possible for the parties signatory to collective labour agreements periodically to update the remuneration rates established in these agreements, through the bilateral negotiation system. In order to safeguard the purchasing power of

wage earners, and to make up for the lag due to the high rate of inflation, periodic automatic wage adjustments were made to the remuneration agreed upon by the parties.

In addition, the Government indicates that the National Congress adopted the Bills regulating the collective bargaining system, with the result that Acts Nos. 23545 and 23546 of 22 December 1987 were promulgated, definitively re-establishing this system on the basis of free discussions between the representative associations of employers and workers in each sector. Act No. 23545 brings back into force, with certain modifications, Act No. 14250 of 1953 which had ceased to be applied by the de facto Government. The amendments to the above Act include section 1 which expressly extends the collective agreement system of state enterprises to state companies or limited liability companies in which the State holds a majority interest and State financial institutions and bodies coming under the national public administration which had already negotiated collective agreements prior to the entry into force of the Act. Act No. 23546 sets out the procedural rules for collective bargaining and specifies that the initiative for negotiations rests with the parties concerned, that is, the representative associations of the employers and workers on condition that they must notify the Ministry of Labour and Social Security of their decision.

The Committee notes this development with interest, but observes that section 3 of Act No. 23545 specifies that an essential prerequisite for approval shall be that the collective agreement is free of any clauses which infringe the norms of public order or standards issued in the protection of the general interest; nor shall the entry into force of the agreement significantly affect the overall economic situation or the situation of certain branches of activity, or result in a serious deterioration in the standard of living of consumers. In this connection, the Committee recalls that a system of official approval is acceptable in so far as the approval can only be refused on grounds of form and where the clauses of a collective agreement do not conform to the minimum standards set out in the labour law. The public authorities should, as a general rule, refrain from intervening to alter the content of freely concluded collective agreements. Such intervention could only be justified for major economic and social reasons of general interest. The Committee would be grateful if the Government would provide information on the scope of this provision and state whether any collective agreements have been refused approval under it.

The Government has undertaken to extend the collective bargaining system to the public administration. Under the Act, new legislation is to be issued within 365 days, regulating the application of this system to the public service.

The Committee takes note of the detailed information supplied by the Government, in particular, on the development of the collective bargaining system which is based on free negotiation between the parties concerned.

The Committee requests the Government to provide information on any developments in the application of Article 4 of the Convention.

Austria (ratification: 1957)

The Committee notes the report of the Government and the observations made by the Austrian Congress of Chambers of Workers.

The Committee observes that, with respect to the burden of proof applicable in appeals against anti-union motivated dismissals, both the Government and the Austrian Congress of Chambers of Workers agree that section 105(5) of the Collective Labour Relations Act of 1973, in fact, imposes on employers the obligation to prove in such cases that the dismissal of an employee had nothing to do with his trade union activities.

As regards the protection against unlawful dismissals (in particular for trade union activities) afforded to workers in enterprises with fewer than five employees, the Committee has underlined for several years that these employees have no protection against acts of anti-union discrimination by employers since section 105 of the Collective Labour Relations Act of 1973 - which protects workers by providing a list of grounds of dismissal that may be challenged - does not apply to small undertakings. The Committee notes with regret that the opposition of employers during bargaining talks between the social partners prevented an amendment to the Act, which would have extended that protection to these workers. However, the Committee notes with interest that the Federal Ministry for Employment and Social Affairs will persevere in its endeavour to obtain better protection for these workers against discrimination based on trade union activities.

The Committee therefore requests the Government to indicate in its next report the measures taken to ensure that workers in enterprises with fewer than five employees are protected against acts of anti-union discrimination, and to bring its legislation into conformity with the Convention, since this shortcoming has been the object of its comments for a number of years.

Bangladesh (ratification: 1972)

The Committee notes the Government's report and the information that it supplied to the Conference Committee in 1987. It also notes the observations of the Bangladesh Employers' Association.

Voluntary bargaining in the private sector

Referring to its previous requests for information concerning the determination of wages and conditions of employment in the organised private sector, the Committee notes the information provided by the Government relating to the further development of bipartite collective bargaining in this sector. It also notes that in small establishments in the private sector, where workers are usually not organised, wages are fixed by a statutory Minimum Wage Board. It notes that employers, workers or the Government have the right to refer matters to this Board for determination. In this regard, the Committee points out that section 7(2) of the Industrial Relations Ordinance, as amended, provides that no trade union may be registered under the Ordinance

unless it has a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments in which it is formed. According to sections 22 and 22A of the Ordinance, only unions which are registered in accordance with section 7 may become collective bargaining agents. The Committee is of the view that taken together these provisions may impair the development of voluntary collective bargaining in small establishments because they appear to inhibit the establishment of "sectoral" or "industry" unions. Accordingly, the Committee requests the Government to provide any available information as to the development of free collective bargaining in this sector.

#### Voluntary bargaining in the public sector

As indicated in previous comments, the Committee has continuing concerns about the development of collective bargaining in the organised public sector.

Since 1973 wage rates in this sector have been determined by government-appointed Wages Commissions. To date, there have been three such Commissions: in 1973, 1977 and 1984. According to the Government, all three Commissions have taken account of the opinions of all interested parties, including workers, in arriving at their determinations. However, the 1984 Commission was the first to have a formal tripartite structure. The Government states that it adopted this structure in 1984 because, as the employer in this sector, it could be expected to become the dominant partner in negotiations, and that accordingly it felt that it was necessary to provide some means of redressing any resultant imbalance.

The Committee considers that an ad hoc Commission which is established only at the initiative of the Government is not an appropriate means for the promotion of collective bargaining between workers and employers within the meaning of Article 4 of the Convention. The Committee notes that in a communication dated 29 July 1986, the Bangladesh Employers' Association intimated that it agreed with this assessment.

The Committee points out that, under Article 4, it is for the Government to encourage and promote the full development and utilisation of machinery for the voluntary negotiation of collective agreements. The Committee therefore requests the Government to state how it intends to meet this obligation in respect of workers in the public sector industries, where they should be able to negotiate freely in their own right with the employer, even though the employer is the State.

In making this request the Committee wishes to draw the attention of the Government to paragraphs 298 to 319 of its 1983 General Survey, which deal with machinery and procedures to facilitate bargaining and with the autonomy of the parties. In particular, it wishes to emphasise that the establishment of conciliation and arbitration procedures, on an ad hoc or a permanent basis, is not necessarily incompatible with the requirements of Article 4. However, all such procedures must be designed to facilitate bargaining between the two sides of industry and leave them free to reach their own settlements. This in turn requires that it should be for the parties to decide

whether or not they wish to refer any matters in dispute to binding arbitration.

#### Protection against interference

The Committee has, on a number of occasions, observed that there is no adequate legislative protection against interference in the establishment, functioning or administration of workers' and employers' organisations as required by Article 2 of the Convention.

The Government has stated that it is willing, where necessary, to protect workers' organisations against any act of interference. Both the Government and the Bangladesh Employers' Association also draw attention to sections 15 and 16 of the Industrial Relations Ordinance, 1969 and point out that they do provide legislative protection with respect to interference in trade union activities.

The Committee notes that sections 15 and 16 of the Ordinance, taken together with section 53, do appear to provide an appropriate form of legislative protection against anti-union discrimination as envisaged by Article 1 of the Convention. However, the Committee is not satisfied that these provisions constitute an adequate response to the requirements of Article 2. Accordingly, it again requests the Government to review its legislation with a view to the adoption of an appropriate measure of protection against "interference" for purposes of Article 2. Such provision should seek to ensure that no employer or employer organisation may support any organisation of workers by financial or other means with a view to placing that organisation of workers under the control of the employer or employer organisation.

#### Belgium (ratification: 1953)

With reference to its previous comments concerning limitations on voluntary collective bargaining, which have restricted wage negotiations for several years, the Committee takes note of the Government's report and notes with satisfaction that, since 1 January 1987, representatives of the social partners have regained their full freedom to negotiate and to conclude collective agreements concerning conditions of remuneration. The Government adds that the wage restraint measures were of a temporary nature and were justified by the disturbed economic situation.

#### Brazil (ratification: 1952)

The Committee notes the Government's report and the comments supplied by the National Confederation of Land Transport in September 1987 and by the National Confederation of Industry in October 1987 on the application of the Convention.

The Committee notes the adoption of the new Constitution of 5 October 1988, and in particular of articles 7, 8 and 9, which enshrine the principle of collective bargaining and the right to strike, which can be restricted in essential services defined by law.

1. Protection of workers against acts of anti-union discrimination (Article 1 of the Convention). The Committee notes with satisfaction that Act No. 7543 of 2 October 1986, amending section 543(3) of the Consolidation of Labour Laws (CLT), extends the duration of the prohibition on dismissing an employee who has held trade union office from 90 days to one year, after completion of his period of trade union office. Furthermore, the principle that a trade union official cannot be dismissed, except in the event of a serious offence, during the period laid down by Act No. 7543, is included in the new Constitution (article 8).

2. In its previous observation, the Committee asked the Government whether the following provisions, which have been the subject of its comments for several years, were still in force:

- the possibility of excluding from the scope of agreements enterprises demonstrating their economic inability to support the wage increases and the authorisation accorded these enterprises not to grant (automatic) wage increases (section 11(2) and (3) of Act No. 6708);
- the wide powers vested in the authorities to cancel collective agreements or arbitration awards which do not conform to the standards fixed by government wage policy (Consolidation of Labour Laws, section 623, as amended by Legislative Decree No. 229 of 28 February 1967 and section 8 of Act No. 5584 of 26 June 1970);
- interference by the Government in respect of collective bargaining and collective wage increases in mixed-economy enterprises and private enterprises subsidised by the State or holding concessions from public services, these enterprises being entitled to conclude agreements only "within the terms of the resolutions of the National Council on Wage Policy" (section 12 of Act No. 6708 of 30 October 1979).

Right of workers to freely negotiate their terms and conditions of employment (Article 4 of the Convention). The Committee notes, from the Government's report, that the number of collective agreements is increasing regularly and that collective bargaining is the most favoured procedure for resolving industrial disputes.

The Committee refers to Legislative Decree No. 2335 of 12 June 1987, and notes that the free negotiation of terms and conditions of employment is reaffirmed in section 9 of the Decree, although the collective bargaining of wages is restricted by law (section 8 of Legislative Decree No. 2335), as emphasised by the National Confederation of Land Transport in its comments. The Committee also notes the Government's efforts to associate the social partners with its economic policy, which resulted in the signature of an anti-inflationary agreement with all the social partners except for the CUT.

The Committee, however, understands, from the information available, that since the adoption of these measures the Government has reverted to a policy of freezing wages and prices.

The Committee is aware of the economic difficulties that the Government has to face. However, referring to the principles set out in paragraphs 303 and thereafter of its 1983 General Survey on Freedom of Association and Collective Bargaining, it recalls that trade unions

must have the opportunity to negotiate wages freely with employers and their organisations without being unduly hampered by legal restrictions. If, for compelling reasons of economic policy, restrictive measures are imposed respecting wages, procedures should be envisaged to associate all the social partners with the formulation and implementation of the desired policy.

The Committee hopes that the Government will return in the near future to the principles of free collective bargaining and that, in this connection, it will re-examine the various provisions which were the subject of its previous comments, and which still appear to be in force (section 623 of CLT; section 11(2) and (3) of Act No. 6708).

The Committee therefore requests the Government to continue supplying full information on the measures that have been taken or are envisaged, within the framework of its wages policy, to extend the scope of collective bargaining concerning wages and/or to associate the social partners with the above policy.

The right of workers in certain public sector enterprises freely to negotiate their terms and conditions of employment (Article 4 of the Convention). The Committee notes that under the terms of section 7 of Legislative Decree No. 2425, of 7 April 1988, public enterprises, mixed-economy enterprises and private enterprises subsidised by the State or holding concessions from public services may only conclude collective agreements within the terms of the resolutions of the National Inter-Ministerial Council on Wages in Public Enterprises (CISE) or, where appropriate, by the Inter-Ministerial Wages Council (CIRP), taking duly into account section 623 of the CLT, as referred to above.

The Committee points out that this provision, which, in principle, reiterates section 12 of Act No. 6708 of 30 October 1979, which has been the subject of previous comments, constitutes interference by the Government in collective agreements and collective wage increases. It requests the Government to supply full information concerning the measures that have been taken or are envisaged in order to grant workers in these enterprises the right to bargain freely, in accordance with Article 4 of the Convention.

3. The right of workers other than public servants engaged in the administration of the State to associate in order to bargain collectively (Articles 4 and 6 of the Convention). In its previous comments, the Committee noted that the right to associate, and therefore to bargain collectively, was not granted to persons employed by the State and in state institutions, except for those in mixed-economy enterprises, under section 566 of the CLT, as amended.

In its report, the Government states that the bill to guarantee the right of association and the right to strike for persons employed directly or indirectly by the public administration is about to be adopted, in accordance with article 37 of the new Constitution.

Recalling that the exercise of the right to strike should not be restricted except in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population and in relation to public servants acting in their capacity as agents of the public authority, the Committee notes this information with interest and requests the Government to continue supplying information

on the progress achieved in this respect and to supply the text of the above-mentioned bill.

4. In its previous observation, the Committee noted that a bill respecting collective bargaining and the right to strike had been submitted to the Chamber of Deputies. The Committee notes, from the information supplied by the Government, that this bill is currently being revised following the adoption of the new Constitution. The Committee requests the Government to supply information in its next report on the progress achieved in this respect.

Burkina Faso (ratification: 1962)

The Committee refers to the observation that it has made on Convention No. 87 concerning the situation of teachers who were dismissed following a strike that took place in March 1984.

Chad (ratification: 1960)

The Committee notes the Government's report and recalls that its comments dealt with the following points:

- the powers of the administration to intervene in the collective bargaining process (section 119 of the Labour Code);
- prior authorisation for the coming into force of collective agreements (sections 121 and 122 of the Labour Code), contrary to Article 4 of the Convention.

In its previous observation, the Committee noted with interest that the draft Labour Code, the adoption of which would repeal the provisions noted above, constituted progress in the implementation of Article 4 of the Convention by conferring upon the Minister of Labour the role of describing the major government policies with the purpose of encouraging the parties concerned to take into account voluntarily factors of national interest (section 341(1) of the draft Labour Code).

The Committee notes that, according to the Government, the above draft has not yet been adopted. It hopes that a provision that is in conformity with the Convention will be adopted in the near future.

The Committee also drew the Government's attention to the need to maintain in the draft Code a provision comparable to section 37 of the current Labour Code, protecting workers against any act of anti-union discrimination and workers' organisations against any interference by an employer or organisations of employers, accompanied by civil remedies and penal sanctions.

The Committee welcomes the fact that the Government has noted its comment in this connection. It requests the Government to indicate in its next report the measures that have been taken to ensure that full effect is given to the Convention.

Colombia (ratification: 1976)

The Committee notes the Government's report, the comments submitted by the Workers' Central Organisation of Colombia (CUT) on



the application of the Convention and the Government's reply to those comments. The Committee also notes the 259th Report of the Committee on Freedom of Association, on Cases Nos. 1429, 1434, 1436, 1457 and 1465, which were examined in November 1988 [see paragraphs 589 to 678].

In its comments on the application of the Convention, the CUT points out that there are innumerable cases of trade union persecution reported daily and also numerous cases in which the Ministry of Labour absolves the enterprises concerned. Only two cases are known in which penal sanctions have been adopted against employers or public servants in the Ministry of Labour for having hindered trade union rights. Similarly, according to the CUT, the State has not adopted adequate measures to encourage the full development of voluntary negotiation procedures, and Act No. 39 of 1985, which simplified negotiation procedures, has not been implemented.

The Government states that the Ministry of Labour, under the terms of section 485 of the Substantive Labour Code, adequately fulfils its functions of supervising and controlling observance of the provisions of the Code. The cases of trade union persecution that are reported are being investigated by its officials, who, if they find corroborating evidence, impose on the employer the penalties provided for in the law, that is, fines equivalent to from one to 40 times the minimum monthly wage. However, if the officials find through serious and painstaking investigation that there has been no persecution of trade unions, they clearly refrain from imposing penalties. The judicial system always sentences any person violating the rights of meeting and association to detention of from one to five years and to fines of from 1,000 to 50,000 pesos. If the CUT states that only two cases are known of penal sanctions being imposed on employers, this is not either because the judicial, or the administrative, system favours employers, but because the persons concerned do not bring their cases to the authorities or because the authorities find that there has been no violation.

The Government also adds that the large number of collective disputes that are resolved during the stages of direct settlement between the parties and mediation do not bear out the CUT's statement regarding the lack of promotion of collective bargaining. Finally, the Government indicates that Act No. 39 of 1985 is considered in most quarters to be an important contribution to the bargaining procedure and it is strange that the CUT should allege that there has been a lack of development of these procedures.

Given the indications supplied on the practical application of Article 1 of the Convention, the Committee considers that the penal sanctions laid down for acts of anti-union persecution (fines of from 1 to 40 times the minimum monthly wage) should be further increased in order to be sufficiently dissuasive in view of the fact that the minimum wage is very low. Furthermore, the Committee emphasises the importance of ensuring that penal sanctions are carried out in practice.

The Committee also notes that the Committee on Freedom of Association, at its meeting in November 1988, when examining Case No. 1465 [see the 259th Report, paragraphs 675 to 678], referred to the distinction between "public servants" (who may be freely appointed and dismissed and are not entitled to enter into collective

agreements) and "official employees" in commercial and industrial State enterprises, and emphasised that "within the framework of Conventions Nos. 87 and 98, the legal status of Colombian public servants is not satisfactory, to the extent that the workers of state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, and enjoy suitable protection against acts of anti-union discrimination".

The Committee shares this conclusion of the Committee on Freedom of Association and points out that the Convention applies to all workers, with the only possible exception being those who are engaged "in the administration of the State". It asks the Government to take measures to amend the legislation (sections 414 and 416 of the Labour Code) in order to grant public servants who are not engaged in the administration of the State the guarantees set out in the Convention, which include the negotiation of collective agreements and adequate protection against acts of anti-union discrimination.

The Committee requests the Government to report any developments regarding these matters.

#### Costa Rica (ratification: 1960)

Articles 1 and 2 of the Convention (protection against acts of discrimination and interference). For several years in its comments the Committee has been requesting the Government to adopt specific provisions that expressly establish means of recourse and penalties against acts of anti-union discrimination and interference by employers in workers' organisations.

In a previous observation, the Committee regretted that the 1981 draft Labour Code, which had been prepared with ILO assistance, had not been adopted, since it contained provisions respecting non-discrimination and non-interference which were in conformity with the Convention.

The Committee notes the information supplied by the Government in its report to the effect that the new draft of the overall reform of the Labour Code retains the sections respecting non-discrimination and non-interference that were contained in the 1981 draft Labour Code prepared with ILO assistance. It hopes that these provisions will be adopted in the near future.

Articles 4 and 6 (the right to bargain collectively of public servants who are not engaged in the administration of the State). The Committee notes the information contained in the Government's report to the effect that a negotiating committee has been set up and is composed of the principal central trade union organisations, the Government of the Republic, the Ministry of Labour and Social Security, the Ministry of National Planning and Economic Policy, the Ministry of the Economy, Industry and Commerce, the Ministry of Finance and the President's Office and that this committee has prepared draft legislation respecting collective bargaining in the de-centralised public sector which it hopes will be submitted to the Legislative Assembly before the end of the year and become law in the Republic.

The Committee can only once again express the hope that the draft legislation relating to these points of the observation, which would

bring the legislation into full conformity with the Convention, will be adopted in the near future and it requests the Government to indicate any progress achieved in this respect in its next report.

Denmark (ratification: 1955)

With reference to its previous comments relating to restrictions on the free fixing of wage rates, the Committee takes note of the Government's report. It also notes the conclusions reached by the Committee on Freedom of Association in Cases Nos. 1418 (presented by the Seamen's Union), 1443 (presented by the Danish Computer Workers' Trade Union) and 1470 (presented by several national federations) [approved by the Governing Body respectively in March 1988, November 1988 and March 1989: see 254th Report, paras. 200 to 227, 259th Report, paras. 163 to 197 and 262nd Report, paras. 33 to 78] where that Committee considered that various interventions by the public authorities in the collective bargaining process in different sectors have infringed the principle of free collective bargaining contrary to Article 4 of the Convention.

According to the Government's report, during 1987 the renewal of collective agreements took place without industrial action on a major scale and, in most occupational fields, the parties reached agreement on several major issues before the services of the Public Conciliator were called upon. The parties themselves initiated a new concept of four-year long agreements (so as to phase in reductions in the working week) with mid-term negotiations on some items possible in the spring of 1989. Agreement was not reached in some minor fields in the public sector. The Government states that it was obliged to intervene to end industrial action and prolong some agreements: Act No. 246 of 8 May 1987 for junior hospital doctors, Act No. 542 of 20 August 1987 for computer workers, Act No. 657 of 15 October 1987 for the seamen running the only island ship service for the state-owned company "Bornholmstrafikken" and Act No. 289 of 20 May 1987 for ambulance drivers and emergency fire-service workers.

In the private sector, explains the Government, the Public Conciliator used the linking provisions of the Act on Conciliation in Industrial Disputes to extend a general draft agreement concluded on 11 February 1987 to one part of this sector - represented by the Seamen's Union and the Danish Shipowners' Association - where negotiations were taking place towards renewing its own agreement. The Government adds that Parliament adopted Act No. 408 of 1 July 1988 to set up the Danish International Ships' Register, the aim of which is to improve the competitiveness of the Danish merchant fleet and thus to strengthen employment on board Danish ships. Section 10 of this Act introduces special rules concerning collective agreements for ships registered on the Danish International Ships' Register.

The Government is of the opinion that - in view of the collective bargaining procedure and traditions built up by the social partners in Denmark since the end of the last century, including those regulated aspects such as the powers vested in the independent Public Conciliator - its actions are in complete accordance with the spirit of this Convention. The Government particularly objects to the criticism by

the Committee on Freedom of Association of the prolongation of agreements for four years on two counts, namely: (1) that the parties themselves decided to break with the traditional two-year long agreements in favour of four-yearly agreements, and (2) that certain pay-related items can be negotiated as early as the spring of 1989.

The Committee acknowledges that this Convention, according to Article 6, does not deal with the position of public servants engaged in the administration of the State. It also recalls that respect for the autonomy of the parties to collective bargaining can be waived only for compelling reasons of national economic interest. It is clear that the workers in the sectors touched by the various interventions - such as computer workers employed in the tabulation of statistics, or interns - are not public servants engaged in the administration of the State and therefore cannot be denied the right to voluntary negotiations with a view to the regulation of terms and conditions of employment by means of collective agreements as provided for under Article 4 of the Convention.

Likewise, it is evident that even if the Government sincerely believed that it was or would be faced with a series of national economic crises, the various measures taken went beyond the criteria of acceptable intervention by the public authorities in the bargaining process, namely that the restriction of free collective bargaining should be exceptional, applied only to the extent necessary, without exceeding a reasonable period and accompanied by adequate safeguards to protect the standard of living of the workers concerned [General Survey, para. 315]. The Committee bases its conclusion on the following grounds: as the Government's own report and the many cases presented to the Governing Body Committee and discussed in the present Committee over recent years show, such interventions are not exceptional measures but are resorted to on a regular basis when bargaining and conciliation appear to be dead-locked; it is debatable whether the interventions are used only to the extent necessary because, although several specific sectors have each been the subject of a specific intervention, the measures affect both private and public areas and, in one case, imposed an outside settlement at the very point when negotiations were nearing a successful conclusion (Case No. 1418); the interventions are in some cases permanent (Act No. 408, referred to in Case No. 1470) or are to last for four years, although the Committee takes due note of the Government's stand on this point; and the interventions - except for Act No. 408 - do not appear to address the question of maintaining the workers' standard of living.

Given that these various measures therefore are not in conformity with the requirements of Article 4, the Committee asks the Government: (1) to amend Act No. 408 so as to ensure that collective bargaining through their chosen representatives is open to all seafarers employed on Danish internationally registered ships; (2) to ensure that those sectors which are opening bargaining in the spring of 1989 - albeit on limited items in their collective agreements - will be able to negotiate free from interference by the public authorities, and that, more generally, collective bargaining on a voluntary basis, free from any restriction, will resume as rapidly as possible.

It requests the Government to inform it of the outcome of the next negotiations.

[The Government is requested to supply full particulars to the Conference at its 76th Session.]

Dominican Republic (ratification: 1953)

The Committee notes with regret that the Government's report has not been received. It also notes that the General Confederation of Workers has sent communications dated 3 and 31 January 1989 relating to, among others: the trade union rights of migrant workers and acts of anti-union discrimination.

I. Haitian workers in sugar plantations

With reference to its previous comments and the recommendations of the Commission of Inquiry on the employment of Haitian workers in the sugar plantations of the country, concerning the need to adopt provisions for the protection of workers against anti-union discrimination by employers and acts of interference by employers in workers' organisations (paragraph 473 of the report of the Commission of Inquiry), the Committee noted the Government's assurance that a Bill to guarantee protection against removal of trade unionists and to protect trade union leaders engaged in the negotiation of collective agreements or other trade union activities, had been submitted to Congress.

With reference to these points, the Government representative stated to the Conference Committee that the situation of Haitian workers employed in sugar plantations had changed in 1987 since, just as in the two previous years, no Haitian workers had been engaged, and he added once again that Haitians working in the country enjoyed the same rights as Dominican workers. He noted, however, the existence of clandestine work by Haitian workers who illegally cross the border, although he explained that this is a phenomenon which can be controlled only with difficulty and that, nevertheless, the authorities of the two countries are working in good faith to resolve these problems.

The Committee can only urge the Government once again to adopt legislation as soon as possible that is in conformity with the recommendations made by the Commission of Inquiry in 1983 concerning the protection of these workers against acts of anti-union discrimination by employers.

II. The need to strengthen measures  
protecting workers against anti-union  
discrimination and acts of interference

The Committee pointed out the need to adopt provisions protecting workers against anti-union discrimination by employers and acts of interference by employers against workers' organisations. The Committee notes the Government's statement in its report to the effect that: important new draft provisions will be published guaranteeing the situation of the first seven founding members of a trade union; the State Department for Labour, by means of mediation and arbitration, has achieved important progress for workers'

organisations by encouraging collective bargaining and peaceful solutions to labour disputes; and the number of new trade union organisations has risen sharply.

In its previous observation the Committee expressed the hope that legislation would be adopted in the near future that was in accordance with the Convention. It pointed out that under the current legislation, although section 307 of the Labour Code contains a number of provisions that are in conformity with Articles 1 and 2 of the Convention, the penalties provided by the law in order to enforce these provisions (which are limited to a fine of from ten to 500 pesos (sections 678(15) and 679(6) of the Code)), are quite insufficient and should be increased. In this connection, the Committee takes note of the 254th Report of the Committee on Freedom of Association concerning Case No. 1393 (Dominican Republic), approved by the Governing Body at its 239th Session (February-March 1988), and endorses the conclusions and recommendations set out therein which emphasise the need to adopt measures affording effective protection against acts of anti-union discrimination and interference, in particular preventive measures, penal sanctions of imprisonment and measures providing for the reinstatement of workers in their employment. In this connection, the Committee can only emphasise once again the need to adopt these legislative measures as soon as possible.

III. Agricultural workers excluded from  
the scope of the Labour Code

In its previous comments, the Committee referred to the exclusion of agricultural, agro-industrial, stock-raising and forestry enterprises employing fewer than ten permanent workers from the scope of the Labour Code (section 265), thus enabling the employers in these enterprises to evade the obligations laid down by section 307 of the Code, which prohibits acts of anti-union discrimination and acts of interference by employers, and allows the exclusion of this category of workers from the collective bargaining procedures.

Likewise, the Committee takes note of the communications sent by the General Confederation of Workers on 3 and 31 January 1989 which were transmitted to the Government on 7 February 1989. These communications concern, inter alia, the trade union rights of migrant workers, acts of anti-union discrimination and interference in trade union organisations.

Expressing its serious concern, the Committee once again requests the Government to keep it informed of the measures that have been adopted to amend the legislation so as to bring it into full conformity with the Convention in the near future.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Ecuador (ratification: 1959)

The Committee refers to its comments under Convention No. 87 concerning protection against acts of anti-union discrimination at the time of recruitment.

Egypt (ratification: 1954)

The Committee notes the Government's report on the application of the Convention.

For several years, the Committee has been noting that section 87 of the Labour Code, as amended by Act No. 137 of 1981, provides that any clause in a collective labour agreement that jeopardises the economic interests of the country shall be null and void.

As it indicated in its previous observations, the Committee is of the opinion that such a provision, by restricting the scope of collective bargaining, is of such a nature as to prejudice the principle of free bargaining set out in Article 4 of the Convention.

In its previous observation, the Committee noted that a tripartite committee, composed of representatives of the Ministry of Manpower, the Confederation of Egyptian Workers' Unions and the Federation of Egyptian Industries had been set up to study the possibility of amending certain provisions of the Labour Code, including section 87. In its report, the Government indicates that the work of this committee is continuing and that it will ensure that section 87 of the Labour Code is among the provisions submitted for examination with a view to its amendment in accordance with the Committee's opinion, although, according to the Government, bargaining takes place freely in Egypt and the social partners take into account the economic interests of the State.

While noting this statement, the Committee points out that if the Government considers that the social partners must conform to "national economic interests", as defined in the economic policy of the Government, the parties to bargaining must not be compelled to conform, but must be invited to have regard voluntarily to the national interest in their negotiations and must remain free in their final decisions (see in this connection paragraph 318 of the 1983 General Survey on Freedom of Association and Collective Bargaining).

The Committee trusts that the Government, upon whom it is incumbent to encourage voluntary collective bargaining in the broadest sense, will take the necessary steps to amend section 87 of the Labour Code in order to ensure that the national legislation is in full conformity with the Convention. It requests the Government to supply information on progress achieved in this respect.

Ethiopia (ratification: 1963)

The Committee notes the information supplied by the Government in its report and to the Conference Committee in 1987, and the attached documents.

The Committee's comments concern the application of Article 4 of the Convention.

In its previous observations, the Committee noted that section 70(2) of the Labour Proclamation of 1975 provides for the compulsory registration of collective agreements, which may be refused without the possibility of appeal in the event, among other criteria, of their not conforming to the general policy pursued by the Government.

The Committee takes due note of the Government's indication in its report that the main objective of this procedure is to verify that collective agreements conform to the minimum standards established by the labour legislation and that, if a trade union is not satisfied with the Minister's decision, it may appeal to the High Court within two weeks.

Furthermore, the Committee notes, from the available information, that the Government's policy is to restrict wage increases. With reference to sections 6(5) and 8(2) of Proclamation No. 222 of 1982 respecting trade union organisation, under which the All-Ethiopia Trade Union (AETU) participates in the formulation of the country's political and economic plans and first-level trade unions participate in the formulation of enterprise plans, the Committee requests the Government to supply information on the effect given to these provisions and to indicate in particular whether the trade unions were consulted before the wages policy was established and the level at which they participate in decision-making in this area.

It also requests the Government to supply information on the effect given in practice to Article 4 of the Convention by continuing to supply, among other data, information on the number of agreements that are concluded, and the sectors and workers that they cover.

The Committee is addressing a request directly to the Government on another point.

#### Fiji (ratification: 1974)

The Committee notes the Government's report and recalls that its previous comments concerned the following points:

- the need to adopt specific measures, particularly through legislation, to guarantee adequate protection, enforceable by civil remedies or penal sanctions, to workers' organisations against any act of interference by employers or their organisations, in accordance with Article 2 of the Convention;
- the scope of the restrictions on collective bargaining imposed by the Counter-Inflation (Remuneration) Act.

1. With regard to the application of Article 2 of the Convention, the Government refers once again to the Trade Unions Act and the Industrial Association Act which, in its view, guarantee the mutual independence of occupational organisations. It adds that these organisations meet on committees appointed by the Government, but that no employer has control over a trade union.

While noting this information, the Committee once again requests the Government to take specific measures to forbid the establishment of workers' organisations dominated by an employer and the support by financial or other means of workers' organisations with the purpose of



placing these workers' organisations under the control of an employer or an employers' organisation, in accordance with Article 2 of the Convention, and to indicate in its next report any progress achieved in this respect.

2. In its previous observation, the Committee - as did the Committee on Freedom of Association in Case No. 1379, approved by the Governing Body at its 235th Session (March 1987) - requested information from the Government on the way in which effect is given to Article 4 of the Convention, following the adoption of the Counter-Inflation (Remuneration) Act.

The Committee notes from the information supplied by the Government that the Counter-Inflation (Remuneration) Act empowers the Government to set a ceiling for the rate of remuneration of workers and that this measure, which was necessitated by the economic situation, will be re-examined when the situation improves. The Government adds that the social partners are still free to bargain collectively their other terms and conditions of employment.

In this context, the Committee also notes the Counter-Inflation (Remuneration) (Control) (Variation) Order, 1988, adopted under section 10 of the Counter-Inflation (Remuneration) Act and notes that as from 1 January 1988 no salary increase is allowed except under the very restrictive conditions set out in section 4 of the Order of 1988.

The Committee draws the Government's attention to the fact that free collective bargaining should be able to cover all the terms and conditions of employment, including matters relating to wages, and that intervention by the authorities with the intention of removing wage increases from the scope of bargaining is not in conformity with Article 4 of the Convention, if this is prolonged beyond a reasonable period of time. Indeed, the Committee emphasises that where, for compelling reasons of national economic interest, the Government considers that it would not be possible for wage rates to be fixed freely by means of collective negotiations, such a restriction should be imposed as an exceptional measure and only to the extent necessary without exceeding a reasonable period and it should be accompanied by adequate safeguards to protect the workers' living standards. Finally, instead of proceeding unilaterally to apply its economic policy, which may be justified by circumstances, the Government should endeavour to persuade the parties to collective bargaining to have regard voluntarily in their negotiations to the compelling reasons for its policy through appropriate consultation procedures, rather than constraining them through legislative measures.

The Committee therefore requests the Government to indicate in its next report the measures that it intends to take to lift the legal restrictions on the free negotiation of wages and to re-establish collective bargaining in this area.

#### Finland (ratification: 1951)

Referring to its previous observations relating to the insufficiency of penalties incurred by employers committing acts of anti-union discrimination, the Committee notes with satisfaction the information supplied by the Government in its report, and that, under

amendments to the Employment Contracts Act and the Seamen's Act (Acts Nos. 935 and 936 of 4 December 1987), the requirement of equitable treatment of employees has been expressly extended to cover recruitment, and that penal sanctions, including penalties of imprisonment are now provided for such violations. The Committee also notes the increased protection afforded to labour protection delegates through amendments to the Supervision of Labour Protection Act (No. 29/1987), the new provisions regarding the periods of notice in the Employment Contracts Act, and the parallel anti-union discrimination provision applicable to persons employed by local authority employers.

The Committee notes the comments of the Central Organisation of Finnish Trade Unions (SAK) to the effect that the burden of proof in discrimination cases should shift to the employer, and that the quantum of compensation for illegal dismissals is inadequate. In that respect, the Committee draws the Government's attention to the comments it made in its 1983 General Survey, and in particular to the fact that placing on workers the burden of proving that an act occurred as a result of anti-union discrimination may constitute an insurmountable obstacle to compensation for the prejudice suffered. The Committee requests the Government and the SAK to supply information on the practical application of the Convention in this regard, and in particular on the number of cases where the courts have convicted employers for having dismissed workers unlawfully because of their union activities, and where they have ordered employers to reinstate dismissed workers and to pay them damages.

The Committee further notes the criticism of the Finnish Employers' Confederation (STK) about the absence of penal provisions against acts of discrimination between employees which, according to the STK, occur in practice when unionised employees put pressure on unorganised employees to join trade unions. The Committee points out that the protection afforded by Convention No. 98 against acts of anti-union discrimination concerns such acts by employers against workers, and not acts of this kind by trade unions.

#### Gabon (ratification: 1961)

The Committee notes the Government's report and the comments supplied by the Employers' Confederation of Gabon on the application of the Convention.

In its previous observation, the Committee noted the provisions of the Common Agreement dated 6 February 1982, and in particular clause A(6.2) which protects workers against any act of anti-union discrimination, in accordance with Article 1 of the Convention, whereas the legislation only provides such protection in the event of dismissal, and not during the period of recruitment and employment, as required by the Convention. It also noted that no provisions in the national legislation ensure that effect is given to Article 2 of the Convention with regard to the protection of workers' organisations against acts of interference by employers or their organisations.

The Committee takes due note of the Government's statement, in which it indicates that the provisions of the Common Agreement cover

the gaps identified in the law with regard to Article 1 of the Convention. Nevertheless, with reference to the comments by the Employers' Confederation of Gabon, the Committee notes that, although almost all wages have been covered by the Common Agreement since 1982, this text does not have the force of law. The Committee therefore considers it necessary to incorporate into law the obligations set out in the Common Agreement.

Recalling the assurances given by the Government in its previous reports to the effect that Articles 1 and 2 of the Convention are among the matters to be examined when the Code is revised, the Committee once again expresses the hope that the legislation will be amended so as to extend legislative protection against any act of anti-union discrimination to the period of recruitment and during employment (Article 1 of the Convention) and to provide protection, including penal sanctions, for workers' organisations against any act of interference by employers (Article 2 of the Convention).

The Committee requests the Government to indicate in its next report the measures that are envisaged in order to bring the legislation into greater conformity with the Convention.

#### Greece (ratification: 1962)

With reference to its previous comments concerning the restrictions on voluntary collective bargaining, which for several years have limited wage negotiations, the Committee notes the Government's report and observes with interest that since 31 December 1987, the legislation of 18 October 1985 respecting measures for the protection of the national economy ceased to be in force and that, consequently, negotiations of standards, terms and conditions of employment and the remuneration of wage earners has no longer been subject to any intervention whatsoever by the public authorities since 1 January 1988.

The Committee trusts that, henceforth, Article 4 of the Convention will be implemented in a way that is free from interference by the public authorities, and it requests the Government to inform it in its next report of developments in the situation as regards the collective bargaining of wages, including any amendment to Act No. 3239 of 1955, as amended, respecting collective bargaining and labour disputes.

#### Guatemala (ratification: 1952)

In the observation it made in 1987, the Committee requested the Government to indicate the measures that had been taken to repeal or amend section 4 of Decree No. 1786 of 10 September 1968, under which workers in autonomous and semi-autonomous state undertakings are only granted the right to present collective petitions of an economic and social nature to the executive authorities, and thereby granting public servants not engaged in the administration of the State the same rights of free collective bargaining as workers in the private sector, thereby bringing this point of the legislation into full conformity with the Convention (Articles 4 and 6).

The Committee notes with interest that the 1986 Political Constitution, in sections 102(q) and 116 grants freedom of association and collective bargaining to all workers in both the public and the private sectors.

The Committee also notes with satisfaction the Decree issued under the Act respecting the organisation and regulation of strikes for state employees, No. 71-86, which came into force on 1 January 1987 and which contains provisions setting forth the procedures for the exercise of the right to organise, collective bargaining and the right to strike in the public sector, which were previously prohibited.

#### Haiti (ratification: 1957)

The Committee has taken note of the information provided by the Government in its report and of the conclusions reached by the Committee on Freedom of Association in Case No. 1396 examined in February 1989 (see 262nd Report) relating to anti-union dismissal practices.

Further to its earlier comments on the need to amend section 34 of the Decree of 4 November 1983 which confers on the Service of Social Organisations the power to intervene in the preparation of collective agreements, and to adopt a specific provision containing protective measures against anti-union discrimination at the recruitment stage and to require employers that have dismissed workers on grounds linked to legitimate trade union activities to reinstate them in their jobs, the Committee notes the information supplied by the Government in its report. In particular, it notes with interest that following the ILO mission that went to Haiti and met the competent national departments in October 1988, section 34 of the Legislative Decree of 4 November 1983 is in the process of being revised and that the adoption of specific provisions prescribing protective measures against anti-union discrimination at the recruitment stage and the reinstatement of workers dismissed on grounds of legitimate trade union activities is currently being studied.

The Committee trusts that provisions in conformity with the requirements of the Convention will shortly be adopted and requests the Government to indicate in its next report any progress made in this respect.

[The Government is asked to supply full particulars to the Conference at its 76th session.]

#### Indonesia (ratification: 1957)

The Committee notes the Government's report. It also takes note of the conclusions of the Committee on Freedom of Association with regard to Case No. 1431, approved by the Governing Body at its 241st Session (November 1988).

The Committee recalls that its comments concerned the following points:

- the absence of legislative provisions accompanied by civil remedies and penal sanctions to guarantee workers adequate protection against any act of anti-union discrimination at the time of recruitment or during employment (Article 1 of the Convention);
- the absence of legislative provisions accompanied by civil remedies and penal sanctions to give workers' organisations protection against any act of interference by employers or their organisations (Article 2);
- the restriction on free collective bargaining under the terms of Regulations No. 49 of 1954 and No. PER-01/MEN/1975 (referred to in Regulation No. PER-02/MEN/1978) under which only federations covering at least 20 provinces and gathering together 15 trade unions may conclude collective agreements, which is contrary to Article 4.

1. Protection against acts of anti-union discrimination. The Committee noted that the protection measures against dismissal on trade union grounds existed in the legislation, but that Article 1 of the Convention was not sufficiently implemented.

In its last reports, the Government states that Article 1 is being examined. It points out, however, that the Decision of the Director-General of Protection and Maintenance of Manpower No. 362/67 (point 6 of the Decision) and Ministerial Regulation No. PER-04-MEN-1986 (section 8) forbidding dismissal on trade union grounds are still in force and that the number of violations of these provisions is not significant. Furthermore, it emphasises that section 1(3) of the 1954 Act ensures both that employers do not discriminate against trade unionists and that trade unions are not in a legal position to coerce employers. In other terms, according to the Government, employers are not afforded special legal protection against a "dictatorial" attitude by trade unions. The principle of non-discrimination is in accordance with the 1945 Constitution and the philosophy of the Indonesian nation. Finally, the Government indicates that the Decision of the Director-General of Manpower No. 362/67 and Ministerial Regulation No. PER-04-MEN-1986 are the measures to implement Law No. 12/1964 respecting termination of employment in private enterprises. This means that the above Decisions and Regulations only cover dismissals and that the employer's obligations during the employment relationship are not covered by these texts.

The Government also refers to Law No. 22/1957 respecting labour disputes and emphasises that dismissals have to be approved by the tripartite committee responsible for the settlement of disputes and that this mechanism is intended to guarantee that termination of employment or other unfair practices concerning trade unions (membership and other trade union activities) are avoided. In cases of transfers, demotions or other measures which can be suspected of being anti-trade union, the union may bring the case to be examined by the tripartite committee responsible for the settlement of disputes. With regard to protection during employment, the Government states that it is currently preparing a Government Regulation on Work Agreement and that it hopes that some of these provisions will deal with the conditions of employment, which should be established at the time of recruitment.

2. Protection of workers' organisations against acts of interference by employers. The Government refers once again to the principles of the Pancasila concept in industrial relations and to Government Regulation No. 05/MEN/1987 which repealed Regulation No. PER-01/MEN/1975 respecting the registration of trade unions, which, however, has not been supplied to the ILO.

The Committee takes due note of all these indications, and particularly of the fact that the legislation contains provisions to protect workers against anti-union dismissals and, according to the Government, dismissals during the employment relationship. However, the Committee notes that the Committee on Freedom of Association, in Case No. 1431, concluded that the national legislation does not fully implement Articles 1 and 2 of the Convention. Consequently, it once again requests the Government to take specific measures, particularly through legislative provisions, accompanied by civil remedies and penal sanctions, in order to provide protection for workers against all acts of anti-union discrimination, not only in the event of dismissal, since that already exists in the legislation, but also more specifically during the period of employment and at the time of recruitment, and to give workers' organisations adequate protection against any acts of interference by employers and their organisations.

It requests the Government to supply detailed information in this respect in its next report together with the text of any laws that have been adopted, and in particular of Ministerial Regulation No. 05/MEN/1987.

3. Restrictions on collective bargaining. For several years, the Committee has been noting that only registered trade unions can undertake collective bargaining (section 1 of Ministerial Regulation No. PER-2/MEN/1978) and that a federation can only be registered if it covers at least 20 provinces and comprises 15 trade unions (Ministerial Regulation No. PER-01/MEN/1975). In the absence of registered trade unions, the terms and conditions of employment of workers are established by enterprise regulations, in accordance with the provisions of Ministerial Regulation No. PER-2/MEN/1978.

In its report, the Government states that Ministerial Regulation No. PER-01/MEN/1975 has been replaced by Ministerial Regulation No. 05/MEN/1987, which modifies the procedure for the registration of trade unions.

The Committee is not in a position to examine the significance of this text as it has not been supplied to the ILO. It therefore requests the Government to send a copy of the above text with its next report and to provide information on the measures that have been taken or are envisaged to remove the restrictions on collective bargaining and to promote the development of voluntary negotiation procedures for collective agreements between employers and their organisations and workers' organisations, and not only federations of registered trade unions, so that terms and conditions of employment can be settled in this way.

Iraq (ratification: 1962)

The Committee takes notes of the Government's report. It also takes note of Act No. 71 of 1987 issuing the Labour Code and Act No. 52 of 1987 on trade union organisations.

For a number of years, the Committee has been raising the following points in its comments:

- the need to adopt explicit legislative provisions, accompanied by civil remedies and penal sanctions, to ensure the protection of workers against any act of anti-union discrimination by employers, not only in the event of dismissal, as provided for in sections 21 and 29 of the 1970 Labour Code, but also at the time of taking up employment and during the employment relationship, such as transfer and demotions, in order to bring its legislation into conformity with Article 1 of the Convention;
- the need to adopt legislative provisions ensuring the protection of workers' organisations against any acts of interference by employers or their organisations (Article 2).

1. Article 1 of the Convention. With regard to the protection of workers against acts of anti-union discrimination by an employer at the time of recruitment or during the employment relationship, the Committee notes with regret that Act No. 71 of 1987 issuing the Labour Code contains no specific provision for this purpose. Furthermore, the Committee takes due note of the fact that the legislation provides for the reinstatement of a worker when the Industrial Tribunal considers that dismissal is based on an error or on the bad faith of the employer. However, the Committee regrets that the provisions of the former Labour Code (sections 21, 29 and 246) which prohibited dismissal for trade union activities, accompanied by penal sanctions, have not been reproduced in the new Labour Code.

The Committee asks the Government to amend its legislation to provide that it is unlawful for a worker's employment to be conditional upon his membership or non-membership of a union, and for a worker to be dismissed or prejudiced by transfers, demotions or other measures, on grounds of trade union membership or participation in union activities. This prohibition should be accompanied by civil remedies and penal sanctions against the employer.

2. Article 2. With regard to the protection of workers' organisations against acts of interference by employers or their organisations in trade union affairs, the Government refers to sections 9 and 21 of the new Labour Code under which all trade unions and the General Confederation of Trade Unions enjoy legal personality and financial and administrative autonomy for the achievement of their goals.

In the view of the Committee, these provisions which reiterate the principle of the provisions of the former Labour Code (sections 210, 227, 233 and 237), do not cover the protection set forth in Article 2 of the Convention.

The Committee requests the Government to adopt specific measures prohibiting employers from supporting workers' organisations by financial or other means, with the object of placing such organisations under the control of employers, in particular through legislative means, accompanied by civil remedies and penal sanctions, to ensure



that workers' organisations enjoy adequate protection against any interference by employers or their organisations, in accordance with Article 2 of the Convention.

3. Article 4. With reference to the new Labour Code, the Committee notes with regret that the provisions on collective agreements contained in the former Code have not been reproduced in the new labour legislation. It also notes that the provisions of Act No. 52 of 1987 on trade union organisations, concerning the attributions of the various trade union bodies (sections 6, 10, 20 and 27), do not seem to include collective bargaining with a view to establishing the conditions of employment and wages of their members.

The Committee therefore requests the Government to provide information on the manner in which the trade union organisations in the private, mixed and co-operative sectors covered by the new Labour Code, negotiate their conditions of employment and wages.

4. Articles 4 and 6. The Committee notes from the information communicated by the Government that, under Act No. 150 of 1987, workers in the employment of the State and workers in the socialised sector are treated as civil servants.

The Committee recalls that, although the Convention does not deal with the position of public servants engaged in the administration of the State (Article 6 of the Convention), it has never envisaged the possibility of important categories of workers employed by the State being excluded from the benefits of the Convention merely because they are formally assimilated to certain public servants.

The Committee therefore requests the Government to indicate, in its next report, the measures taken or under consideration to guarantee that persons employed by the State, public enterprises and independent public institutions, who are not engaged in the administration of the State, such as teachers and workers in the socialised sector in particular, enjoy the right to be protected against any act of anti-union discrimination and to negotiate their conditions of employment collectively, in accordance with Articles 1, 2 and 4 of the Convention.

#### Jamaica (ratification: 1962)

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

The Committee notes the information supplied by the Government concerning compulsory arbitration and refers in this respect to its observation concerning Convention No. 87.

The Committee also notes with regret that the Government made no comments concerning the need to amend section 5 of the Labour Relations and Industrial Disputes Act No. 14 of 1975, and section 3, (1)(d), and (2) of the regulations issued thereunder on 6 May 1975 regarding the denial of the right to negotiate collectively in the case of the workers in a bargaining unit when these workers do not amount to more than 40 per cent of the unit.

In this respect, the Committee of Experts, in the same way as the Committee on Freedom of Association, which had the matter



brought to its attention in Case No. 1158 (examined in its 226th and 230th Reports, which were approved by the Governing Body), once again urges the Government to indicate in its next report the measures that have been taken or are contemplated in order to ensure that the union with the greatest number of workers in a bargaining unit, even if it does not have 40 per cent of the workers in that unit, is entitled to negotiate collectively conditions of employment at least on behalf of its own members.

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

#### Japan (ratification: 1953)

The Committee notes the information supplied by the Government in its reports.

In its previous observation, the Committee commented on the following points:

1. the implementation of the recommendations made by the National Personnel Authority (NPA) relating to wage increases for public employees in the non-operational sector;
2. the implementation of arbitration awards issued by the Public Corporations and National Enterprises Labour Relations Commission (KOROI) concerning employees in these corporations and enterprises;
3. collective bargaining in bodies financed by the Government.

As no new developments appear to have occurred regarding the two first points, the Committee wishes to refer to its previous comments, namely that it hopes that the recommendations of the NPA will continue to be implemented and that the awards of the KOROI should be implemented fully and rapidly.

With regard to collective negotiations in corporations financed by the Government, the Committee notes the Government's statement to the effect that wages and other terms and conditions of employment are determined by autonomous collective bargaining between the trade unions and the management concerned.

However, many organisations of this type have to obtain, with regard to wages, authorisation from the competent Minister, who consults the Minister of Finance. This procedure is followed in order to ensure the proper expenditure of public funds, since these corporations depend, for most of their resources, on such funds. Furthermore, market constraints cannot act in these cases since the corporations in question are not managed on their own commercial resources. The Committee also notes the Government's statement to the effect that it has never intervened in collective bargaining in such organisations and that the approval of the competent Minister has been given in all cases. Finally, it notes that it is generally recognised that the wage level of employees in these corporations is higher than that of national public employees.

The Committee hopes that the collective agreements concluded in corporations financed by the Government will continue to conform to the freely expressed wishes of the social partners. It requests the Government to continue supplying information on collective bargaining

practices in these corporations, and in particular on the comments of the competent Ministers on the agreements submitted to them.

Jordan (ratification: 1968)

The Committee takes note of the Government's report. It recalls that, for several years, it has been making comments on the following points:

1. the absence of specific provisions accompanied by civil remedies and penal sanctions ensuring the protection of workers' organisations against any act of interference by employers or their organisations (Article 2 of the Convention);
2. the absence of provisions ensuring that the Convention is applied to domestic servants and agricultural workers who are not employed in government organisations or institutions for mechanical equipment or in irrigation work.

1. In the past, the Government has indicated that it was not necessary to adopt specific provisions to apply Article 2 of the Convention, because under section 33 of the Constitution of the Hashemite Kingdom of Jordan, international treaties and agreements become enforceable upon ratification. Furthermore, in its last report it states that it interprets Labour Code No. 21 of 1960, as amended, as prohibiting all interference by employers' organisations in the affairs of workers' unions.

The Committee takes note of this specific information, but points out that the legislation currently in force contains no provisions protecting workers' organisations against interference by employers or their organisations.

It again urges the Government to adopt a specific statutory provision in this respect at an early date, protecting workers' organisations against acts of interference by an employer, liable to give rise to the establishment of workers' organisations under the domination of the said employer, who would support a workers' organisation by financial or other means with the object of placing such an organisation under his control.

The Committee therefore requests the Government to indicate, in its next report, the measures it has taken to bring its legislation into conformity with the Convention.

2. In answer to its previous observation concerning the exclusion of certain agricultural and domestic workers from the protection of the Labour Code and thereby of the Convention, the Committee notes with interest that, according to the Government, the application of the provisions of the Labour Code, hitherto limited to agricultural workers employed in government organisations, technical institutions or in permanent irrigation work, is extended in the draft new Labour Code to agricultural workers whose activities have to do with the driving, installation or repair of agricultural machinery; to administrative, financial and accountancy work in agricultural enterprises; to the manufacture and marketing of agricultural products; and to cattle-, poultry- and horse-breeding, fish-breeding, bee-keeping and other similar work.

As regards the exclusion of domestic workers from the scope of the Labour Code, the Committee notes that the draft Code continues to exclude these workers but that, on the recommendation of the responsible Minister, the Council of Ministers will be able to establish regulations concerning their situation, their conditions of work and their rights and obligations.

The Committee trusts that the new legislation currently being prepared will grant all agricultural and domestic workers, without exception, protection against acts of anti-union discrimination, as well as the right to negotiate their conditions of employment collectively. It requests the Government to provide information in its next report on any progress made in this respect.

Libyan Arab Jamahiriya (ratification: 1962)

The Committee notes the Government's report.

1. For many years the Committee has been pointing out that certain provisions of the national legislation do not sufficiently implement or are not in conformity with the Convention, namely:

- section 34 of Act No. 107 of 1975 concerning trade unions, which provides protection against acts of discrimination for trade union activities during the employment relationship, but not at the time of the recruitment of a worker (Article 1 of the Convention);
- sections 63, 64, 65 and 67 of the Labour Code, which require the clauses of collective agreements to be in conformity with the economic interest (Article 4), whereas, in the Committee's opinion, rather than subjecting the validity of collective agreements to government approval, steps should be taken to persuade the parties to collective bargaining to have regard voluntarily to major economic and social policy considerations of general interest invoked by the Government (see paragraph 318 of the 1983 General Survey on Freedom of Association and Collective Bargaining).

In its report, the Government indicates once again that proposals have been made to amend these provisions of the national legislation in order to bring them into line with the Convention.

The Committee once again trusts that the necessary measures will be taken in the near future to give effect to the Convention on these points and it requests the Government to supply information on the progress achieved.

2. The Committee notes that the Government's report does not contain any information on a number of points that were raised in its previous observations:

- (a) the right to bargain collectively of public servants not engaged in the administration of the State.

The Committee noted that by virtue of Part IV of Decision No. 184 of the General People's Committee of 1983, concerning the organisation of municipalities, the People's Committees of the public service are responsible for the recruitment of workers. The Committee once again requests the Government to indicate whether these provisions apply to public servants other than those acting in their capacity as agents of

the public authority whom, by virtue of Article 6, are not covered by the Convention. If this is the case, it requests the Government to indicate the provisions under which the guarantees set out in Articles 1 and 2 and the right to freely negotiate collective agreements as laid down in Article 4 are recognised for public servants who are not engaged in the administration of the State;

(b) the right of agricultural workers and seafarers to bargain collectively.

The Committee has been noting for several years that agricultural workers and seafarers are excluded from the scope of the Labour Code and that seafarers are governed by the Maritime Code. The Committee once again urges the Government to supply a copy of the Maritime Code and of the legislative texts that give agricultural workers and seafarers the right to organise and to bargain collectively their terms and conditions of employment in accordance with the Convention.

[The Government is requested to supply full particulars to the Conference at its 76th Session.]

#### Malaysia (ratification: 1961)

The Committee notes the Government's report and recalls that its comments concerned a number of provisions of the Industrial Relations Act of 1967:

- the exclusion from collective bargaining of matters concerning promotion, transfers, recruitment, dismissal without notice, the assignment of jobs (section 13(3) of the Industrial Relations Act of 1967, as amended in 1980);
- the prohibition from including, in collective agreements for so-called "pioneer enterprises" and in all other enterprises specified by the Minister, provisions that are more favourable than those contained in Part XII of the Employment Ordinance, 1955 (section 15 of the Act);
- restrictions on the right to bargain collectively for employees in public administrations other than those engaged in the administration of the State (section 52 of the Act).

1. Restrictions on the scope of collective bargaining. With regard to section 13(3), in its previous observation the Committee noted that, according to the information supplied by the Government, the matters excluded by virtue of the Act from the scope of collective bargaining were in fact negotiated. The Committee suggested that the Government could repeal this provision in order to bring its legislation into accordance with its practice and with the Convention on this point.

In its last report, the Government indicates that, within the framework of its industrial development policy, the objective of which is economic growth, employment must be able to develop without undue hindrances. It adds that, rather than withdrawing the legal restrictions regarding collective bargaining, it is for the social partners to remove these restrictions through collective negotiation. It also states that the Act gives the opportunity to negotiate questions of a general nature concerning the procedure of promotions

and that in the event of refusal by an employer, a trade union may make representations to the Minister.

With regard to section 15 of the Act of 1967, which, according to the Government, is only a reserve provision to protect the so-called "pioneer enterprises", the Committee notes the Government's statement in its last report to the effect that this provision is one of the measures that it has taken to promote investment, that it furthers industrial growth and employment and that it is essential in view of the cutback in public expenditure and the emphasis given to the development of the private sector.

The Committee once again points out that, even though collective bargaining may in practice cover matters excluded under the 1967 Act by section 13, and that section 15 of the 1967 Act only concerns newly constituted enterprises for a period of five years, giving their workers the minimum employment conditions established by law, these provisions nevertheless are contrary to the principles set forth in Article 4 of the Convention which lays down that measures shall be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by this means.

It therefore requests the Government to supply information in its next report on the measures that have been taken or are envisaged in order to remove the restrictions on collective bargaining contained in the law.

2. With regard to the restrictions on the right to bargain collectively of employees in public administrations, the Government indicates that it is not entirely true that these employees cannot bargain collectively since five National Joint Councils provide them with this opportunity. The Government adds, in this connection, that for five years serious negotiations have taken place within these councils and have resulted in a substantial wage rise for civil service employees.

The Committee notes this information, but points out that although discussions have taken place in National Joint Councils, their recommendations, and those of the salary commissions (which may be re-examined by the Public Service Tribunal), are submitted for approval to the Cabinet Committee, which makes the final decision. In the Committee's opinion, this system does not fully afford employees in public administrations who are not in the category of public servants covered by Article 6 of the Convention, the right to negotiate collectively their terms and conditions of employment as set out in Article 4 of the Convention.

The Committee once again requests the Government to take steps to grant employees in public administrations other than public servants engaged in the administration of the State the right to negotiate collectively, without the intervention of the public authorities.

#### Malta (ratification: 1965)

1. Referring to its previous comments relating to Case No. 1349 examined by the Committee on Freedom of Association, which concerned a collective dispute between the Government and the Movement of United

Teachers, the Committee notes with satisfaction that, following its recommendation, the Government has now fully refunded the salaries of the 31 worker-students with respect to their October 1984 strike. The Committee also notes with interest that the new Government immediately set out to remedy the adverse situation of the teachers who had been the object of compulsory transfers following their strike in October/November 1984, that the affected teachers were individually consulted and that their wishes were taken into consideration, all the while taking into account the exigencies of service.

2. As regards the establishment of the Joint Negotiating Council for the public sector, provided for by section 25 of the Industrial Relations Act No. 30 of 1976, the Committee notes with interest that the Government will study its recommendation, together with other possibilities, in conjunction with the unions concerned in order to arrive at a mutually agreeable solution to this problem. The Committee recalls that Article 4 of the Convention places on the Government a positive duty to encourage and promote the full development and utilisation of machinery for voluntary negotiation of collective agreements between the State (the employer) and this category of workers (public servants not engaged in the administration of the State). The Committee requests the Government to keep it informed in its future reports of the progress achieved as concerns the Joint Negotiating Council.

#### Mauritius (ratification: 1969)

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

In its previous comments, the Committee pointed out that the provisions of the Act do not give workers' organisations sufficient protection against acts of interference, as provided for by Article 2 of the Convention. It has been requesting the Government since 1977 to include an express provision in the legislation for this purpose.

The Committee noted from the observations of the Mauritius Labour Congress sent in 1984 that a committee set up to examine the replacement of the Industrial Relations Act of 1973 has submitted its report.

The Committee trusts that this step will give rise in the near future to the inclusion in the Act of an express provision covering appropriate procedures and penalties, to ensure that the guarantees set forth in Article 2 of the Convention are respected. The Committee requests the Government to keep it informed of any development in the situation.

#### Morocco (ratification: 1957)

The Committee takes note of the information provided by the Government to the Conference Committee of 1988 and its report on the application of the Convention.

Referring to the Committee's previous comments concerning the shortcomings of the statutory provisions on protection against anti-union discrimination (Article 1 of the Convention), the Government stated in its previous report that the new Labour Code in the process of being drafted included provisions to guarantee the application of this Article of the Convention concerning the protection of workers against acts of anti-trade union discrimination in employment. The Committee requested the Government to provide a copy of the draft Labour Code and to supply information on the adoption of these measures.

The Committee takes note of the text of the above draft submitted by the Government and notes with interest sections 7 and 353 of the draft Code under which a worker may not be subjected to discriminatory measures either at the recruitment stage or in the course of employment, or in respect of the distribution of work, vocational training, wages, promotion, the granting of social benefits, dismissal and disciplinary measures, and sections 8 and 372 guaranteeing the application of the above provisions by the imposition of civil and/or penal sanctions. It also notes section 54(1) of the draft, under which trade union membership does not constitute a valid reason for dismissal, and section 79 which provides that employers can be obliged to reinstate workers dismissed unjustly. Finally, it notes that, in conformity with section 104(3) of the above draft, all collective agreements must contain provisions which regulate the recruitment and dismissal of workers without prejudicing the free choice of a trade union by the workers.

In the view of the Committee, these provisions should make it possible to ensure that Article 1 of the Convention is given legal effect. However, the Committee regrets that it has received no information concerning the entry into force of the Labour Code.

The Committee expresses the firm hope that the draft Labour Code will be adopted in the near future and urges the Government to provide information on progress made in this respect.

#### Nicaragua (ratification: 1967)

With reference to its previous comments, the Committee notes the information supplied by the Government in its report. It also notes the interim conclusions of the Committee on Freedom of Association concerning the various pending cases and a complaint submitted under article 26 of the Constitution of the ILO by several Employer delegates at the 73rd (1987) Session of the Conference (see the 258th, 261st and 264th Reports of the Committee on Freedom of Association, approved by the Governing Body in May 1988, November 1988 and February-March 1989). Finally, the Committee has examined the report submitted by the representative of the Director-General following the study mission that he undertook in Nicaragua in September-October 1988.

The Committee recalls that, in its previous observations, it pointed out the need to repeal Decree No. 530 of 24 September 1980 which, in section 1, subjects collective agreements to the prior approval of the Ministry of Labour before they can come into force. Furthermore, starting in 1984, the National Labour and Wages

Organisation System (SNOTS) began to be applied, establishing categories of employment and their corresponding wage rates.

The Committee notes with interest, from the information gathered by the representative of the Director-General, that SNOTS is now only applied as a reference point for wages, which can therefore be established freely. It is nevertheless bound to note that no information has been supplied to report the repeal of Decree No. 530 and that consequently a collective agreement still has to be approved by the Ministry of Labour in order to come into force, which is contrary to Article 4 of the Convention respecting the promotion and development of machinery for voluntary negotiation, with a view to the regulation of terms and conditions of employment by this means. It appears, however, that during the course of 1988 there was no refusal by the Ministry to register a collective agreement.

The Committee therefore requests the Government to take the necessary measures to repeal Decree No. 530 in order to give full effect to the Convention.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Nigeria (ratification: 1960)

The Committee takes note of the Government's report on the application of the Convention.

For a number of years, the Committee has been observing that, although certain categories of workers (persons exercising executive, technical and administrative functions, agents and commercial travellers, self-employed workers and persons employed in a vessel or aircraft to which the civil laws apply) are entitled, according to the Government, to associate in occupational organisations or to join trade unions by virtue of the Trade Unions Act, they are not covered by the provisions of the Labour Decree of 1974 (No. 21), concerning the protection of workers against acts of anti-union discrimination, since section 90 of the same Decree excludes them. It also noted that the Senate Committee on Labour was to examine the situation with a view to amending the legislation on this point.

The Committee notes from the Government's report that the Senate Committee has been replaced by the National Labour Advisory Council, a tripartite body responsible for reviewing all labour laws and that the conclusions of the above Council will be forwarded as soon as the review exercise is completed.

The Committee again recalls that, under Article 1 of the Convention, it is not enough for the above-mentioned categories of workers to enjoy the right to organise; this provision of the Convention implies that specific measures, in particular legislative measures, accompanied by civil remedies and penal sanctions, must be taken to guarantee the protection of workers against any acts of anti-union discrimination, both at the recruitment stage and in the course of employment. The Committee therefore urges the Government to amend its legislation so as to ensure that the above categories of



workers excluded from Decree No. 21 of 1974 are granted the protection due to them under this provision of the Convention.

Norway (ratification: 1955)

The Committee considers that the legislative interference with the right to free collective bargaining mentioned in its observation under Convention No. 87 is not in conformity with the principles embodied in Article 4 of the Convention.

Pakistan (ratification: 1952)

The Committee notes the Government's report and the information that it supplied to the Conference Committee in June 1988. The Committee also notes the observations made by the Pakistan National Federation of Trade Unions.

The Committee recalls that in the past it has identified divergencies between the Convention and legislative provisions relating to the employees of the Pakistan International Airlines Corporation (PIAC), to wage fixation in the banking and financial sector, and to the position of workers in export processing zones (EPZs).

Pakistan International Airlines Corporation

The Committee notes that section 10 of the Pakistan International Airlines Corporation Act, 1956 denies employees of PIAC the right to form or join trade unions, or to exercise the other rights which are embodied in Conventions Nos. 87 and 98.

The Committee notes, for example, that section 10(2) of the 1956 Act enables PIAC to dismiss any of its employees without giving any reason, without the employees having the right to appeal to a court and with only a very limited right to be heard. This provision gives the employer full latitude to dismiss an employee for any reason whatsoever, and particularly for reasons that may be connected with trade union activities. The Committee points out that by virtue of Article 1 of the Convention workers shall enjoy adequate protection against acts of anti-union discrimination (paragraph 1), and more particularly in respect of dismissals by reason of union membership or participation in union activities (paragraph 2, subparagraph (b)). The Committee draws the Government's attention to the fact that, in order to give effect to the provisions concerning the protection of the right to organise, employees of the PIAC should in the first place be allowed, in the same way as any other worker, to participate in trade union activities (see its comments in this respect under Convention No. 87) and secondly to enjoy adequate protection against any discriminatory act respecting recruitment or employment. The Committee emphasises that, even if they are considered as public servants, employees of the PIAC must enjoy the protection of the Convention since they are not public servants engaged in the administration of the State (Article 6).

Wage-fixation in the banking  
and financial sector

The Committee has, on several occasions, drawn attention to the fact that sections 38A to 38I of the Industrial Relations Ordinance, 1969 as amended empower the Government to constitute a wage commission to fix wage rates and determine all the other terms and conditions of service in banks and in any other sector that may be specified by a government notification, and that these provisions restrict the exercise of voluntary negotiation as established under Article 4.

The Committee notes that, according to the Government's report, employees of banks and other financial institutions enjoy freedom of association and that in all these establishments the sole collective bargaining agent is determined by secret ballot. The bargaining agent is entitled to present to the employer a charter of demands relating to the employees' wages and conditions of service. These demands are then submitted to the wage commission which is presided over by a High Court Judge, and which gives the parties, namely the bargaining agent and the management, the opportunity to present their arguments. The Government states that on the last occasion that a Commission was established (1984) some 51 unions were invited to make submissions to the Commission before it reached its decision.

The Committee notes that, in the opinion of the Government, the decisions of the Commission are arrived at having full regard to the process of collective bargaining. According to the Government, this is borne out by the fact: (i) that the social partners are given the opportunity to discuss wages and employment issues through the agency of the Commission; (ii) that on no occasion has any party to the process questioned the impartiality of the system, and (iii) that the Commission has never made an award which lacked the support of either workers or management.

The Committee recalls that the principle of voluntary negotiation implies the establishment of procedures encouraging discussions between the parties with the aim of concluding agreements that are freely arrived at. In the Committee's opinion, if, in order to facilitate negotiation, bodies and procedures are established, their intervention should not result in restrictions on the scope of negotiation or the independence of the parties. Accordingly, the Committee requests the Government to keep it informed of any future developments in this area - in particular, whether a further Commission has been established, the outcome of its deliberations, and the reactions of the parties to that outcome.

Export Processing Zones

With regard to restrictions upon the right to organise and to bargain collectively for workers in EPZs, the Committee invites the Government to refer to its comments under Convention No. 87.

The Committee trusts that the Government will take the necessary measures in the near future concerning the matters discussed above in order to give full effect to the requirements of the Convention.

Panama (ratification: 1966)

The Committee notes the Government's report.

In the comments that it has been making since 1967, the Committee has been asking the Government to grant the right to bargain collectively to public servants not engaged in the administration of the State, since under Article 6 of the Convention it is only the narrow category of public servants engaged in the administration of the State who may be excluded from the guarantees provided for by the Convention.

The Committee notes the Government's statement in its report that it has abandoned the draft Decree to which it referred in previous reports, through which it was preparing to give effect to Book III of the Labour Code to public employees, since it hopes that the Legislative Assembly will debate next year a Bill to regulate administrative careers, granting the rights of association, collective bargaining, strikes and arbitration to public servants.

After examining the above Bill, the Committee notes that the possibility of concluding collective agreements is excluded from the forms of negotiation envisaged in the Bill. The Committee emphasises that organisations of public officials and employees who are not engaged in the administration of the State should be able to negotiate collective agreements, in accordance with Articles 4 and 6 of the Convention and it urges the Government to take steps to include a provision of this nature in the Bill and to supply information in this connection.

Papua New Guinea (ratification: 1976)

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

The Committee recalls that it took note of a communication transmitted by the Government concerning Case No. 1267, approved by the Governing Body at its 228th Session (November 1984), in which a number of the legislative aspects raised had been the subject of its previous comments (section 52 of the Public Services Conciliation and Arbitration Act, amended by the Act of 1983, and section 42 of the Industrial Relations Act, covering the private sector).

In this communication the Government stated that it had taken steps to amend the legislation empowering the Government to reject, at its discretion, arbitration awards or agreements concerning wages, in order to bring it into conformity with Article 4 of the Convention.

With reference to the comments that it made concerning section 52 in a previous direct request, the Committee recalls that a system for the approval of collective agreements is only acceptable in so far as such approval can only be refused on grounds of form or where the provisions of a collective agreement do not conform to the minimum standards set out in the labour legislation.

The Committee once again expresses the hope that the necessary amendments will be made in the near future to bring the legislation into conformity with the Convention. It hopes that in its next report the Government will be able to supply information in this respect. It requests the Government to transmit a copy of the new texts upon their adoption; it also requests the Government to supply information on the practical application of the Convention (number of collective agreements, the sectors concerned, their duration, the number of workers involved, etc.).

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

#### Paraguay (ratification: 1966)

The Committee takes note of the Government's report.

In earlier comments, the Committee stressed the need to adopt provisions setting out civil remedies and penal sanctions to protect a number of categories of workers not covered by the Labour Code (public officials not engaged in the administration of the State and public employees and workers in public enterprises) against acts of interference and anti-union discrimination (Articles 1 and 2 of the Convention).

The Committee notes that the Government reiterates in its report that the proposals for amendments put forward during the direct contacts mission carried out in September 1985 have not yet been adopted. The Committee notes with concern that a number of complaints of acts of anti-union discrimination have been addressed to the Committee on Freedom of Association (Cases Nos. 1275, 1341 and 1368 (251st and 259th Reports of the Committee on Freedom of Association, approved by the Governing Body at its Sessions in May 1987 and November 1988)). It again urges the Government to bring its legislation and practice into conformity with the Convention in the very near future, and requests it in its next report to indicate the measures taken to give full effect to the Convention.

#### Poland (ratification: 1957)

The Committee notes the information supplied by the Government to the Conference Committee in 1988, and in its last report, in reply to its previous comments.

Its previous observation concerned factual questions and legal questions. The factual questions dealt with dismissals on grounds related to participation in social activities or acts of protest against the authorities and the difficulties allegedly encountered by former trade unionists who have been interned, arrested or sentenced and then amnestied, in finding employment. The legal questions concerned the Act of 24 November 1986 to amend Part XI of the Labour Code, containing restrictive provisions with regard to the registration of collective agreements.

On the first point, the Committee requests the Government to re-examine the situation and, if necessary, to strengthen the machinery and the law protecting workers against acts of anti-union discrimination, including sufficiently dissuasive civil remedies and penal sanctions in respect of employers and machinery for preventive protection.

According to the information supplied by the Government in its last report, the present legislation guarantees the prevention of acts of anti-union discrimination, including through penal and civil sanctions. While noting this information, the Committee is bound to emphasise the importance of protection against acts of anti-union discrimination, not only in law, but also in practice. The Committee hopes that, within the framework of the discussions that are currently being held (see, in this respect, the observation under Convention No. 87), it will be possible to find solutions regarding the persons who have been prejudiced due to trade union activities.

With regard to the registration of collective agreements, the Committee notes with interest that, under the Act of 17 June 1988, the need to register wage tables has been abolished. Wage tables are negotiated at the enterprise level and are concluded in the form of agreements which come into force on the date set out in the agreements. Similarly, under the terms of this Act, the parties to a national collective agreement may decide that, in the enterprises covered by the agreement, the provisions of the Labour Code regarding registration do not apply.

The Committee requests the Government to indicate the effect of the adoption of the Act of 17 June 1988 on the application of section 241 of the Labour Code respecting the registration of collective agreements. It requests the Government, in particular, to specify the cases in which collective agreements must still be submitted to the Minister of Labour, Wages and Social Affairs.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Portugal (ratification: 1964)

The Committee takes note of the information supplied by the Government to the Conference Committee in 1987 and in its last report.

It also takes note of the comments made by the CGTP (General Confederation of Portuguese Workers) and of the Government's reply to them.

Articles 4 and 6 of the Convention. In its previous observation, the Committee, as did the Committee on Freedom of Association in Case No. 1370 (248th Report approved by the Governing Body at its 235th Session, March 1987), invited the Government to amend its legislation so as to ensure that the prior authorisation needed for the entry into force of a collective agreement concerning public enterprises (section 24(c) of Legislative Decree No. 519/CI/79) can only be refused on grounds of form or because the provisions of the collective agreement do not conform to the minimum social standards contained in the legislation.

In its communications, the Government reiterates its previous statements to the effect that public enterprises are subject to the authorisation or approval of the supervisory authorities, and recalls that the refusal to deposit agreements applying to public enterprises constitutes an act of a procedural nature in that the examination by the General Labour Directorate is confined to ascertaining the presence or absence of the document giving the permission or approval of the appropriate authorities.

The Committee again takes note of this statement, but points out that it has already observed that public enterprises are subject to government supervision in economic and financial matters, in accordance with Legislative Decree No. 260/76, as the CGTP confirms in its comments.

Although it is not for the Committee to pronounce on the causes of the measures a government takes for purposes of economic stabilisation, it none the less emphasises that when legislation has the effect of imposing such a policy on the social partners, the principle contained in Article 4 of the Convention is not respected.

The Committee joins the Committee on Freedom of Association in urging that, instead of making the validity of collective agreements subject to government approval, the Government might provide that every collective agreement filed with the appropriate authority should normally come into force a reasonable length of time after having been filed. If the public authority considered that the terms of the agreement were manifestly in conflict with the objects of the economic policy recognised as being desirable in the general interest, the case could be submitted for advice and recommendation to an appropriate consultative body, it being understood, however, that the final decision on the matter lay with the parties.

The Committee again requests the Government to state the measures taken to ensure that the Convention is applied in this respect.

#### Singapore (ratification: 1965)

1. With reference to its earlier comments, the Committee notes with interest that the Employment (Amendment) Act of 1988 removes the prohibition on the negotiation of annual wage supplements, introduced by the Employment Act of 1968 and its amendments of 1972, 1975 and 1980, and provides that wage increases may be negotiated freely according to a system based on trading results, productivity or any other criteria agreed upon by the parties concerned (section 48(1) (2) of the 1988 Act). Under this new system, the Minister responsible may make recommendations for wage adjustments, to serve as a basis for negotiations (section 49 of the 1988 Act).

However, the Committee notes that, where an employer has never paid any annual wage supplement, the parties to the negotiations may not negotiate an annual wage supplement exceeding the equivalent of one month's wages, under penalty of sanctions (section 48(3) of the 1988 Act).

The Committee recalls in this connection that, rather than imposing restrictions on collective bargaining, the Government should take steps to persuade the parties to collective bargaining to have

regard voluntarily in their negotiations to major economic and social policy considerations of general interest invoked by the Government, and that it should prefer persuasion to constraint.

2. The Committee further recalls that it addressed the following points in its earlier comments:

- exclusion from collective bargaining of issues concerning promotion, transfer, appointment, dismissal without notice and the assignment of duties (section 17 of the Industrial Relations Act) even if, according to the Government, these matters have been the subject of consultation with the unions;
- power of the Industrial Arbitration Court to refuse to register the collective agreement of newly-established enterprises, when the conditions of employment that they afford are more favourable than those set forth in Part IV of the Employment Act (section 25 of the Industrial Relations Act) even if, according to the Government, the Industrial Arbitration Court has never refused to register a collective agreement.

In the absence of any new information on these points, the Committee again requests the Government to indicate in its next report the measures taken or contemplated to remove all restrictions in the area of collective bargaining contained in the legislation (section 17 of the Industrial Relations Act), since workers' organisations must be able to negotiate freely with employers and their organisations, and not merely be consulted on all aspects of conditions of employment. It also requests the Government to indicate the measures taken or contemplated to remove the restrictions on free collective bargaining laid down by section 25 of the Act and to promote, in newly-established enterprises, the development and utilisation of voluntary collective bargaining procedures with a view to regulating conditions of employment.

#### Sri Lanka (ratification: 1972)

The Committee takes note of the Government's report and the information supplied to the Conference Committee in 1987. It recalls that, for several years, its comments have addressed the following points:

- the need to adopt legislative provisions accompanied by civil remedies and penal sanctions to ensure the protection of workers against acts of anti-union discrimination both at the recruitment stage and during the course of employment (Article 1 of the Convention);
- the need to adopt legislative provisions accompanied by civil remedies and penal sanctions to ensure the protection of workers' organisations against acts of interference by employers or employers' organisations (Article 2).

The Committee takes note of the Government's statement to the Conference Committee in 1987, to the effect that, despite the difficult political, economic and social situation, it was aware of the need to bring the national law into conformity with the Convention. In this connection, the Minister of Labour was to

finalise, in the near future, the preparation of the documentation to be placed before the Cabinet of Ministers for its consideration.

The Committee points out that, for several years, the Government has been referring to draft legislation to guarantee the application of Articles 1 and 2 of the Convention, but that no progress has yet been made.

The Committee recalls that the rights set forth in Articles 1 and 2 must be guaranteed by appropriate measures accompanied by civil remedies and penal sanctions, in particular through legislative means.

The Committee requests the Government in its next report to provide information on measures taken to guarantee adequate protection of workers against acts of anti-union discrimination both at the recruitment stage and in the course of employment, and protection of workers' organisations against acts of interference by employers or employers' organisations, accompanied by civil remedies and penal sanctions.

The Committee also requests the Government to provide the draft prepared by the Minister of Labour so that it may examine it.

#### Swaziland (ratification: 1978)

The Committee notes the Government's report.

For several years it has been noting discrepancies between the national legislation and the Convention on the following matters:

1. the absence of provisions in the legislation respecting the protection of workers' organisations against acts of interference by employers or their organisations, contrary to Article 2 of the Convention;
2. the compulsory registration of collective agreements by the occupational tribunal, which may refuse registration in the event of non-observance of government directives on wages and wage levels, contrary to Article 4 of the Convention (sections 5(1b) and 43(3) and sections 4(4) and 44(3b) of the 1980 Industrial Relations Act).

1. In its previous observations, the Committee noted that the Labour Advisory Board, a tripartite body, had before it an amendment to the legislation intended to give effect to Article 2 of the Convention.

In its current report, the Government indicates that the work of the above Board on this matter has still not been completed, but that no cases of interference covered by Article 2 of the Convention have been brought to the knowledge of the Government.

While noting this statement, the Committee points out that under the terms of the Convention observance of the right set out in Article 2 must be ensured by appropriate measures, that is by legislative means.

The Committee trusts that the legislative process that is under way will be completed in the near future and requests the Government to supply full information on the progress achieved in this respect.

2. The Committee notes that the Government's report contains no information on the point raised concerning the implementation of Article 4 of the Convention.



The Committee therefore refers to its previous comments to the effect that the procedure according to which, before a collective agreement is applied, it is submitted to an industrial tribunal for authorisation, which is given after certifying that it is in conformity with official directives on wages, is a restriction of the right of workers to negotiate freely with their employers their terms and conditions of employment. It once again emphasises that government directives, particularly those concerning wages, should not be imposed upon the social partners but should be accepted voluntarily by all the parties concerned through appropriate procedures.

Consequently, the registration of a collective agreement should only be refused on grounds of form or because the provisions are not in conformity with the minimum standards of the labour legislation.

In this connection, the Committee refers to paragraphs 309, 311 and 313 of its General Survey of 1983.

The Committee requests the Government to supply information on the measures that have been taken or are envisaged to give full effect to this provision of the Convention on this point.

#### United Republic of Tanzania (ratification: 1962)

The Committee notes the Government's report. It recalls that its previous comments concerned the following point:

- the requirement that negotiated or voluntary collective agreements be registered by the permanent labour tribunal and that, in the event of their non-conformity with the Government's economic policies, registration be refused or accepted after modification of their clauses, without the possibility of appealing (sections 4, 6, 16, 22, 23, 27 and 39 of the Permanent Labour Tribunal Act, No. 41 of 1967), contrary to Article 4 of the Convention.

In its previous observation, the Committee noted that, in practice, measures had been taken to encourage the development of collective bargaining, particularly by advising, at various levels, the parties concerned of the economic conditions of the country. It, nevertheless, requested the Government to amend the legislation so as to bring it into greater conformity with Article 4 of the Convention under which the principle of free negotiation implies, when economic conditions make this necessary, that the observance by the parties concerned of government policies should be sought through appropriate consultation procedures and not that these policies should be imposed, *inter alia*, through a system of compulsory registration of collective agreements. If such a registration system does exist, it should be limited to ensuring that the minimum standards set forth in the labour legislation are respected and to verifying questions of form.

On several occasions the Government has stated its readiness to amend the legislation, particularly on the basis of proposals that were formulated, at its request, by the ILO.

In its last report, the Government indicates that a draft Labour Code is currently under study with the technical assistance of an ILO expert, whose proposals in this connection will be transmitted to the Tripartite Advisory Labour Council and that the legislation can only

be amended once the Government has been informed of the recommendations of the Council.

The Committee notes this statement and requests the Government to supply information in its next report on the measures that have been taken to give full effect to the Convention.

Trinidad and Tobago (ratification: 1964)

Following the comments it has been making since 1973, the Committee requested the Government in its last observation to indicate the measures taken or envisaged to amend section 34 of the Industrial Relations Act in order to allow minority unions who have not been able to reach a membership of 50 per cent of the workers in the unit to negotiate collectively conditions of employment, at least on behalf of their own members.

The Committee notes with regret that the Government merely answers that, at this stage of the country's socio-economic development, the granting of representational rights to minority unions is not necessarily in the best interests of collective bargaining, and that fragmentation of union representation could create problems of inter-union rivalry and costly work stoppages.

As regards the Government's argument (presumably based on section 48(1)(c) of the Act) that a majority group of workers could be compelled, in certain cases, to accept the terms and conditions of a subsisting collective agreement negotiated by a minority union, the Committee considers that this would be only a transitional situation and that the union which succeeds in rallying more workers will most likely be in a favourable bargaining position to negotiate a better collective agreement at the following negotiation session.

With respect to the acceptable minimum percentage of workers to enable a non-majority union to bargain collectively, the potential problem of several minority unions seeking to bargain collectively in respect of workers belonging to a single bargaining unit does not constitute per se an absolute bar to granting negotiating rights to such unions.

The Committee can only request the Government once more to indicate in its next report the measures taken or envisaged to ensure that a union whose members constitute the largest number of workers in a bargaining unit, even if these do not amount to 50 per cent of the workers, is granted the right to negotiate collectively conditions of employment, and that minority unions have the right to pursue individual grievances on behalf of their members.

Turkey (ratification: 1952)

The Committee notes the Government's report and the information that it supplied to the Conference Committee in June 1988 and the subsequent discussion. The Committee also notes the conclusions of the Committee on Freedom of Association in the cases that it has examined concerning Turkey (260th Report, November 1988), in so far as they relate to the application of the Convention and it notes the

observations supplied by the Turkish Confederation of Employers (TISK) and the Confederation of Turkish Trade Unions (TURK-IS).

In its previous comments, the Committee expressed its concern regarding two problems relating to the Turkish legislation on collective bargaining, namely the numerical requirements set out for trade unions to be allowed to negotiate a collective agreement (section 12 of Act No. 2822) and the procedure for postponing a strike and for compulsory arbitration in certain specified cases (section 33 of Act No. 2822). The Committee has examined with interest the amendments made by Acts Nos. 3449 and 3451, which improve the legislation in certain respects. However, it is bound to note that the situation remains unchanged with regard to the two provisions referred to above.

The Government states that it is convinced that there are no grounds of a legal or practical nature for amending the provision that lays down the double numerical requirement, and bases its view essentially on the following arguments:

- this requirement reflects "national conditions";
- it has not been criticised by the other social partners;
- it has made it possible to establish powerful trade unions, with sufficient human and material resources to represent their members effectively.

With regard to the provisions imposing compulsory arbitration in certain situations, the Government emphasises, firstly, that this procedure has only been imposed once since 1983 and, secondly, that:

- it applies only in exceptional cases (when the health of the population or national security are endangered), and only if the exceptional circumstances continue;
- the law provides for the possibility of an appeal to the administrative appeal tribunal;
- agreement can always be reached during the period of postponement;
- the tripartite composition of the Supreme Arbitration Board guarantees the balanced nature of its decisions.

The Committee notes with regret the position adopted by the Government and urges it to amend the legislation in order to encourage and promote the full development and utilisation of voluntary negotiation between workers' and employers' organisations for the conclusion of collective agreements, so that terms and conditions of employment can be regulated in this way in accordance with Article 4 of the Convention.

It urges the Government to indicate in its next report the measures that are envisaged, firstly, to grant trade unions, which do not represent 50 per cent of the workers in an enterprise or 10 per cent of the workers in a sector of activity, the right to negotiate collectively terms and conditions of employment, at least on behalf of their own members and, secondly, to restrict the application of the compulsory arbitration procedure established by the legislation in cases where a work stoppage due to a strike would endanger the life, personal safety or health of the whole or part of the population.

Furthermore, in view of the continuing ambiguity in this respect, the Committee requests the Government to indicate whether, in the terms of the Convention, public servants covered by the Convention, namely those who are not engaged in the administration of the State,

enjoy the right to organise and to negotiate freely their terms and conditions of employment, and it requests the Government to supply with its next report the legislative texts and regulations relating to this matter.

Uganda (ratification: 1963)

The Committee notes the Government's report.

For several years, the Committee has been noting that employees in the Bank of Uganda are excluded from the scope of the Trade Unions Decree No. 20 of 1976, and therefore do not enjoy the rights guaranteed by the Convention.

The Committee notes from the Government's report that this matter is still being discussed with the competent authorities and that it will transmit any decision that is taken in this respect.

The Committee recalls that although the Convention does not deal with public servants engaged in the administration of the State (Article 6), the right to bargain collectively their terms and conditions of employment should be granted to bank employees, who cannot be considered to be public servants engaged in the administration of the State. The Committee once again requests the Government to indicate in its next report the measures that have been taken to guarantee the rights laid down in this Convention to the staff of the Bank of Uganda.

United Kingdom (ratification: 1950)

1. The Committee notes the information set out in the report submitted by the Government. It also notes the conclusions of the Committee on Freedom of Association in Case No. 1391 [256th Report of the Committee, approved by the Governing Body in May-June 1988, paras. 39 to 89.].

2. Article 4 of the Convention. The Committee notes that the Government still intends to establish permanent machinery for the determination of schoolteachers' pay and conditions of service by April 1990, when the Teachers' Pay and Conditions Act, 1987 is due to expire. The Committee notes that to this end, the Government has had meetings with the National Employers' Organisation (representing local education authorities), and with each of the teacher unions, in order to hear their responses to its proposals for a new Teachers' Negotiating Group. The Committee also notes that the Secretary of State is presently considering these responses - with a view to preparing draft legislation.

The Committee trusts that any new scheme which may emerge from this process will enable primary and secondary school teachers in England and Wales to negotiate on a voluntary basis their terms and conditions of employment and their remuneration in accordance with Article 4 of the Convention.

The Committee requests the Government to keep it informed of any further developments in this regard.

3. Article 1. The Committee has always taken the view that Article 1 of the Convention guarantees workers adequate protection against acts of anti-union discrimination both in taking up employment and during the course of employment and that it covers all measures of anti-union discrimination (dismissals, transfers, demotions and any other prejudicial acts) [General Survey on Freedom of Association and Collective Bargaining, 1983, paras. 279 and 256].

The Committee notes that the Employment Protection (Consolidation) Act, 1978 (as amended by the Acts of 1980, 1982 and 1988) provides some measure of protection against discriminatory dismissal on grounds of union membership and activities (section 58), and against action short of dismissal (section 23). However there does not appear to be any legislative protection against denial of access to employment on grounds of union membership or activity. Both the wording of Article 1 and the jurisprudence of the Committee clearly require that workers should have protection against this form of discrimination. Accordingly, the Committee asks the Government in its next report to indicate the measures taken or contemplated in order to bring the situation into conformity with the requirements of the Convention in this regard.

#### Uruguay (ratification: 1954)

The Committee notes the Government's report.

The Committee notes with interest the adoption of Act No. 15903 of 10 November 1987 empowering the administrative labour authority to impose sanctions (fines, warnings or closures of establishments) in the event of infringements of international labour Conventions, laws, resolutions, awards and collective agreements which regulate labour relations.

The Committee previously requested information on collective bargaining involving public servants and public employees not engaged in the administration of the State. In its report, the Government indicates that it has submitted to Parliament a Bill to issue regulations under section 65 of the Constitution, establishing representative committees for autonomous bodies.

In this connection, since it seems that the above Bill does not deal with collective bargaining, the Committee is bound to emphasise that organisations of public servants who are employed in autonomous bodies and decentralised services (State enterprises) should enjoy the right to collective bargaining, since the Convention only permits the exclusion from its scope of public servants engaged in the administration of the State. In this connection, the Committee wishes to refer to paragraph 255 of its 1983 General Survey on Freedom of Association and Collective Bargaining, in which it indicated that:

With regard to public servants, who are covered without distinction by Convention No. 87, Article 6 of Convention No. 98 establishes that the Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way. The Committee considers that, while the concept of public servant may vary to some degree under the various national

legal systems, the exclusion from the scope of the Convention of persons who are employed by the State or in the public sector, but who do not act as agents of the public authority (even though they may be in a situation identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention; ... The Committee could not admit the exclusion from the terms of the Convention of important categories of workers employed by the State merely on the grounds that they are formally assimilated to public officials engaged in the administration of the State. If this were the case, the Convention might be deprived of much of its scope. The distinction therefore must be drawn between, on the one hand, public servants who by their functions are directly engaged in the administration of the State - that is, civil servants employed in government ministries and other comparable bodies, as well as officials acting as supporting elements in these activities - and, on the other hand, other persons employed by the Government, by public undertakings or by autonomous public institutions. Only the former category can be excluded from the scope of the Convention.

The Committee therefore requests the Government to take measures to include in the legislation explicit recognition of the right of public servants in autonomous bodies and decentralised services (State enterprises) who are not engaged in the administration of the State, and to supply information in this connection.

#### Venezuela (ratification: 1968)

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

Articles 1 and 3 of the Convention. With reference to its previous comments concerning the need to amend section 270 of the Labour Act in order to ensure that a sufficiently severe penalty is applicable to employers in order to guarantee adequate protection against acts of anti-union discrimination, the Committee notes with interest the Government's statement in its latest report to the effect that it hopes that the amount of the fine that may be imposed on employers who dismiss a worker in violation of the statutory trade union protection, or refuse to reinstate him, will be set much higher than its current rate.

The Committee once again requests the Government to indicate any progress achieved in this respect in its next report.

#### Yemen (ratification: 1976)

The Committee notes the Government's report.

1. In its previous observation, the Committee requested the Government to take specific measures accompanied by penal sanctions in order to guarantee: (a) the protection of workers against any act of anti-union discrimination by employers both at the time of recruitment

and during employment, in accordance with Article 1 of the Convention; and (b) the protection of workers' organisations against acts of interference by employers, in accordance with Article 2.

In its report, the Government refers once again to the constitutional guarantees respecting the rights and freedoms of citizens, and to the provisions of the Labour Code, which provide that the dignity and religious opinions of workers shall be respected, and which recognise the right of workers to vote for trade union purposes during employment (section 45 of the Labour Code).

The Committee emphasises that the protection set out in Articles 1 and 2 of the Convention must be guaranteed by appropriate measures, particularly legislative provisions, which are all the more necessary when the trade union movement is still at the stage of consolidation.

In order to ensure that effect is given to the Convention, the Committee therefore requests the Government to adopt, in the legislation, specific provisions to guarantee expressly the protection of workers against acts of anti-union discrimination and the protection of workers' organisations against acts of interference by employers or employers' organisations, accompanied by civil remedies and penal sanctions, and to indicate in its next report the measures that have been taken in this respect.

2. In its previous observation, the Committee requested the Government to take measures to encourage the collective negotiation of terms and conditions of employment, in view of the fact that no collective agreement had yet been concluded.

In its report, the Government refers to the provisions of the Labour Code that regulate the terms and conditions of employment within the context of individual negotiations (Chapter IV of the Labour Code). In the Committee's opinion, the information supplied illustrates that the collective bargaining process has still not been implemented, although, however, new trade unions have been established in various industrial branches.

The Committee therefore requests the Government, under the terms of Article 4 of the Convention, that appropriate measures be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation of collective agreements between the social partners, in order to establish by this means terms and conditions of employment and thereby make it possible for the trade unions to play fully their part in promoting and defending the rights and interests of their members, in accordance with the Convention and the by-laws of the trade unions.

3. The Committee also notes that sections 68, 69 and 71 of the Labour Code, which were the subject of previous comments, concerning the compulsory registration of a collective agreement and its cancellation in the event of it not conforming to the security and economic interests of the country, will be examined within the framework of the current revision of the Labour Code.

Although these provisions do not appear to be applied in practice, in the absence of any collective contract, the Committee points out that they are contrary to the principle of Article 4, under which collective bargaining must be free and cannot be subject to legal restrictions.

The Committee notes that one of the objectives pursued by trade unions, under the terms of section 5(c) of the Regulations concerning the statutes of trade unions, is to represent workers in debates on matters which concern them on bodies set up for this purpose. It hopes that the above provisions will be amended and that, within the context of measures to promote free and voluntary negotiation, appropriate machinery will be set up in order to associate the social partners on a voluntary basis with the formulation of the Government's economic and social policy. It requests the Government to indicate in its next report the measures that have been taken to this effect.

#### Zaire (ratification: 1969)

The Committee takes note of the Government's report.

The Committee recalls that its previous comments addressed the following points:

- the need to strengthen the legislative provisions ensuring that workers are protected against acts of anti-union discrimination (Article 1 of the Convention);
- the need to complete the provisions concerning the protection of trade union organisations against acts of interference by both employers' organisations and individual employers (Article 2);
- the need to ensure that workers employed in public enterprises, other than those engaged in the administration of the State, may enjoy the right to negotiate their conditions of employment collectively without interference by the public authorities (Articles 4 and 6) since, in its 1986 report, the Government itself admitted that for compelling reasons of national economic interest the Executive Council was obliged to fix the rates of wage increases in public enterprises.

Articles 1 and 2 of the Convention. The Committee takes due note of the assurances given by the Government in its last report to the effect that, as part of the revision of the Labour Code, measures are to be taken to:

- strengthen, by imposing a fine on employers committing acts of discrimination liable to prejudice freedom of association in employment, the provisions protecting such workers; and
- adopt an Order issued by the Commissioner of State for Labour and Social Welfare determining, inter alia, practical measures to ensure protection against acts of interference in the establishment of workers' organisations, committed by individual employers.

While recalling that penal sanctions, by way of fines or imprisonment, are likely to give an adequate protection against acts of discrimination, the Committee trusts that provisions in conformity with the Convention will be adopted in the near future and asks the Government, in its next report, to provide information on the progress made in this regard.

Articles 4 and 6. As regards the fixing of wage increases in public enterprises, in its last report the Government indicates that workers in such enterprises enjoy the right to a free collective



bargaining by virtue of section 266 of the Labour Code and sections 13 and 14 of the National Inter-Occupational Collective Agreement (CCINT).

The Committee takes note of these indications but recalls that the fixing of wage increase rates by the authorities runs counter to the principle of free negotiation of conditions of employment contained in Article 4 of the Convention, when such a measure is applied to workers in public enterprises.

The Committee therefore requests the Government to state whether this measure which, according to the information provided previously, was to apply for a limited period has been renewed. If so, it requests the Government to re-examine this procedure and to reinstate the voluntary negotiation machinery provided for in the legislation or, if the economic situation calls for a restrictive wages policy, to endeavour to associate the social partners in this policy through appropriate machinery.

The Committee requests the Government to provide information on measures taken or under consideration to promote the free negotiation of collective agreements in the public enterprise sector.

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In addition, requests regarding certain points are being addressed directly to the following States: Antigua and Barbuda, Australia, Barbados, Belize, Benin, Bolivia, Byelorussian SSR, Cape Verde, Côte d'Ivoire, Ethiopia, Ghana, Guatemala, Guinea, Guinea-Bissau, Honduras, Hungary, Iceland, Indonesia, Kenya, Malawi, Malaysia, Morocco, Philippines, Saint Lucia, Senegal, Sierra Leone, Sri Lanka, Syrian Arab Republic, Togo, Uganda, Ukrainian SSR, USSR, United Kingdom, Venezuela.

Information supplied by Angola, Grenada and Luxembourg in answer to a direct request has been noted by the Committee.

### **Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951**

Mauritius (ratification: 1969)

See under Convention No. 26.

Turkey (ratification: 1970)

The Committee notes the comments of the Turkish Confederation of Employer Associations (TISK) which were transmitted by the Government with its report. It requests the Government to supply information on the points raised in this connection in a request that is being addressed directly to it.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Uruguay (ratification: 1953)

See the comments made under Convention No. 131.

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In addition, requests regarding certain points are being addressed directly to the following States: Algeria, Brazil, Colombia, Comoros, Grenada, Guatemala, Guinea, Ireland, Philippines, Senegal, Seychelles, Turkey.

Information supplied by Belize and Poland in answer to a direct request has been noted by the Committee.

**Convention No. 100: Equal Remuneration, 1951**Australia (ratification: 1974)

The Committee notes the detailed information supplied by the Government.

1. The Committee notes the granting, for the State of Western Australia, of a 12-month exemption from provisions of the Federal Sex Discrimination Act, 1984. The Committee requests the Government to provide details on the reasons for granting an exemption.

Articles 1 and 2. 2. The Committee notes from the Government's report that the New South Wales Industrial Commission is required to declare a male basic wage and a female basic wage in state wage cases pursuant to section 57(2) of the Industrial Arbitration Act, 1940. The Government states that this requirement has remained in force because there are a number of state acts which refer to the female basic wage, although such legislative requirements may be discriminatory, and that as a result of section 40 of the Federal Sex Discrimination Act, 1984, such legislative requirements are being reviewed. The Committee requests that the Government provide information on the practical application of section 57(2) of the Industrial Arbitration Act, 1940, as well as any similar legislation. Also, the Government is asked to indicate what action, if any, has been taken pursuant to the current review to amend the Industrial Arbitration Act, 1940 and any similar legislation, to ensure that rates of remuneration are established without discrimination based on sex.

Barbados (ratification: 1974)

The Committee notes the Government's report received in 1988 with comments made by the Barbados Sugar Industry Ltd. and the Barbados Workers' Union.

1. Wage differentials in the sugar industry. In its preceding comments, made in 1986, the Committee noted the Government's indication that the Sugar Workers (Minimum Wage) Order, adopted by the Cabinet in 1982, which had re-established, in wage rates for 1982 and

1983, differentials based on sex and not on the work performed, had been in abeyance since it was replaced by a collective agreement fixing wage rates for 1984-85, which eliminated the earlier differences apparent between male and female workers. Noting also the indication by the Barbados Workers' Union that it intended to continue to appraise jobs without regard to sex and on the basis of the work to be performed, the Committee observed that in the list of wage rates furnished by the Government certain jobs were identified without reference to the work to be performed, and asked the Government to indicate the methods used in job classification to give effect to the principle of equal remuneration for work of equal value. It also requested the Government to supply a copy of the full text of the Sugar Industry Limited Agreement of 1984 and information on the distribution of male and female labour over the various jobs covered by the collective agreement.

In its report received in 1988, the Government transmits comments supplied by the Barbados Sugar Industry Ltd. with Appendices C and D to its 1984-85 collective agreement, as well as comments by the Barbados Workers' Union.

The Barbados Sugar Industry Ltd. states that the industry has ceased classifying jobs and wage rates according to sex, that both men and women perform the same tasks and receive the same rates of pay, and that it is now common practice to see women cutting cane - a job which is thought to be the most strenuous, but at the time most financially rewarding in the industry. Referring to clause 3 of the Conditions of Employment in Appendix D of the 1984-85 collective agreement, according to which "Men and women doing equal work shall be paid at the same rate", the Barbados Sugar Industry Ltd. also points out that the term "workers" is used throughout the documents and that there is no mention of men and women; it concludes that there is no sex discrimination in today's sugar industry.

The Barbados Workers' Union indicates that generally there are a few jobs on a sugar estate in the out-of-crop season which are done primarily by males. As the pace of mechanisation increases, these jobs are disappearing. However, it is still common on estates to find that men are engaged almost exclusively in forking, digging and cleaning drains, planting canes and spraying crops. The union is not aware that women have shown an interest in these jobs which are considered more difficult. At the same time, there has been no policy of excluding women from these jobs.

The Committee has taken due note of these indications. It notes that Appendix C to the 1984-85 collective agreement provides in clause 1 that in 1984 and 1985, minimum rates of wages shall be 12.5 per cent higher than the rates of wages paid during the year 1983. Recalling that the Sugar Workers (Minimum Wage) Order, 1982, established in clause 5 for 1983 minimum hourly wages of \$3.23 for general workers, male, and \$2.68 for general workers, female, in factories, the Committee observes that the corresponding differential rates, increased by 12.5 per cent, are maintained in clause 5 of Appendix C to the 1984-85 collective agreement which establishes minimum hourly wages of \$3.63 for general workers named "A" class and \$3.02 for general workers named "C" class in factories, without any description of their jobs. Other wage categories, such as those for artisans "A"

class and artisans "B" class also lack a job description. The Committee also notes that hourly minimum wage rates in plantations and estates, which distinguished in 1983 between men, A class (\$3.23), men, B class (\$3.13), women, A class (\$2.68) and women, B class (\$2.51), are faithfully reflected for 1984 and 1985 in rates increased by 12.5 per cent which distinguish four categories of sugar workers over 18 years of age by reference not to the work actually performed when employed on time work, but, in the case of the three higher paid categories, by reference to tasks they are required to perform when employed at piece rates.

The Committee urges the Government to provide full information on the numbers of men and women in the various wage categories, and on any job descriptions adopted for those wage categories which do not indicate the jobs actually performed. Referring to the explanations provided in paragraphs 44 to 70 of its 1986 General Survey on Equal Remuneration, the Committee hopes that details will also be supplied on the methods used in job evaluation or classification to give effect to the principle of equal remuneration for work of equal value. It also again requests the Government to forward the full text of the Sugar Industry Limited Collective Agreement of 1984, as well as copies of any subsequent collective agreement or minimum wage order for the sugar industry.

2. Hotel and catering industry. In earlier comments the Committee had noted that the collective agreement of 11 September 1979 concerning workers in the hotel and catering industry made some differentiation between jobs on the basis of sex. In its report for the period ending 30 June 1985 the Government indicated that a new collective agreement concluded between the Barbados Workers' Union and the Hotel and Catering Group had removed all references to sex in the classification of jobs. The Committee again asks the Government to furnish the text of this collective agreement and of any subsequent agreement for the same industry.

3. General adoption of the principle of the Convention. In earlier comments the Committee noted that there had been no further progress on the Employment and Related Provisions Bill, which was to embody the principle of equal remuneration in terms similar to those in the Convention, and that it was unlikely that the bill would be promulgated in the form of the draft in question. It also noted that neither the text of the bill nor the comments of the occupational organisations could be supplied to the ILO, and expressed the hope that the Government would indicate the means by which the principle of the Convention was to be applied to all workers.

The Government in its reply indicates that overall, it is satisfied that there are no forms of discrimination in remuneration in the country of which it is aware.

The Government adds that it subscribes to and applies in the public service, the principle of equal remuneration for men and women for work of equal value, and that this principle is fully endorsed by employers' and workers' organisations in collective bargaining. In those areas where workers are not organised, the Minister of Labour has the power under the Wages Councils Act to establish by order, wages councils to determine wages and conditions for such workers, if he considers the circumstances so demand. According to the

Government's report, the principle of equal pay for equal work would naturally be applied in these circumstances as well.

The Committee takes due note of these indications. Referring to point 1 of the present observation, it recalls that openly discriminatory wage rates were adopted by order as recently as 1982 and that the same wage differentials, albeit under a different name, appear to continue in existence by collective agreement; this, combined with the absence of data on jobholders and job evaluation, repeatedly requested from the Government, tends to show that the need for government action to promote and, in so far as possible, ensure the application to all workers of the principle of the Convention, still exists. Moreover, referring again to the explanations provided in paragraphs 44 to 70 of its 1986 General Survey on Equal Remuneration, the Committee must point out that a principle under which men and women doing equal work shall be paid at the same rate, such as proclaimed in the 1984 collective agreement for the Barbados Sugar Industry Ltd., merely covers equal remuneration for persons performing the same work, but falls short of the principle of the Convention, under which men and women shall be paid equal remuneration for work of equal value, implying a comparative evaluation of work of a different nature. The Committee again expresses the hope that standard-setting action to apply the principle of the Convention to all workers, as had been contemplated before, will soon be taken through one or several of the means listed in Article 2, paragraph 2, of the Convention, and that the Government will indicate the measures adopted to this end.

4. Application in practice. Referring to its general observation of 1984 on the Convention, the Committee once more expresses the hope that the Government will provide detailed information on the application in practice of the principle of equal remuneration for work of equal value, in particular by furnishing information on the measures taken to monitor its implementation.

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In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Australia, Cape Verde, Djibouti, Dominican Republic, Ghana, Islamic Republic of Iran, Ireland, Israel, Libyan Arab Jamahiriya, Philippines, Sierra Leone, Sudan, Sweden.

#### **Convention No. 101: Holidays with Pay (Agriculture), 1952**

A request regarding certain points is being addressed directly to Costa Rica.

**Convention No. 102: Social Security (Minimum Standards), 1952**General observation

In the course of its examination of the detailed reports of States which have ratified the Convention, the Committee has noted that several of them contain no information on the application of Article 65, paragraph 10, and Article 66, paragraph 8, as regards the review of current periodical payments in respect of old age, employment injury and occupational diseases (except in case of temporary incapacity), invalidity and death of the bread-winner. The Committee also notes that some States which have supplied such information indicate that they have suspended indexation of long-term benefits to price and wage levels or have postponed their readjustment for a time as part of a series of measures to preserve the financial viability of the insurance funds and slow down increasing social security costs.

In its General Survey of 1989 on Part V of Convention No. 102 and Part III of Convention No. 128 (paragraphs 169 to 191) the Committee has examined the question of the review of old-age benefits in detail. The Committee has noted the reasons which have led some countries to take measures to preserve the financial viability of social security funds; however it considers that, given the effects of inflation on the general level of earnings and increases in the cost of living, revision of the level of cash benefits in respect of the contingencies referred to above should receive governments' particular attention in the general economic climate of today.

The Committee therefore requests the governments of States which have ratified the Convention to take all possible steps to ensure the application of the provisions of the Convention referred to and include in their next reports the statistical data requested under Article 65, Title VI, in the report form on the Convention, adopted by the Governing Body.

Costa Rica (ratification: 1972)

The Committee notes the Government's reply to its observation and previous direct requests.

1. Regarding the representation made by a number of Costa Rican trade union organisations, under article 24 of the Constitution of the ILO, alleging non-compliance with certain provisions of the Convention, namely non-payment to the People's Bank and the Costa Rican Social Security Fund of the employers' contributions due from the State (Article 71, paragraph 2, of the Convention) and non-revaluation of retirement pensions (Articles 65, paragraph 10, and 66, paragraph 8), the Committee notes with interest the conclusion, on 7 December 1988 (for a period of three years), of an agreement between the Ministry of Finance and the Costa Rican Social Security Fund concerning the modalities for the reimbursement of the State debt in respect of the contributions in question. However, the Committee notes that the agreement provides for a reduction in the State's contribution to sickness and maternity insurance costs together with a

comprehensive reform of the system for financing health care. The Committee hopes that such reform will not affect the application of the Convention and that in its next report the Government will be able to supply information on the implementation of the measures provided for in the above-mentioned agreement.

The Committee also notes the information provided on the review of the level of retirement pensions and requests the Government to continue to supply data on that subject, set out in the manner prescribed in the report form for the Convention, under Article 65, Title VI.

2. Regarding the comments made earlier on Part VIII (Maternity benefit), Article 52, the Committee notes with satisfaction that article 43 of the sickness and maternity insurance regulations was amended on 9 September 1987 (Official Gazette, No. 145, of 31 July 1987) to provide for maternity cash benefits to be granted for a period of four months.

Regarding the other points raised in its earlier comments, the Committee asks the Government to refer to the request addressed to it directly.

#### Denmark (ratification: 1962)

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

Part IV (Unemployment benefit), Article 24 of the Convention (in conjunction with Article 69 (i)). In its earlier comments, the Committee noted that section 61, paragraph 3, of Act No. 114 of 24 March 1970 respecting placement and unemployment insurance (which provides that benefits shall be suspended for all members of an unemployment insurance fund or section thereof if 65 per cent or more of the members are considered to be involved in a labour dispute) no longer applied, by virtue of the amendment made by Act No. 229 of 6 June 1979, except in cases where the labour dispute is not incompatible with a collective agreement. The Committee consequently requested the Government to confirm whether the suspension of unemployment benefits was henceforth limited to workers involved in the dispute or whose conditions of employment might be influenced by its outcome. In its report, the Government indicates that this is indeed the case. The Committee takes note of this statement with interest; it hopes that the Government will therefore have no difficulties in completing, in a future revision of the legislation, section 61, paragraph 3, of Act No. 114 of 24 March 1970, respecting placement and unemployment insurance as amended, so as to expressly provide that the suspension of unemployment benefit envisaged in this provision only applies where the person concerned has lost his employment as a direct result of a stoppage of work due to a trade dispute, as provided for in this provision of the Convention.

The Committee hopes that the Government will be able to keep the Office informed of any progress made.

Federal Republic of Germany (ratification: 1958)

1. The Committee has examined the Government's detailed report and notes with interest the improvements in the social security scheme and particularly the increases in the level of benefits and the new allowances for dependent children. The Committee hopes that the Government will also be able to provide information on the effect given to Part VIII of the Convention (Maternity benefit), which has also been accepted by the Federal Republic of Germany.

2. Part XIII (Common provisions), Article 69(i), of the Convention. With reference to its previous observations concerning section 116 of the Employment Promotion Act and the Regulations issued under this section (which provides for the suspension of unemployment benefit in certain cases where workers who have lost their employment as a result of a trade dispute are not directly implied in the dispute, whereas under the Convention, these benefits may only be suspended if the person concerned has lost his employment as a direct result of a stoppage due to a trade dispute), the Committee notes the Government's explanations on the scope of the amendments made to the above-mentioned legislation by the Act of 15 May 1986 to ensure the neutrality of the Federal Employment Institute (BGBI, Part I, page 721). According to the provisions of the new legislation and the Government's explanations, unemployment benefit due to workers who have lost their employment as a result of a trade dispute, but who are not directly involved in the dispute is suspended: (a) when the enterprise in which the persons concerned have been employed falls within the territorial and occupational scope of the collective agreement which gave rise to the dispute, and (b) when the enterprise in question does not fall within the territorial scope of the collective agreement but belongs to an occupational sector covered by it. In the latter case, benefits are only suspended if a claim which is "similar" - but not necessarily identical - in nature and extent to one of the main claims giving rise to the dispute has been made and if the results of the dispute will in all probability be endorsed, "in essential respects", by the collective agreement that is not the subject of dispute but applies in the territory where the enterprise is located.

According to the information contained in the report and the provisions of new subsections 5 and 6 of section 116 of the Employment Promotion Act, the question whether: (a) the claim of the workers who were not directly involved in the trade dispute in question is similar - but not necessarily identical - in nature and extent to one of the main claims that gave rise to the dispute; and (b) the results of the conflict will in all probability be taken into account "in essential respects" by the collective agreement applying in the territory where the enterprise which employed the workers is situated is determined by a decision of the competent body of the Federal Employment Institute, namely, the Neutrality Committee. This Committee is made up of employers' and workers' representatives who sit on the above Institute's Executive Board, and only issues a ruling after hearing the opinion of the umbrella organisations of the parties to the collective agreement which was the subject of the trade dispute in question. These organisations may also institute proceedings against



the ruling before the Federal Social Tribunal (Bundessozialgericht). Furthermore, in the event of a work stoppage, the employers must prove before the Federal Employment Institute that the loss of employment is indeed due to a trade dispute, and their notification must be accompanied by a statement of the views of the representatives of the workers concerned.

The Committee takes due note of the explanations provided in the report. It recalls, however, that this matter has been the subject of comments from workers' organisations, the most recent of which (1988) was submitted to the International Labour Office by the German Trade Union Confederation (DGB) in connection with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which concerned in particular the amendments made to section 116 of the Act of 1969 by the Act of 1986 concerning the neutrality of the Federal Employment Institute. The Committee therefore requests the Government to continue to provide information in its future reports, on the way in which practical effect is given to the provisions of section 116 of the Employment Promotion Act and the last subsection of section 133 of the same Act, as amended by the Act of 1986 mentioned above. (Please provide also copies of any rulings issued by the Neutrality Committee.)

Libyan Arab Jamahiriya (ratification: 1975)

The Committee notes that the Government's report has not been received. However, it notes the information provided with the Government's report on Convention No. 130 and has also examined the various decisions taken by the People's General Committee on Social Security in application of Law No. 13 of 14 April 1980, of which the text has been communicated by the Government.

However, the Committee notes that these decisions do not constitute a reply to the comments made by the Committee over a number of years; it is therefore bound to repeat these comments in a new request which is being addressed directly to the Government.

The Committee trusts that the Government will not fail to provide a report for examination at its next session and that this report will contain full information, including statistical data, on all the points raised.

Mexico (ratification: 1961)

Part X (Survivors' benefit), Article 64 of the Convention. With reference to its previous direct requests, the Committee notes with satisfaction that a new Act respecting the State Employees' Social Security and Social Services Institute (ISSSTE), which came into force on 1 January 1984, no longer contains a provision providing for the progressive decrease of survivors' pensions until they reach half their initial amount, as was the case in the previous legislation, which was contrary to the Convention.

Niger (ratification: 1966)

The Committee notes that the Government has not supplied a report. It nevertheless notes the information transmitted to the Conference Committee (73rd Session, June 1987) in reply to its previous comments, and hopes that a report will be provided for examination at its next session, containing full information on the measures taken in respect of the points raised in a new direct request.

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In addition, requests regarding certain points are being addressed directly to the following States: Austria, Barbados, Bolivia, Costa Rica, Denmark, Greece, Israel, Italy, Libyan Arab Jamahiriya, Luxembourg, Mauritania, Mexico, Netherlands, Niger, Norway, Peru, Senegal, Switzerland, Turkey, Venezuela.

Information supplied by Sweden in answer to a direct request has been noted by the Committee.

**Convention No. 103: Maternity Protection (Revised), 1952**Austria (ratification: 1969)

Article 6 of the Convention. The Committee noted the information provided by the Government in reply to its earlier comments. It also noted the statement made by the Austrian Congress of Chambers of Workers according to which talks are being conducted between the social partners concerning the amendment of the Maternity Protection Act with a view to provide a more effective protection of pregnant women against unlawful dismissal and, in particular, to prevent the evasion of the provisions of the Act by means of fixed-term contracts.

The Committee further noted the detailed explanations in the report concerning the application of sections 10 and 12 of the Federal Maternity Protection Act and section 75 of the Federal Agricultural Labour Act. It draws the Government's attention once again to the point that the above-mentioned legislation is not in full conformity with Article 6 of the Convention, in accordance to which while a woman is absent from work on maternity leave in accordance with the provisions of Article 3 of this Convention, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence. The Committee can but reiterate its hope that the Government will take the necessary legislative measures in the near future in order to ensure full conformity of the national legislation with the provision of this Article and asks the Government to report any progress made in this connection.

[The Government is asked to report in detail for the period ending 30 June 1990.]

Bolivia (ratification: 1973)

The Committee takes note of the information provided by the Government in reply to its earlier comments.

Article 1 of the Convention (scope). The Committee notes with interest that the new Draft Social Security Code is aiming at the extension of the scope of the maternity protection to certain categories of workers previously not protected (including workers in domestic service and rural workers). It hopes that the new Code will be adopted in the near future and asks the Government to report any progress made in this connection.

Article 3, paragraph 2 (duration of maternity leave). The Committee noted in its earlier comments that the Social Security Code of 1956 provides for maternity cash benefit for six weeks before and six weeks after confinement. It points out once again that it is still necessary to amend section 61 of the General Labour Act in order to provide also for a period of leave of at least 12 weeks in conformity with this Article of the Convention and with the national legislation on social security. Further to its previous comments it draws the attention of the Government to the point that a similar change should be made with respect to public service employees, who are only entitled to 60 days of maternity leave under the terms of Presidential Decree No. 2291 of 7 December 1950.

Article 3, paragraph 4 (extension of pre-natal leave). The Committee can but reiterate its hope that the Government will take the necessary steps to include in the General Labour Act and in the Social Security Code a provision allowing for the extension of pre-natal leave where confinement takes place later than the presumed date, without any reduction in the minimum post-natal leave period of six weeks prescribed by this provision of the Convention. The Committee points out once again that a similar change will have to be made with respect to public service employees. It asks the Government to provide in its next report information on any progress made in this connection.

Article 4, paragraphs 5 and 8 (benefits for women who have not completed the qualification period stipulated by the Social Security Code or who are not yet covered by the insurance scheme). The Committee notes the statement in the report that the Draft Social Security Code contains better provisions in this field as compared to the existing legislation. It hopes that the new Code will be adopted in the near future and that it will contain provisions which will enable women workers to receive cash benefits provided either under compulsory social insurance or out of public funds or social assistance funds, as required by the Convention. It asks the Government to provide in its next report information on any progress made in this connection.

Article 5 (nursing breaks). The Committee notes that the Government's reply contains no new information as regards the question put in its previous comments. It asks the Government once again to indicate the provisions whereby this Article of the Convention is applied to public service employees excluded from the scope of the General Labour Act.

Brazil (ratification: 1965)

The Committee takes note of the information supplied by the Government in its report concerning, in particular, Article 5 of the Convention. It wishes to draw the Government's attention to the following point.

Article 6. The Committee notes the Government's statement to the effect that there are no problems concerning the stability of employment of pregnant women, and that the non-observance by the Government of this provision of the Convention is due to the absence of concrete cases.

The Committee takes note of this statement. However, it can only express once again the hope that, taking account of current practice, the Government will be able to take the necessary measures to bring national legislation into full conformity with the provision of Article 6 of the Convention.

Cuba (ratification: 1954)

1. The Committee takes note of the Government's reply to its previous comments and of the other information contained in the report. In particular, the Committee notes with interest that under Act No. 61 of 29 September 1987, the minimum maternity cash benefit has been increased.

2. With regard to Article 5 of the Convention, concerning the entitlement to interrupt work for the purpose of nursing, the Committee takes note of the Government's statement to the effect that the possibility of giving effect to this provision of the Convention is still under study.

The Committee hopes that the Government will be able to take the necessary steps, either through legislative or administrative measures or through collective agreements, to enable women wishing to do so to nurse their children without any reduction of remuneration, in accordance with Article 5 of the Convention. The Committee requests the Government to indicate in its next report any progress made in this respect.

Italy (ratification: 1971)

1. Article 6 of the Convention (Domestic workers). The Committee notes the information provided by the Government in reply to its earlier comments. It notes, in particular, the intention of the Government to modify Act No. 1204 of 1971 with a view to make rules governing the protection of pregnant women workers and working mothers against dismissal applicable to domestic workers, thus bringing the legislation into conformity with the Convention.

As regards the collective agreement for domestic work of 28 April 1987, noted by the Committee in its previous comments, it would like to draw the Government's attention once again to the point that its provisions on the protection against dismissal are not in conformity with Article 6, which prohibits to give notice of dismissal to a woman

during the period while she is absent from work on maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such absence. The Committee therefore reiterates its hope that the Government will take the necessary measures in order to bring the national legislation into full conformity with the Convention on this point in the near future and asks the Government to report any progress made in this connection.

2. The Committee notes the comments made by the Confederazione Generale Italiana del Commercio e del Turismo (CONFCOMERCIO).

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In addition, requests regarding certain points are being addressed directly to the following States: Equatorial Guinea, Ghana, Libyan Arab Jamahiriya, Poland, Portugal, Spain, Zambia.

Information supplied by Hungary in answer to a direct request has been noted by the Committee.

### **Convention No. 105: Abolition of Forced Labour, 1957**

#### Bangladesh (ratification: 1972)

Article 1(c) and (d) of the Convention. 1. In its previous comments, the Committee observed that under sections 101 and 102 of the Merchant Shipping Act, 1923, seamen could be forcibly conveyed on board ship to perform their duties, and under sections 100 and 103(ii), (iii) and (v) various disciplinary offences by seamen, concerning cases where life, health or safety are not endangered, were punishable with imprisonment which may involve an obligation to work. The Committee noted that the Bangladesh Merchant Shipping Ordinance, 1983, which has repealed the 1923 Act, again provides in sections 198 and 199 for the forcible conveyance of seamen on board ship to perform their duties, and in sections 196, 197 and 200(iii), (iv), (v), (vi) for the punishment, with imprisonment which may involve an obligation to work, of various disciplinary offences in cases where life, safety or health are not endangered. The Committee requested the Government to review the Ordinance adopted in 1983 and to indicate the measures taken or contemplated to bring it into conformity with the Convention. The Committee notes the Government's statement in its report that the Government is examining the suggestion of the Committee. The Committee expresses the hope that the Government will soon be in a position to indicate that the necessary action has been taken to bring the Ordinance into conformity with the Convention.

2. A certain number of other legislative texts which call for comment under Article 1(a), (c) and (d) of the Convention are again dealt with in a direct request to the Government.

Central African Republic (ratification: 1964)

Article 1(a) of the Convention. In comments that it has been making for many years, the Committee has noted that sentences of imprisonment involving compulsory labour may be imposed under the following legislative provisions:

- Act No. 63/411 of 17 May 1963 (political activities undertaken outside the "MESAN" national movement);
- Act No. 60/169 of 12 December 1960 (the dissemination of publications that are banned on the grounds that they are likely to prejudice the edification of the Central African Nation);
- Order No. 3-MI of 25 April 1969 and Decree No. 70/238 of 19 September 1970 (dissemination of foreign periodicals or news that has not been approved by the censor).

The Committee noted the repeated statements by the Government that draft amendments to these texts had been submitted to the executive authorities and that, furthermore, the provisions of Act No. 63/411 of 17 May 1963 had fallen into abeyance following the dissolution of the MESAN. It expressed the hope that the necessary measures to ensure observance of the Convention would be adopted in the near future and that the Government would supply the relevant texts, including those concerning the dissolution of the MESAN.

The Committee notes the information supplied by the Government and the discussion on the application of the Convention which took place in the Conference Committee in 1988. The Committee notes the Government's indications that the announced draft texts are following the course of the legislative procedure before the competent national authorities with a view to their adoption. It also notes that, according to the Government, the MESAN movement was automatically dissolved when the former regime fell and the Constitution was repealed.

The Committee takes due note of these indications. It also notes that by virtue of section 3 of the new Constitution, which was adopted in 1986, the Central African Democratic Assembly is the sole party. The Committee notes that penalties of imprisonment are laid down in section 4 of the above Act No. 63/411 of 17 May 1963 for any person "who establishes or attempts to establish a party, movement, group, association or organisation of a political nature". The Committee hopes that the Government will indicate in the near future measures adopted to prevent sentences of imprisonment involving compulsory labour being imposed on persons who establish or attempt to establish a party, movement, group, association or organisation of a political nature outside the sole party (Central African Democratic Assembly), including measures taken to repeal the provisions of Act No. 63/411 and the other texts referred to in its comments, in order to ensure observance of the Convention, and that the Government will supply the relevant texts.

Cuba (ratification: 1958)

The Committee notes with interest the enactment of the Penal Code, Act No. 62 of 22 December 1987 which has been in force since

30 April 1988, in particular section 30(9) establishing the voluntary nature of work for persons sentenced to imprisonment.

Article 1(c) of the Convention. The Committee notes that the wording of section 220 of the new Penal Code is identical to that of former section 262 which has already been the subject of comments on the part of the Committee. Under section 220, a sentence of imprisonment of from six months to two years may be imposed on a person who, by breach of the duties placed on him by his office, employment occupation or profession in a state economic unit (particularly of his duties relating to the observance of the standards or standard-setting instructions and other rules and instructions concerning technological discipline), causes harm or substantial prejudice to the production output or to the rendering of services by the unit or to its equipment, machines, machinery, tools or other technical devices. The Committee has pointed out that this section is not confined to breaches of labour discipline that impair or may endanger the operation of essential services or that are committed in jobs essential to safety or in circumstances in which the life or health of persons is threatened, and that the harm or prejudice that gives rise to the penalty involving the obligation to work is a consequence of a breach of duties imposed by virtue of the office, employment, occupation or profession. The Committee has thus found the section in question to be incompatible with the Convention.

The Committee notes that section 30(9) provides that "during their term of imprisonment, able-bodied prisoners shall perform useful tasks if they accept this".

The Committee notes, however, that sections 32 and 33 of the same Code provide for penalties of correctional labour with and without internment, which are subsidiary to the penalty of deprivation of freedom, if there are grounds for considering that the re-education of the prisoner can be obtained by labour. As it now stands, section 220 does not exclude the possibility of replacing the penalty of deprivation of freedom with that of correctional labour.

The Committee again requests the Government to take the necessary measures to ensure that, in accordance with the provisions of this Convention, penalties involving compulsory labour may not be imposed on persons who, due to negligence, cause damage to the property of an economic unit and to report on any progress made in this respect.

#### Cyprus (ratification: 1960)

The Committee has taken note of a communication dated 9 February 1989 by the Democratic Labour Federation of Cyprus concerning the application of the Convention.

In comments made for a number of years, the Committee noted that section 3, subsection 1, of the Supplies and Services (Transitional Powers) (Continuation) Law (Cap. 175A) authorises recourse to the provisions of Defence Regulations 79A and 79B for the purpose of maintaining, controlling and regulating supplies and services and, in particular, to secure their equitable distribution or their availability at fair prices, to promote the productivity of industry, commerce and agriculture, to foster and direct exports and reduce

imports, to redress the balance of trade, and to ensure that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community. Defence Regulation 79A gives authority to direct any person to perform services for any of these purposes and to require persons employed in undertakings engaged in work essential for any such purpose, not to terminate their employment or absent themselves from work or to arrive persistently late for work, on pain of imprisonment (involving, under the Prison Regulations, the obligation to perform labour), and Regulation 79B authorises the Government to issue regulations to prohibit strikes and lock-outs on pain of imprisonment, by virtue of the provisions of Regulation 94.

The Committee noted the Government's statement in its report for the period 1985-86 that these provisions are only applied to the extent that they are not inconsistent with the Constitution, in particular with Article 10 (which provides that forced or compulsory labour is prohibited except in certain cases, amongst which is service exacted in case of an emergency or calamity threatening the life or well-being of the inhabitants) and Article 27 (which guarantees the right to strike subject to certain conditions); any person or organisation which feels aggrieved by the provisions of any order under Regulations 79A and 79B may have recourse to the Supreme Court under Article 166 of the Constitution to challenge the validity of the order.

The Committee pointed out that, under Article 1(c) and (d) of the Convention, a ratifying State undertakes to suppress and not to make use of any form of forced or compulsory labour as a means of labour discipline or as a punishment for having participated in strikes. As the Committee has indicated in paragraphs 110 to 132 of its 1979 General Survey on the Abolition of Forced Labour, any sanctions involving compulsory labour, for breaches of labour discipline or participation in strikes, must be limited to essential services in the strict sense of the term, that is services whose interruption would endanger the life, personal safety or health of the whole or part of the population. Furthermore, the workers concerned must remain free to terminate their employment by reasonable notice. Noting the Government's indication in its report as to the constitutional guarantees and the limited application in practice of the above provisions, the Committee expressed the hope that there would be no difficulty in bringing the law into conformity with the Convention as well as with practice and that, pending the adoption of the necessary legislative amendments in this regard, the Government would give due consideration to these principles in the application of the Regulations in question.

The Committee notes from the communication by the Democratic Labour Federation of Cyprus that on 7 February 1989 and as a reaction to a decision of the employees of the Cyprus Ports Authority for a strike, the Minister of Communication and Public Works issued an order under the Supplies and Services (Transitional Powers) (Continuation) Law (Cap. 175A) and Defence Regulations 79A by which all the above-mentioned employees are mobilised.

The Committee requests the Government to indicate any measures taken or contemplated in this regard to ensure the observance of the



Convention, and to supply information also on any action taken with a view to amending the statutory provisions under which the order was made.

Dominican Republic (ratification: 1958)

The Committee notes the discussion in the Conference Committee in 1988 concerning the application of Conventions Nos. 95, 98 and 105 by the Dominican Republic, and the report of the direct contacts mission which, at the request of the Governments of the Dominican Republic and Haiti, visited the two countries from 10 to 21 October 1988. It notes that the Government has not supplied the reports requested on the application of the Conventions in question; it has noted communications of 3 and 31 January 1989 of the Central General de Trabajadores (CGT) and a communication of 8 February 1989 in which the Secretary-General of the Central de Trabajadores Mayoritaria (CTM) forwarded to the ILO a copy of a letter that she had sent on 31 January 1989 to the President of the Dominican Republic.

A. Employment in sugar plantations

In its previous comments, the Committee asked for information about the effect given to the recommendations made in 1983 by the Commission of Inquiry appointed to examine the observance of certain international labour Conventions with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic. In its observation of 1988, the Committee raised questions regarding five points: the negotiations between the two Governments concerned with a view to concluding agreements for the recruitment of Haitian workers; the round-ups of Haitians obliged to work in plantations and the abuses in connection with the clandestine labour by Haitians who illegally cross the frontier; the measures that should be taken to stabilise the number of workers employed in sugar plantations in the Dominican Republic and to regularise the status of Haitians who have lived and worked in that country for a given period of time; the measures which should be taken regarding the recruitment, authorisation to stay in the country and transportation of Haitian workers engaged only for the harvest period, and the information that should be given to them concerning their terms and conditions of employment; the measures to be taken to strengthen the labour inspection services and ensure the observance of labour legislation in sugar plantations.

Absence of agreements but illegal immigration supported by the CEA. The Committee notes that, by the time of the direct contacts mission in October 1988, earlier negotiations between the two Governments concerned with a view to concluding agreements for the recruitment of Haitian workers for the sugar-cane harvest in the Dominican Republic had remained fruitless. In actual fact, Haitian workers continue to cross the frontier illegally. The Government authorities of the Dominican Republic have voiced their concern at this illegal immigration. However, at the same time, it appears from the evidence given to the direct contacts mission that many Haitian

workers are transported from the frontier to the sugar plantations in vehicles organised by the State Sugar Board, accompanied by Dominican soldiers. Similarly, the communications received from the CGT and the CTM refer to an accident which occurred on 27 January 1989 near to Santo Domingo in which around 50 Haitian workers, who had been transported from the frontier on a semi-trailer vehicle, were killed, along with one of the two Dominican soldiers who were accompanying them. In paragraph 525 of its report, published in 1983, the ILO Commission of Inquiry indicated that it is not legitimate for a State to leave in a status of illegality workers whose employment it accepts as necessary to the functioning of the economy, all the more so when they are employed in undertakings belonging to the State itself. The Commission put forward recommendations in order to resolve this situation, in view of the fact that many of the violations of the international Conventions in question are imputable to the fact that most of the Haitian workers in the Dominican Republic do not have the status of legal residents. The recommendations put forward in this connection will be recalled further below.

Round-ups of persons residing in the Dominican Republic. The problems connected with the non-recognition of legal status are particularly well illustrated by the round-ups of persons who are living, working or merely passing through towns and the countryside in the non-sugar-producing areas of the Dominican Republic. In its observation of 1988, the Committee noted that the study "El Batey", undertaken in 1986 at the request of the State Sugar Board, confirms the existence of such round-ups with the assistance of members of the police force and military personnel (pp. 71-74) in order to make up for the shortage of labour for cutting the cane. According to the same study (pp. 194-196), and based on the information compiled by the direct contacts mission, it is not only Haitian workers without a legal certificate of residence (indocumentados) in the Dominican Republic who are exposed to these round-ups, but also workers of Haitian origin but who are Dominican by birth; even where such persons have identity papers, which is not always the case in plantations, they are liable to lose them at the hands of the soldiers. The Committee notes that the assurances given on these matters by various Government representatives during the direct contacts mission of October 1988 were of a fairly general nature. It also notes that according to the information received by the direct contacts mission, round-ups occurred until the end of the harvest in 1987-88 and even during its visit to the Dominican Republic, just before the 1988-89 harvest.

Measures taken by the Government and the State Sugar Board in order to improve the situation of Haitian workers. The Committee notes that, by Decree No. 488 of 19 October 1988, the President of the Dominican Republic set up a special commission to study the situation of agricultural workers in general and, in particular, those of foreign nationality, and to propose the measures that it considered appropriate to improve the conditions in which these workers performed their work. The preamble to this Decree emphasises the will to leave out no measure which may be taken so that the situation of these workers corresponds more and more to the international undertakings of the Dominican Republic. The Committee also notes that, following the accident of 27 January 1989 mentioned above and by a letter, dated

31 January 1989, to the President of the Republic, one of the five members of the presidential commission, a member of the National Congress and Secretary-General of the Central de Trabajadores Mayoritarios (CTM), resigned from the commission in protest against the attitude of the State Sugar Board and called for the necessary legal machinery to be set up to regularise the employment of Haitian workers in the Dominican Republic.

The Committee also notes various circulars adopted by the State Sugar Board, to which more detailed reference is made under Convention No. 95, particularly with regard to the information supplied to workers concerning their terms and conditions of employment. It notes that under Circular No. 7 of 20 October 1988, addressed to the managers of plantations with regard to the forthcoming recruitment of agricultural workers for the 1988-89 harvest, recruitments were to be the responsibility of officials appointed to the task in the main office and in each administration. The only persons who were to take part in recruitment operations were the employees assigned to this task, who were constantly to check that the recruitment operations were in accordance with the legal provisions in force and with the international Conventions that have been ratified.

Measures to be taken to ensure observance of the Convention. The persistence of the problems raised above emphasises the urgent need for the Government to adopt the measures recommended by the Commission of Inquiry in 1983 and recalled since then by this Committee. Three groups of measures appear of priority importance:

1. The regularisation of the status of Haitians who have lived and worked in the country for a given period of time and the issue of identity papers to persons born in the Dominican Republic (paragraph 527 of the report of the Commission of Inquiry). At the same time, economic promotion measures should make it possible to stabilise the labour force employed on plantations (paragraph 516).

2. Regularisation of the hiring procedure and residence in the country of workers entering the country to work on the sugar-cane harvest (paragraphs 521 and 522). In so far as entry of new foreign workers into the country is recognised as being necessary to the operation of the economy, measures should be taken by the Dominican Government, either within the framework of an inter-governmental agreement or outside it, so that the process operates in an orderly manner and the workers concerned enjoy the necessary safeguards concerning their free choice of employment and their terms and conditions of employment and so that the role played by the armed forces in this context may be ended. These measures should include the following:

- (a) the determination of the number of workers whose engagement by the various employers would be authorised;
- (b) the establishment of placement offices at appropriate locations where such workers seeking employment in the Dominican Republic could be hired for the sugar-cane harvest, and be given a medical examination and issued with the necessary documents (residence and employment permits);
- (c) the provision of clear information to the workers concerned on their terms and conditions of employment, by means of individual

contracts of employment or a written statement (which should also be available in Creole);

- (d) the transportation of the workers engaged to their places of employment.

3. Protection by the competent authorities of the rights and freedoms of workers. In this connection, the Government should take the necessary measures to:

- (a) prevent by all the means at its disposal the recurrence of round-ups of persons for work in plantations and enforce the application of appropriate sanctions to those responsible for such cases;
- (b) ensure that labour legislation is applied to sugar-cane workers, in accordance with the Basic Principle III of the Labour Code, under which labour legislation is of a territorial nature and applies to citizens of the Dominican Republic and aliens without distinction; the Committee refers to its comments regarding the labour inspection services under Convention No. 95;
- (c) in addition, set up in "bateyes" of the CEA and in private plantations, civil administration structures such as exist in other population centres. This presence of the public authorities should ensure in a more permanent manner than is possible in real terms through the labour inspectorate, the protection of the rights of workers and their families in plantations, since they will no longer be dependent in all the areas of their life exclusively on the employer's administrators, assisted by the rural police force.

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The Committee hopes that the Government's will, which was reaffirmed in October 1988, to take every measure to ensure that the situation of agricultural workers in general and, of those of foreign nationality in particular, responds increasingly to the Conventions it has ratified, will make possible real progress in the implementation of the necessary measures for this purpose. It also hopes that the Government will supply detailed information on the measures that it has taken.

#### B. Matters not related to plantations

Article 1(c) of the Convention. Under the terms of Act No. 3143 of 11 December 1951, as amended by Act No. 5225 of 1959, workers who have not completed their work on the agreed day or within the established time-limits, when they have been paid in advance for such work, are punishable by prison sentences involving compulsory labour.

The Committee notes that the Labour Code is currently being revised by workers' organisations and the administrative labour authorities in order to bring national legislation into conformity with the Convention. It trusts that the necessary measures will be adopted with regard to the above provisions to ensure that no form of forced labour may be used as a punishment for breaches of labour discipline.

Article 1(d). Under sections 370, 373, 374, 378, paragraph 16, and 679, paragraph 3, of the Labour Code, sentences of imprisonment involving compulsory labour may be imposed for participation in strikes. The Committee notes the Government's statement to the Conference Committee in 1986 that these provisions have fallen into abeyance. It notes, however, that in Case No. 1179 examined by the Committee on Freedom of Association in 1984, the Government referred to a number of these provisions. It therefore once again expresses the hope that, in order to eliminate all uncertainty in this respect, measures will be taken to repeal or amend the above provisions so as to bring the law into conformity with the Convention.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

Ecuador (ratification: 1962)

The Committee notes that no report has been received from the Government. It must therefore repeat its previous observation on the following matters:

Article 1, (c) and (d) of the Convention. 1. In comments that it has been making for some years, the Committee has referred to Decree No. 105 of 7 June 1967, under which sentences of imprisonment of from two to five years can be imposed on any person who foments, or takes a leading part in, a collective work stoppage. The sentence laid down by the Decree for a person who participates in a work stoppage without fomenting or taking a leading part in it, is correctional imprisonment of from three months to one year. For the purposes of this provision "there is a work stoppage when a collective cessation of activity, the imposition of a lock-out outside the cases permitted by law, the paralysing of ways of communication and similar anti-social acts occur". Sentences of imprisonment involve compulsory labour by virtue of sections 55 and 66 of the Penal Code.

The Committee noted that the Committee on Freedom of Association in its 248th Report, approved by the Governing Body at its 235th Session in March 1987, Case No. 1381, paragraph 420, recommended that the Government repeal Decree No. 105.

The Committee noted the Government's statement in its report that Decree No. 105 has not been repealed and remains in force. The Committee also notes that the Government's report does not contain information regarding the measures that have been taken or are contemplated in order to repeal the above Decree.

The Committee hopes that the measures that are necessary to bring the legislation into conformity with the Convention will be taken in the very near future and that the Government will report the progress achieved in this respect.

2. In previous years, the Committee has commented on section 165 of the Maritime Police Code, which prohibits crew members of an Ecuadorian vessel from disembarking in any port other than the port of embarkation except with the agreement of the master. It also provides that if a crew member deserts he

shall forfeit his pay and belongings to the vessel and that if he is captured he shall pay the cost of his arrest and be punished in accordance with the navy regulations in force.

In its previous comments the Committee noted the statement made by the Government on various occasions concerning the possibility of amending this provision in order to give the worker full freedom to leave his employment, after a reasonable period of notice.

The Committee noted that in its last report the Government once again states that the possibility of enacting a new Maritime Police Code is under study.

In view of the fact that the Committee has been making comments on this point since 1971, it hopes that measures to bring section 165 of the Maritime Police Code into conformity with the Convention will be taken as rapidly as possible.

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

#### Ghana (ratification: 1958)

In comments made for a number of years, the Committee referred to various provisions of the Penal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. The Committee had requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within Article 1(a), (c) or (d) of the Convention. The Committee has also repeatedly requested the Government to supply information on the practical application of a number of legislative provisions.

For many years the Government has indicated in its reports that these matters were under consideration. In its report for 1983-85, the Government stated that the Tripartite National Advisory Committee on Labour was reconstituted on 23 July 1985 and would give serious consideration to the Committee's observations. According to the Government's latest report, received in November 1988, the same body was still being reconstituted and comments would be promptly dealt with as soon as it resumed sitting. In a report received in June 1988, the Government also indicated that information had been requested from various public authorities.

The Committee is aware that not only the supply of information requested on the application of certain legislative provisions, but also many of the amendments required to bring national legislation into conformity with the Convention call for the co-operation of a number of national authorities not normally concerned with labour matters. As, however, the Committee's comments on most of the points

at issue have been known to the Government for many years, the Committee trusts that the necessary concrete action will at last be taken, and that the Government will soon provide detailed information both on the measures taken to bring national legislation into conformity with the Convention and on the application in practice of provisions again listed in a request addressed directly to the Government.

Guatemala (ratification: 1959)

The Committee notes the Government's report and the discussions held in the Conference Committee in 1987 on the application of the Convention in Guatemala.

Article 1, paragraph (a), (c) and (d) of the Convention. In earlier comments, the Committee referred to the provisions of Legislative Decree No. 9 of 10 April 1963 and to articles 390, paragraph 2, 396, 419 and 430 of the Penal Code, under which sentences of imprisonment involving, by virtue of article 47 of the Penal Code, the obligation to work can be imposed as a punishment for expressing certain political opinions, as a measure of labour discipline or for participation in strikes.

The Committee notes that, at the Government's request, direct contacts between the Government and representatives of the Director-General of the International Labour Office took place in Guatemala at the end of October 1988. In the course of those meetings, a number of drafts were prepared with a view to the annulment of some of the above-mentioned provisions, considered contrary to the national Constitution, and the amendment of the others to bring them into conformity with the Convention.

The Committee hopes that the necessary measures will soon be adopted to bring the legislation into conformity with the Convention on these points and that the Government will report on the progress made.

The Committee also requests the Government to transmit copies of any statutes governing the "Voluntary committees for civil defence".

Haiti (ratification: 1958)

1. In its previous comments, the Committee requested the Government to supply information on any arrangements which now exist to enable representatives of the Haitian Government to be informed of the conditions of Haitian nationals working in the Dominican Republic and to intervene for the protection of the rights and interests of such workers.

The Committee notes the Government's reply in its report that no arrangement of this type currently exists. It also notes the report of the direct contacts mission which took place in the Dominican Republic and in Haiti from 10 to 21 October 1988 at the request of the two Governments in order to examine the effect to be given to the recommendations made by the Commission of Inquiry in 1983 regarding Haitian workers on sugar plantations in the Dominican Republic. It

notes that the Government of Haiti has not continued the previous arrangements in view of the irregularities that they involved, but that it is aware that the migration of workers continues, whether voluntary or not, with the complicity of Dominican and Haitian intermediaries, both public servants and private individuals. It notes that the Government is open to dialogue with the authorities of the Dominican Republic in order to ensure that international labour standards are observed. The Committee hopes that the Government will continue to supply information on any developments regarding this dialogue.

2. The Committee also refers to Article 25 of Convention No. 29 and hopes that the necessary measures will be taken by the Government to severely punish any trafficking of workers in violation of the abolition of forced labour Conventions and that the Government will supply information on the measures that have been taken to this effect.

Iraq (ratification: 1959)

Article 1(c) and (d) of the Convention. 1. The Committee, in earlier comments, referred to section 364 of the Penal Code, under which a penalty of imprisonment (involving an obligation to work) may be imposed on any official and any person in charge of a public service who leaves his work, even after having resigned, or who abstains from performing his duty or work if he thereby might endanger the life, health or personal safety of the population, cause riots or unrest among the population or paralyse a public service. The Committee noted from the Government's report dated 30 December 1986 that the same persons are to be punished with heavier prison terms under section 241 of the draft new Penal Code. The Committee referred the Government to paragraphs 110 and 114 to 116 of the 1979 General Survey on the Abolition of Forced Labour and indicated that the Convention does not protect persons responsible for breaches of labour discipline which are committed either in the exercise of functions that are essential to safety or in circumstances where life and health are in danger. Since the scope of the national provisions is not limited to such circumstances, but includes, inter alia, cases falling within Article 1(c), the Committee requested the Government to re-examine the provisions in the light of the Convention. Referring also to Convention No. 29, under which workers must remain free to terminate their employment by reasonable notice, the Committee asked the Government to supply information on any amendment made or contemplated in section 241 of the draft Penal Code, as well as on application in practice of section 364 of the Penal Code.

The Committee notes the Government's reference, in its latest report, to section 36, paragraph III of the Labour Code (Law No. 71 of 1987), under which workers may terminate their labour contract by giving notice. The Committee also notes that under Decision No. 150 of 1987 of the Revolutionary Command Council, referred to in the new Labour Code, all workers of state services and the socialist sector are to be public officials and thus excluded from the scope of the new Labour Code, whose application is thus limited to the private, co-operative and mixed sectors. Moreover, the Committee recalls that



section 364 of the Penal Code and section 241 of the draft new Penal Code apply even to persons having formally resigned. In the absence of an indication that these provisions have undergone revision, the Committee again requests the Government to re-examine these provisions in the light of Conventions Nos. 29 and 105 and to supply information on any amendment made or contemplated, as well as on their application in practice, including in particular, copies of any court decisions defining or illustrating their scope.

Article 1(d). 2. In its earlier comments, the Committee pointed out that under section 132 of the Labour Code all labour disputes that are not settled by mutual agreement must be submitted to the Supreme Labour Court, whose judgement was final, without appeal and binding on the parties. The Committee notes that under section 132 of the new Labour Code (Law No. 71 of 1987) unresolved trade disputes are referred to the Labour Dispute Chamber of the Court of Cassation, whose judgement is final according to section 133. Section 136 (I) of the new Code provides (as did section 134 of the former Code) that if an employer does not give effect to the decision of the Chamber, the workers have the right to strike and sanctions may be imposed against the employer.

The Committee notes that except for the strike action allowed under section 136, the right to strike does not appear to be recognised. The Committee asks the Government to indicate the penalties applicable to workers who go on strike in disregard of a final judgement under section 133 of the Labour Code, that is, otherwise than in the case envisaged in section 136.

3. In its earlier comments, the Committee pointed out that section 197, subsection 4, read together with section 216 of the Penal Code provides for imprisonment (involving the obligation to work) for a fixed period or for life as a punishment for stopping activities of public services or bodies, public utility associations, state industrial installations or public establishments of importance to the national economy. The Government had stated in earlier reports that officials of the State and of government establishments have no right to strike, that section 197, subsection 4, is applied without qualification and makes no distinction between the essential and the non-essential services provided by the undertakings, and that the penalty of imprisonment for disrupting work is a threat intended to induce persons to remain at work who would otherwise leave it, thereby causing a disruption in the activities of the services in question.

The Committee had pointed out that under the above-mentioned provisions of the Penal Code, penalties involving the imposition of compulsory prison work can be inflicted for stoppages of work in a wide range of activities and industrial installations. The Committee had asked the Government to indicate the measures taken or under consideration to ensure the observance of the Convention in this regard, for example by restricting the application of these provisions to officials whose functions include the exercise of public authority and to employees of essential services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's statement in its latest report that Article 19 of Law No. 104 of 1981 regarding the State

Organisation for Social Reform provides that work is a part of the implementation of the punishment and not a punishment in itself. Further, the Government indicates that sections 87, 88 and 89 of the Penal Code provide for imprisonment, but do not contemplate the imposition of forced labour within the penal establishment. The Committee observes that under sections 87 and 88 of the Penal Code, concerning imprisonment and penal servitude, persons sentenced are to be assigned to specified work. Referring to the explanations provided in paragraphs 102 to 109 of its 1979 General Survey on the Abolition of Forced Labour, the Committee recalls that the Convention prohibits the use of "any form" of compulsory labour, including compulsory prison labour, in the five cases specified in the Convention. Thus, the imposition of sanctions involving compulsory prison labour of any kind on persons sentenced for breaches of labour discipline, or for participation in a strike, is covered by Article 1(c) and (d) of the Convention. The Committee again requests the Government to re-examine section 197, subsection 4, and section 216, read together with section 87, of the Penal Code and to indicate the measures taken or contemplated to ensure the observance of the Convention.

4. In the same connection the Committee, in its previous direct request, noted that section 152 of the draft new Penal Code corresponds to section 197, paragraph 4 of the Penal Code; the Government stated that section 152 of the draft new Penal Code provides for a penalty of imprisonment for life to be imposed on anybody who voluntarily destroys, deteriorates or damages public property or a socialist sector enterprise, with the aim of overthrowing the socialist republican system and that this provision applies not only to officials or persons in charge of a public service but likewise to any person who commits one of those acts. The Committee requests again that the Government supply a copy of the precise wording of the provision referred to as well as any indications enabling it to ascertain whether the scope of the draft provision shall be limited to damages caused by violence or misappropriation of public funds, or whether this provision could also apply to a strike; in the latter case the Committee requests the Government to indicate any measure taken or contemplated to ensure the observance of the Convention.

#### Ireland (ratification: 1958)

The Committee notes with regret that the Government's report has not been received. It must therefore repeat its previous observation on the following matters:

Article 1(c) and (d) of the Convention. In comments made since 1963, the Committee pointed out that under sections 221 and 225(1)(b) and (c) of the Merchant Shipping Act, 1894, certain disciplinary offences by seamen are punishable with imprisonment (involving, under section 42 of the Rules for the Government of Prisons, 1947, an obligation to work), and that under sections 222, 224 and 238 of the Merchant Shipping Act, seamen absent without leave may be forcibly conveyed on board ship. The Committee likewise pointed out that section 16 of the Conspiracy and Protection of Property Act, 1875, deprives seamen of immunity

from criminal liability for conspiracy in respect of acts in contemplation of or furtherance of trade disputes, and that under section 225(1)(e) of the 1894 Act it is an offence, punishable by imprisonment (involving an obligation to work), for seamen to combine to disobey lawful commands or to neglect duty.

The Committee also noted the Government's indications over a number of years that there had been no practical application of these provisions and that the amendment of the merchant shipping legislation was proceeding.

In its report for the period 1984-85, the Government expressed the view that the application of the Convention to seamen is excluded by virtue of resolution No. 8 adopted by the International Labour Conference in 1921, and that sanctions for breach of a contractual obligation freely entered into cannot be regarded as forced or compulsory labour, provided the conditions referred to in Article 2, paragraph (2)(c) of Convention No. 29 are met. The Government reiterated that since the Convention was ratified, there has been no case in which a man was tried or punished for any of the offences referred to. As regards work in prisons, in actual fact prisoners have freedom of choice whether to work or not; it is accepted that the 1947 Prison Rules need to be rewritten in order to have them reflect present practice, but the process of revising the Rules is likely to be a long-term one.

The Government furthermore pointed out that the courts are empowered to strike down as void laws which are inconsistent with the Constitution. While statutes enacted after 1937 enjoy a presumption of constitutionality, there is no presumption that pre-1922 British statutes (such as the provisions of the 1894 Merchant Shipping Act referred to by the Committee) are consistent with the Constitution. In view of the widespread recognition of the right not to be required to perform forced or compulsory labour as a fundamental human right, it may be regarded as virtually certain that the courts would regard it as a personal right guaranteed under the Constitution. That the courts have never been called upon to determine whether the provisions concerned of the 1894 Merchant Shipping Act are inconsistent with that right is because the provisions in question have not in practice been used in recent times. Finally, the Prison Rules must be read in the light of the Constitution and are so administered by the prison authorities and notwithstanding anything contained in the Rules, prisoners are not in fact compelled to work.

The Committee took due note of these indications. It also has noted the assurances given by the Government to the Conference Committee in 1985 that any conflict which exists between Irish statute and the Convention is purely a legal technicality and does not affect in any way the effective implementation of the Convention, that the Minister for Labour continues to press for legislative changes in this matter as soon as possible, and that in the meantime crew agreements in merchant shipping which are vetted by the Department of Communications in effect preclude forced labour.

In view of the more general questions raised by the Government with regard to the scope of application of the Convention, the Committee observed the following:

As indicated on page 756 of Vol. I of the International Labour Code, the effect of resolution No. 8 adopted by the Conference in 1921 was to create a presumption as to the scope of Conventions and Recommendations not adopted at maritime sessions of the Conference or after consideration by the Joint Maritime Commission. Such a presumption can however be rebutted, and as the Committee pointed out in paragraph 26 of its 1962 General Survey on Forced Labour, the Abolition of Forced Labour Convention, intended to guarantee respect for certain fundamental human rights, is of general application and designed to protect the entire population of the countries where it is in force.

As regards sanctions for breach of a contractual obligation, imposed in the conditions referred to in Article 2, paragraph (2)(c) of Convention No. 29, the Committee has recalled in paragraphs 102 to 110 of its 1979 General Survey on the Abolition of Forced Labour that the exceptions to the 1930 Convention, and specifically the exclusion of prison labour, do not automatically apply to Convention No. 105 which was designed to supplement the 1930 Convention. While in most cases, labour imposed on persons as a consequence of a conviction in a court of law will have no relevance to the application of the Abolition of Forced Labour Convention, compulsory labour in all its forms, including compulsory prison labour, is covered by the 1957 Convention in so far as it is exacted in the five cases specified by that Convention, including the case where a person is in any way forced to work because he has committed a breach of labour discipline.

Moreover, as the Committee pointed out in paragraph 110 of its 1979 General Survey, forced or compulsory labour as a means of labour discipline may be of two kinds. It may consist of measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical constraint or the menace of a penalty) or of a sanction for breaches of labour discipline with penalties involving an obligation to perform work. Both kinds are provided for in the 1894 Merchant Shipping Act, and in so far as seamen absent without leave may be forcibly conveyed on board ship, the legislation cannot be brought into conformity with the Convention through a change in the Prison Rules, but only through an amendment of the Merchant Shipping Act.

As the Committee noted in paragraphs 117 and 118 of its 1979 General Survey, a considerable number of countries in which the 1894 Merchant Shipping Act had remained in force, including the United Kingdom itself, have repealed or amended this legislation, so that provisions permitting the forcible return of seamen to their ship were abolished, and penalties of imprisonment which could be imposed for desertion, absence without leave or disobedience were also repealed or, in certain cases, restricted to offences that endanger the safety of the ship or the life or health of persons. Since the relevant provisions of the 1894 Merchant Shipping Act have not, so far, been declared

unconstitutional or otherwise abolished in Ireland, similar amendments are called for to bring the legislation into conformity with the Convention.

In view of the assurances to this effect again given by the Government to the Conference Committee in 1985, the Committee trusts that the Government will soon be in a position to indicate that the necessary amendments have been made.

Pending legislative action, the Government is requested to supply specimen copies of the crew agreements to which it has referred.

#### Kenya (ratification: 1964)

In previous comments, the Committee referred, inter alia, to various provisions of the Penal Code, the Public Order Act, the Prohibited Publications Order, 1968, the Merchant Shipping Act, 1967, and the Trade Disputes Act (Cap. 234) under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for the display of emblems or the distribution of publications signifying association with a political object or political organisation, for various breaches of discipline in the merchant marine and for participation in certain forms of strike.

The Committee notes the Government's statement in its report that serious discussions are still under way between the Office of the President, the Attorney General's Chamber, the Law Reform Commission and the Ministry of Labour, regarding the proposals that the Government intends to introduce in order to bring national legislation (and especially the Chief's Authority Act) into conformity with the provisions of both Conventions Nos. 29 and 105 on the abolition of forced labour. The Committee continues to look forward to learning of the amendments introduced in the Chief's Authority Act called for under Convention No. 29. It must, however, again point out that the Government has supplied no indication of measures taken with regard to the above-mentioned legislative provisions under Convention No. 105, nor information in reply to direct requests repeatedly made under this Convention. Recalling the Government's earlier assurances that proposals for solutions had been forwarded to the Kenya Law Commission for action, the Committee trusts that the necessary measures will soon be adopted and that the Government will supply detailed information on the action taken, having regard also to the various points raised in a more detailed request which is again being addressed directly to the Government.

#### Libyan Arab Jamahiriya (ratification: 1961)

The Committee notes the information provided by the Government in its latest report and in its statement to the Conference Committee in 1987, as well as the discussion which took place in the Conference Committee.

1. Article 1(a), (c) and (d) of the Convention. In comments made for a number of years, the Committee has referred to various

provisions of the Publications Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section 24(1) of the Penal Code, an obligation to perform labour). The Committee has likewise referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment involving compulsory labour may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes even in services whose interruption would not endanger the life, personal safety or health of the whole or part of the population. The Committee has asked the Government to indicate the measures taken to bring these provisions into conformity with the Convention. It also has asked for information on the practical application of a number of other provisions of the Penal Code, in order to ascertain the observance of the Convention.

The Committee notes with interest from the Government's report that the tripartite Committee established at the national level to examine its comments, although of the opinion that the work performed by prisoners permitted the learning of a trade which might be useful upon release from prison, nevertheless has recognised obligations under the Convention and has recommended, therefore, that national legislation be harmonised with the Convention so as to assure the freedom of prisoners with regard to work.

The Committee has pointed out in paragraphs 102 to 109 of its 1979 General Survey on the Abolition of Forced Labour that the Convention does not prohibit the exaction from common offenders of compulsory labour intended to reform or rehabilitate them, but protects a limited range of persons where the same need does not arise. In the case of persons punished for expressing certain political views an intention to reform or educate them through labour would in itself be covered by the express terms of the Convention, which applies, inter alia, to any form of compulsory labour as a means of political education. In many countries, the law has traditionally accorded to prisoners convicted of certain political offences a special status under which they are free from prison labour imposed on common offenders, although they may work on request. The Committee looks forward to learning of the legislative amendments announced by the Government to ensure the observance of Article 1(a), (c) and (d) of the Convention with regard to persons convicted under the relevant provisions of the Publications Act and the Penal Code. Pending amendment of the legislation, the Committee requests the Government to supply information on the practical application (including court decisions defining their scope) of sections 237 and 238 of the Penal Code, as well as sections 175, 195, 206, 207, 220, 221, 245 and 291 of the same code.

2. Supply of legislative texts. For a number of years the Committee has asked the Government (a) to furnish the text of the Orders of the Higher Council of the Revolution of 11 December 1969 respecting the defence of the revolution and of 26 October 1969 respecting the judgement of those responsible for political and administrative corruption, which are referred to in section 5(A)(8) of the Publications Act; and (b) to furnish all legislative texts

concerning the establishment, operation and dissolution of associations and political parties. The Committee hopes that these texts will soon be supplied, so as to enable it to ascertain the observance of the Convention.

Mauritius (ratification: 1969)

Article 1(d) of the Convention. In comments made for a number of years, the Committee has referred to sections 82 and 83 of the Industrial Relations Act, 1973, which empower the minister to refer any industrial dispute to compulsory arbitration, enforceable by penalties involving compulsory labour, and has pointed out that these provisions are incompatible with Article 1(d) of the Convention. The Committee notes from the Government's latest report that measures to bring this legislation into conformity with the Convention are still under consideration. It recalls the statement by the Government in its report for the period 1979-82 that the procedure for the repeal of the Industrial Relations Act, 1973, had been set in motion and that a parliamentary committee was to draft completely new legislation on industrial relations after hearing the proposals of the employers' and workers' organisations. The Committee hopes that action will soon be completed to ensure that compulsory arbitration enforceable with penalties involving compulsory labour is limited to services whose interruption is likely to endanger the life, personal safety or health of the whole or part of the population, and that the Government will indicate the measures taken to bring the legislation on industrial relations into conformity with Article 1(d) of the Convention.

Nigeria (ratification: 1960)

In comments made for a certain number of years, the Committee has referred to various statutory instruments calling for action and information on the measures taken to ensure the observance of Article 1(a), (c) and (d) of the Convention. The Committee notes with regret that in its latest report the Government merely indicates that the comments have been noted, that the situation on the application of the Convention has not changed and that consideration will be given to the matter in due course. The Government also states that forced or compulsory labour does not exist in Nigeria. The Committee therefore must repeat its observation on the following matters.

Article 1(a) of the Convention. 1. In its previous comments the Committee observed that by virtue of the Constitution (Suspension and Modification) Decree 1984 and the Constitution (Suspension and Modification) (Amendment) Decree 1985 certain provisions of the 1979 Constitution, including provisions on fundamental rights relating to detention and the right of peaceful assembly and association were suspended or modified. The Committee noted in particular that political parties are prohibited and that under the State Security (Detention of Persons) Decree No. 2 of 1984 (as amended) persons may be detained for successive periods of three months, subject to a review every three months, and that the guarantees of the Constitution

in this matter are suspended. The Committee requested the Government to provide information on any sanctions provided for in case of non-compliance with the provisions suspending fundamental rights and on the conditions of detention of persons detained under the above-mentioned Decree.

The Committee has noted the information provided by the Government in reply in 1987 that all decrees were promulgated under military regimes which could be regarded as periods of emergencies and that democratic rule would be restored in 1992 when it was hoped that all the decrees would be reviewed and the ban on political activities and freedom of association and assembly be lifted. The Committee has also noted that a timetable for the political transition has been adopted and a constitutional review committee been established.

Referring to paragraphs 66 and 134 of its 1979 General Survey on the Abolition of Forced Labour, the Committee recalls that under the Convention the nature and duration of measures taken under an emergency, such as the suppression of fundamental rights and freedoms enforced by sanctions involving compulsory labour should be limited to what is strictly required in order to cope with circumstances endangering the life, personal safety or health of the whole or part of the population. The Committee expresses the hope that in the preparation of the new Constitution and of other enactments due regard will be given to the provisions of the Convention so that no penalties involving an obligation to work be imposed as a means of political coercion or education or as punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system, in particular with regard to expression of views through the press, political activities, freedom of association and of assembly.

Pending the restoration of democratic rule referred to by the Government the Committee again requests the Government to provide full information on any sanctions provided for in case of non-compliance with the provisions suspending or modifying fundamental rights and on any provisions adopted under the Constitution (as amended) and falling within the scope of the Convention - in particular with regard to the expression of views, political activities, freedom of association and assembly and on any measures taken or contemplated to ensure the observance of the Convention in this respect. It again requests the Government to provide copies of any Act or regulation concerning the conditions of detention of persons detained under Decree No. 2 of 1984.

Article 1(c) and (d). 2. In previous comments, the Committee noted that under section 81(1)(b) and (c) of the Labour Decree, 1974, a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison. The Committee had noted the Government's indication that committal to prison in such circumstances does not usually involve an obligation to perform work. The Committee notes the Government's statement communicated in June 1987 that the situation has not yet changed but that however efforts would be made to submit section 81(1)(b) and (c) of the Labour Decree, 1974 to the National Advisory Council for necessary amendments. The Committee hopes that the necessary measures will soon be adopted with regard to



section 81(1)(b) and (c) of the Labour Decree, 1974, to ensure that no sanctions which may involve an obligation to perform work are provided for breaches of labour discipline or for taking part in a strike and that the Government will indicate the action taken to this end.

3. In previous comments, the Committee referred to section 117(b), (c) and (e) of the Merchant Shipping Act, under which seamen are liable to imprisonment involving an obligation to work for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons. The Committee hopes that in this regard too, the necessary measures will be taken to ensure the observance of the Convention, and that the Government will soon be able to indicate the amendments adopted.

Article 1(d). 4. The Committee previously noted that under section 13(1) and (2) of the Trade Disputes Decree, No. 7 of 1976, participation in strikes may be punished with imprisonment involving an obligation to work in the following cases: (a) where the mediation and reporting procedure imposed by sections 3 and 4 of the Decree for all industrial disputes has not been complied with; (b) where arbitration procedures under sections 7 to 9 of the Decree, which shall be initiated by the Federal Commissioner whenever conciliation attempts have failed, have led to an award by the arbitration tribunal and that award has become binding; (c) when the Federal Commissioner has referred the dispute to the National Industrial Court; (d) when the National Industrial Court has issued an award on the reference.

The Committee noted the Government's statement that section 13 merely imposes on an employer or worker an obligation to observe and exhaust prescribed procedures before engaging in a strike or lock-out. In this connection, the Committee referred to paragraph 130 of its 1979 General Survey on the Abolition of Forced Labour, where it explained that the imposition of a temporary restriction on the right to strike until all facilities for negotiation and conciliation have been exhausted and while voluntary arbitration procedures are in progress, are to be distinguished from compulsory arbitration systems which result in binding awards allowing practically all strikes to be prohibited or rapidly stopped. When such systems provide for sanctions involving compulsory labour, they should be limited to sectors and types of employment where restrictions may be imposed on the right to strike itself, that is, to essential services in the strict sense of the term (that is, services whose interruption would endanger the life, personal safety or health of the whole or part of the population). The Committee further noted that the list of essential services included in Schedule 1 to Decree No. 7 of 1976 and in section 8 of the Trade Disputes (Essential Services) Decree No. 23 of 1976 is wider and covers for example the Central Bank and banking business. The Committee once again expresses the hope that the necessary action will soon be taken to ensure the observance of the Convention in this regard and that the Government will indicate the measures taken or contemplated to amend the legislative provisions referred to.

Pakistan (ratification: 1960)

The Committee notes the discussion on the application of the Convention by Pakistan that took place in 1988 at the Conference Committee, which expressed its serious concern and urged the Government to take very shortly the necessary measures to put its legislation and practice into conformity with the Convention, and to supply the detailed information requested. The Committee also notes that no report has been received from the Government.

Article 1(a) of the Convention. 1. In comments made for a number of years, the Committee has referred to certain provisions in the Security of Pakistan Act, 1952 (sections 10-13), the West Pakistan Press and Publications Ordinance, 1963 (sections 12, 36, 56, 59, and 23, 24, 27, 28 and 30) and the Political Parties Act, 1962 (sections 2 and 7) which give the authorities wide discretionary powers to prohibit the publication of views and to order the dissolution of associations, subject to penalties of imprisonment which may involve compulsory labour.

The Committee notes that the representative of the Government reiterated to the 1988 Conference Committee the Government's view as had been put forward in its earlier reports and statements at the Conference Committee, that conviction of offenders by courts of law for specific offences did not fall within the scope of the Convention and, therefore, the courts had discretion in awarding punishment according to the gravity of the offence.

The Committee is bound to refer again to the explanations provided in paragraphs 102 to 109 of its 1979 General Survey on the Abolition of Forced Labour, where it indicated that compulsory labour in any form, including compulsory prison labour, falls within the scope of the Convention in so far as it is exacted in one of the five cases specified in Article 1 of the Convention and, in the case of persons convicted for expressing certain political views, an intention to educate them through labour would in itself be covered by the express terms of the Convention. The Committee again expresses the hope that the necessary measures will soon be taken to bring the above-mentioned provisions into conformity with the Convention.

Pending action to amend these provisions, the Committee once more requests the Government to supply information on their practical application including the number of convictions and copies of court decisions defining or illustrating the scope of the legislation.

Article 1(c). 2. In comments made for many years, the Committee has referred to sections 54 and 55 of the Industrial Relations Ordinance (No. XXIII of 1969) under which whoever commits any breach of any term of any settlement, award or decision or fails to implement any such term may be punished with imprisonment which may involve compulsory labour.

The Committee notes the statement of the Government representative at the 1988 Conference Committee repeating the Government's earlier indications that nobody had been punished in the recent past under the provisions of that Ordinance, and that the penalties provided for in the Ordinance were only to ensure that employers and workers respected the collective agreements they concluded through the process of collective bargaining. The Committee

again observes that, under the provisions referred to, breaches of labour discipline such as non-compliance with obligations under a settlement, award or decision are punishable with sanctions involving compulsory labour, contrary to Article 1(c) of the Convention. In view of the Government's indications concerning actual practice, the Committee again expresses the hope that the Government will take the necessary measures to bring the Industrial Relations Ordinance into conformity with the Convention, by repealing sections 54 and 55 of the Ordinance or by repealing the penalties which may involve compulsory labour, or by limiting their scope to circumstances endangering the life, personal safety or health of the population.

Article 1(c) and (d). 3. The Committee notes the statement of the Government representative to the 1988 Conference Committee that a Bill had been introduced in the National Assembly to amend sections 100 to 103 of the Merchant Shipping Act, under which various breaches of labour discipline by seamen may be punished with imprisonment which may involve liability to compulsory labour but, due to the dissolution of the Assembly and the forthcoming elections, no progress could be made. The Committee hopes that the necessary amendments will soon be adopted either by repealing the penalties involving compulsory labour or by limiting their scope to offences committed in circumstances endangering the safety of the ship or the life, personal safety or health of persons, and that the Government will indicate the action taken in this regard.

Article 1(e). 4. In previous comments, the Committee has referred to sections 298B and C of the Penal Code, inserted by the Anti-Islamic Activities of the Quadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984. Under section 298B(1), "any person of the Quadiani Group or the Lahori Group (who call themselves 'Ahmadis' or by any other name) who by words, either spoken or written, or by visible representation - (a) refers to or addresses any person, other than a Caliph or companion of the Holy Prophet Muhammad (peace be upon him), as 'Ameer-ul-Mumineen', 'Khalifa-tul-Mumineen', 'Khalifa-tul-Muslimeen', 'Sahaabi' or 'Razi Allah Anho'; (b) refers to, or addresses, any person, other than a wife of the Holy Prophet Muhammad (peace be upon him), as 'Umul-Mumineen'; (c) refers to, or addresses, any person, other than a member of the family ('Ahle-bait') of the Holy Prophet Muhammad (peace be upon him) as 'Ahle-bait'; or (d) refers to, or names, or calls his place of worship as 'Masjid' - shall be punished with imprisonment of either description for a term which may extend to three years".

Under section 298B(2), any persons of the same groups "who by words, either spoken or written, or by visible representation, refers to the mode or form of call to prayers followed by his faith as 'Azan', or recites 'Azan' as used by the Muslims, shall be punished with imprisonment of either description for a term which may extend to three years".

Under section 298C, any person of the same groups "who, directly or indirectly, poses himself as a Muslim, or calls or refers to his faith as Islam, or preaches or propagates his faith, or invites others to accept his faith, by words, either spoken or written, or by visible representations, or in any manner whatsoever outrages the religious

feelings of Muslims, shall be punished with imprisonment of either description for a term which may extend to three years".

The Committee notes the statement of the Government representative to the 1988 Conference Committee reiterating that forced labour as a result of religious discrimination does not exist and is forbidden under the Constitution and laws of Pakistan. When making the same statement in its report for the period 1985-87, the Government had added that any law, custom or usage having the force of law, so far as it was inconsistent with rights conferred by the Constitution, was void to the extent of the inconsistency. The Committee had accordingly expressed the hope that sections 298B and C of the Penal Code would be reviewed and amended so as to ensure the observance of the Convention. The Committee again urges the Government to take the necessary action to this end. Pending the repeal or amendment of sections 298B and C of the Penal Code, the Committee requests the Government to supply information on the practical application of these provisions, including the number of persons convicted thereunder and copies of the judicial decisions rendering such conditions, as well as a copy of any court decision finding sections 298B and C of the Penal Code incompatible with constitutional requirements.

In addition, a request regarding certain points is being addressed directly to the Government.

#### Peru (ratification: 1960)

In the comments it has been making for more than ten years, the Committee has referred to section 44 of the Penal Code, under which, where offences are committed by "savages", the judge may replace sentences of imprisonment by assignment to a penal agricultural colony for an unspecified period of up to 20 years, irrespective of the maximum duration of the sentence that the offence would entail if it had been committed by a "civilised man".

In its previous observation, the Committee noted with interest section 21 of the draft Penal Code published in the Official Gazette of 31 March 1986, under which the judge may declare a person legally incompetent or reduce the sentence below the legal minimum where this person, by reason of his culture or customs, commits a punishable act without being capable of a proper understanding of the illegal nature of his act or of deciding in accordance with such an understanding.

The Committee notes that Act No. 24911 of 25 October 1988 extends the time limit for adopting the new Penal Code.

In view of the fact that this point has been the subject of its comments for more than ten years, the Committee hopes that the new provisions will be adopted rapidly and requests the Government to supply a copy once adopted.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Philippines (ratification: 1960)

1. Further to its previous comments, the Committee notes with satisfaction that Executive Order No. 65 issued by the President on 21 November 1986 has repealed Presidential Decree No. 90 (on unlawful rumour-mongering and spreading of false information) and its implementing Letter of Instructions No. 50.

2. Requests on a number of related matters are being directly addressed to the Government.

Saint Lucia (ratification: 1980)

Further to its previous comments concerning sections 221 to 224 and 225 of the United Kingdom Merchant Shipping Act, 1894, under which seamen absent without leave could be forcibly returned on board ship and desertion, absence without leave and disobedience were punishable with imprisonment involving an obligation to perform labour, the Committee notes with satisfaction that by virtue of the Law of the Merchant Shipping Act, 1981, the 1970 United Kingdom Merchant Shipping Act has become applicable in St. Lucia, replacing the 1894 Act.

Sierra Leone (ratification: 1961)

Article 1(a) of the Convention. The Committee notes the information provided by the Government in May 1988 in reply to earlier comments.

1. In comments made for a number of years, the Committee has asked for information on the practical application of sections 24, 32 and 33 of the Public Order Act (concerning public meetings, the publication of false news and seditious offences), including the number of convictions for offences thereunder and particulars of relevant court decisions defining or illustrating the scope of these provisions. The Committee noted from the Government's report received in 1983 that the information requested was being collected. The Committee notes from the Government's most recent report that correspondence has been reopened requesting the Law Officers Department to state whether there had been convictions under sections 24, 32 and 33 of the Public Order Act during the period 1986-87. The Committee hopes that the information requested will soon be supplied.

2. In its previous comments, the Committee noted that articles 15, 16 and 17 of the Constitution of Sierra Leone, 1978, exclude from the protection of the freedoms of conscience and of assembly and association and from the protection against discrimination, anything contained in, or done under, the authority of any law that makes provision which is reasonably required for safeguarding the proper functioning of the Recognised Party, or which imposes restrictions on the establishment of political parties other than the Recognised Party, or regulates the behaviour of members of that Party, except in so far as that provision is shown not to be reasonably justifiable in a democratic society. The Committee requested the Government to supply copies of all statutory provisions relating to the

establishment of political parties, the functioning and interest of the Recognised Party and the behaviour of its members.

Recalling the Government's statement in its 1983 report that it was expecting a reply from the Law Officers Department, and noting that no additional information has been provided on this subject in the Government's most recent report, the Committee hopes that copies of the statutory provisions will soon be supplied.

United Republic of Tanzania (ratification: 1962)

Tanganyika

1. In previous comments, the Committee noted that forced or compulsory labour may be imposed in circumstances falling within Article 1(a), (c) and (d) of the Convention under the following legislative provisions:

Article 1(a) of the Convention. Under section 25 of the Newspaper Act, 1976, the President may, if he considers it necessary in the public interest or in the interest of peace and order, prohibit the further publication of any newspaper. Any person who prints, publishes, sells or distributes in a public place such a newspaper may be punished with imprisonment (involving, by virtue of Part XI of the Prison Act, 1977, an obligation to perform labour).

Article 1(c). Under section 284A of the Penal Code, any employee of a "specified authority" (i.e. the Government, a local authority, a registered trade union, the Tanganyika African National Union or any body affiliated to it, any publicly owned company, etc.) who causes pecuniary loss to his employer or damage to his employer's property, by any wilful act or omission, negligence or misconduct, or failure to take reasonable care or to discharge his duties in a reasonable manner, may be punished with imprisonment for up to two years (involving an obligation to work).

Under section 176(9) of the Penal Code, any person employed under lawful employment of any description who is, without lawful excuse, found engaged in a frolic of his own at a time he is supposed to be engaged in activities connected or relating to the business of his employment may be punished with imprisonment (involving an obligation to work). In addition, under section 26 of the Human Resources Deployment Act, the Minister shall make such arrangements as will provide for a smooth and co-ordinated transfer or any other measure which will provide for the rehabilitation and full deployment of persons chargeable with or previously convicted under section 176 of the Penal Code.

Article 1(c) and (d). Under section 145(1)(b), (c) and (e) and section 147 of the Merchant Shipping Act, 1967, various breaches of discipline by seamen are punishable by imprisonment, involving an obligation to perform labour. Under section 151, any seaman who deserts from a foreign ship may be forcibly conveyed on board ship or delivered to the master, mate or owner of the ship or his agent.

Article 1(d). Sections 4, 8, 11 and 27 of the Permanent Labour Tribunal Act, 1967, which contain general provisions for compulsory arbitration in labour disputes, make it possible in practice to render

all strikes illegal and punishable with imprisonment (involving compulsory prison labour).

In earlier reports, the Government has stated that consultations on proposals for the revision of these legislative provisions have been completed and a report has been submitted to the competent authority for decision. In its reply to the Committee's 1987 observations, the Government once again expressed its desire to bring the above-mentioned provisions into conformity with the Convention, but stated that there have been unavoidable delays in the conclusion of proposals for the revision of the relevant legislative provisions to bring them into conformity with the requirements of the Convention.

In its latest report, the Government points out that the labour laws of the country are under revision, that a first draft of a consolidated labour code was submitted in September, 1988 and discussions centred on the draft were held with people from different institutions, and that it was hoped that a second and final draft would be submitted in December, 1988 and would do away with all the existing statutory provisions which are not in line with international labour standards.

The Committee takes due note of these indications. Recalling that these matters have been under consideration for a number of years and that the statutory provisions conflicting with the Convention are to a large extent contained in legislation outside the normal purview of a labour code, the Committee hopes that the draft legislation now referred to by the Government will indeed provide for the repeal of all provisions which are incompatible with the Convention, and that the Government will soon indicate that the necessary action has been taken.

In a direct request, the Committee once again requests the Government to furnish information on the practical application of a number of legislative provisions which the Committee has been requesting for many years, and which the Government is still seeking to obtain.

#### Zanzibar

2. In its previous observation, the Committee noted the Government's indication that the Afro-Shirazi Party Decree, 1965, by virtue of which the Afro-Shirazi Party was declared the sole political Party and all other political parties, organisations or societies were declared unlawful and membership therein was made punishable with imprisonment (involving an obligation to perform labour) had been superseded and was no longer in force since the creation of the Revolutionary Party (Chama cha Mapinduzi) of Tanzania, that the United Republic of Tanzania is a one-party democratic State and Chama cha Mapinduzi is the ruling Party governed by its constitution.

The Committee notes from the text of the constitution of Chama cha Mapinduzi (CCM) supplied by the Government that a joint national conference of the Tanganyika African National Union (TANU) and the Afro-Shirazi Party (ASP) assembled in Dar es Salaam on 21 January 1977 resolved and proclaimed the dissolution of these two parties and the simultaneous establishment of CCM as a new and sole political Party for the whole of Tanzania. Under section 1 of its constitution, this



Party shall exercise final authority in respect of all public affairs; under section 5(4), the Party is to maintain and carry forward the ideological line of the founding fathers of TANU and ASP bequeathed to it in the various documents of those parties; under section 6, every member of TANU and ASP shall, unless he wishes otherwise, become a founder-member of Chama cha Mapinduzi. The Committee also notes that the Constitution of Zanzibar of 1984, the Swahili text of which has been communicated by the Government, pays tribute to the standard-setting work of the ASP and provides in section 5 that CCM is the single Party in Tanzania and that all institutions are under the authority and responsibility of this Party.

In view of the organic links between CCM as the present sole political Party and the Afro-Shirazi Party as one of its two parent organisations, the Committee hopes that on an appropriate occasion, the Afro-Shirazi Party Decree, 1965 and in particular all penal provisions punishing membership in political organisations other than the sole political Party with penalties involving compulsory labour will be formally repealed.

3. In its previous comments, the Committee also had referred to a number of other statutory provisions having a bearing on Article 1(a), (c) and (d) of the Convention. The Committee notes with interest the Government's statement in its report that measures are being taken with a view to re-examining the situation, and to ensure that prisoners covered by the Convention should be exempted from prison labour. The Committee is addressing a direct request to the Government on these matters.

#### Trinidad and Tobago (ratification: 1963)

Article 1(c) and (d) of the Convention. 1. In previous comments, the Committee has noted the Government's indications over a number of years concerning progress in the revision of the Merchant Shipping Act, 1894, which continued in force in Trinidad and Tobago and which provided in sections 222 to 224 for the forcible return of deserters on board ship, and in sections 221 and 225(1)(b), (c) and (e) for penalties of imprisonment involving compulsory labour for breaches of discipline which do not endanger the safety of the ship, or the life or health of persons. The Committee notes with regret that, although the Merchant Shipping Act, 1894 was repealed by section 413 of the Shipping Act, 1987, the new Shipping Act contains provisions substantively identical to those which have been the source of comment for numerous years. Thus, section 157 (1)(a), (b) and (e) of the Shipping Act, 1987 follows section 225(1)(a), (b) and (e) of the 1894 Act in providing for penalties of imprisonment (involving, under rules 255 and 269(3) of the Prisons Rules, compulsory labour) for disobeying lawful commands. While subsection (2) of section 157 of the Shipping Act, 1987 excludes the application of subsection (1) to a lawful strike after the ship has been secured in good safety to the satisfaction of the master and the port authority at a port in Trinidad and Tobago, subsection (1) may be applied to strikes outside Trinidad and Tobago as well as to breaches of labour discipline which do not endanger the safety of the ship or the life or limb of persons



(endangering life or ship is the subject of a specific provision in section 156, which has no bearing on the Convention). Similarly, section 158 of the Shipping Act, 1987 follows section 221 of the 1894 Act in punishing desertion and absence without leave with penalties of imprisonment involving compulsory labour. Finally, section 162 of the 1987 Act still provides for the apprehending and forcible conveyance of deserters on board ship upon the request of the master of the ship, regarding both seamen deserting in Trinidad and Tobago a ship registered abroad and, by way of reciprocity, seamen deserting in a foreign state from a Trinidad and Tobago ship.

The Committee hopes that the necessary measures will soon be taken to bring sections 157 (1)(a), (b) and (e), 158 and 162 of the Shipping Act, 1987 into conformity with the Convention, and that the Government will indicate the action initiated.

2. For several years the Committee has commented upon section 8(1) of the Trade Disputes and Protection of Property Ordinance, under which penalties involving compulsory labour may be imposed for breach of contract by persons employed in certain public services where the probable consequences would be to deprive the inhabitants, wholly or to a great extent, of such services. The Committee observed that certain of the services mentioned in section 8(1) of the Ordinance (electricity, water, health, sanitary or medical services) are strictly essential because their interruption could endanger the life, personal safety or health of the whole or part of the population, while in others (namely, railway, tramway, ship or other transport services) only a few posts essential to security might fall under the same category. For several years the Government has reported that efforts were under way to amend these provisions. In its latest report the Government indicates that the implications of amending section 8(1) of the Trade Disputes and Protection of Property Ordinance are still being studied and that in practice, there has been no infringement of the Convention in this respect.

The Committee hopes that the necessary action will soon be completed to bring law as well as practice into conformity with the Convention on this point, by ensuring that no penalties involving compulsory labour may be imposed for breaches of contract which are not likely to endanger the life, personal safety or health of the whole or part of the population.

Article 1(d). 3. The Committee has noted in previous comments that under section 69(1)(d) and (2) of the Industrial Relations Act, 1972, teachers in the public service are prohibited from taking part in a strike, subject to penalties of imprisonment involving the obligation to work. The Government indicates in its latest report that the matter is being referred for consideration by a committee which has been appointed under the chairmanship of the Permanent Secretary to the Prime Minister and Head of the Civil Service, to undertake a review of all the civil service acts and their relevant regulations. Since section 69(1)(d) and (2) of the Industrial Relations Act, 1972, has been the subject of comments by the Committee for several years, the Committee hopes that the necessary measures will soon be taken to bring this provision into conformity with the Convention, and that the Government will indicate the progress made in this respect.

Turkey (ratification: 1961)

The Committee notes the Government's report and the observations made by the Turkish Confederation of Employers' Associations.

Article 1(c) of the Convention. In comments made for a number of years, the Committee noted that with a view to ensuring the proper running of the vessel and the maintenance of discipline, section 1467 of the Commercial Code empowers the master of a ship to use force to bring deserting seafarers back on board to perform their duties.

In its report supplied in 1988, the Government states that there had been a misinterpretation of section 1467 when, upon examination of the observation made by the Committee in 1970, the Government indicated that consultations would be initiated with a view to amending this section through the deletion of the last phrase of paragraph 2 under which the master of a ship is empowered, in case of necessity, to use force to bring back on board defecting seafarers who had run away from the vessel in order not to work. According to the Government's latest report, the restriction in section 1467 to "the case of necessity" is of the same nature as a restriction of sanctions to acts tending to endanger the ship or the life or health of persons. Moreover, the Government points out that section 1470 of the Code provides safeguards against the malicious use of disciplinary powers by the captain or the officers of a ship, and that these provisions also apply to the forcible return of seamen on board of a ship which lies safely in a harbour. Although such cases are not clearly excluded from section 1467, the Government considers that it can be concluded from the analysis of the said section that the master of a ship cannot use his/her authority to bring deserting seafarers back on board. Consequently, in the Government's opinion there is no need to amend this section because it allows judicial bodies flexible interpretation, and national as well as international law, including the Convention, is not to list all events and conditions, but to set out principles in general nature.

The Committee has taken due note of the Government's views, which are shared by the Turkish Confederation of Employers' Associations. It observes that Article 1(c) of the Convention prohibits without exception the use of any form of forced or compulsory labour as a means of labour discipline, and that any sanction involving compulsory labour for acts endangering the safety of the ship or the life or health of persons, to which the Committee has been referring in paragraph 117 of its 1979 General Survey on the Abolition of Forced Labour, must be strictly defined to remain outside the scope of the Convention. As the Government has pointed out, section 1467 of the Commercial Code allows a flexible interpretation, since it is with a view to ensuring the proper running of the vessel or providing security and discipline on board that all kinds of measures may be taken under section 1467, and it is with this flexible finality - and not merely to avert imminent danger from the ship or persons - that the use of force is limited to "the case of necessity".

The Committee recalls, however, the Government's indication in an earlier report that in practice the power to use force under section 1467 was exercised only in cases of emergency, and that the wording of this provision would be amended accordingly. The Committee again

expresses the hope that this provision will be consequently amended so as to exclude the possibility of forcible return of seafarers on board of a ship with a view to ensuring the proper running of the vessel or the maintenance of discipline, and permit recourse to compulsion only to counter an imminent danger to the ship or the life or health of persons.

Zambia (ratification: 1965)

The Committee notes the discussion on the application of the Convention by Zambia which took place at the Conference Committee in 1987 and the information provided by the Government in its report covering the period 1 June 1986 to 30 June 1988.

In comments made for a number of years, the Committee has referred to a series of statutory provisions violating Article 1(a), (c) and (d) of the Convention. The Committee notes that the Conference Committee in 1987 expressed its concern regarding the serious problems encountered in the implementation of the Convention over many years and expressed the hope that the Government would be able to take action in the near future to give full effect to the Convention and that it would report on the progress made. The Committee also notes the statement by the Government representative to the Conference Committee in 1987 that he was aware that ratification of the Convention involved obligations which the Government had freely assumed, and his assurances that the promised action would be taken by the Government.

The Committee notes with regret that none of the necessary measures have so far been taken to bring national law into conformity with the Convention and that on certain of the points which have long been at issue, the Government now objects to taking action. The Committee therefore is bound to comment again on the following matters.

Article 1(a) of the Convention

1. In comments made for a number of years, the Committee has referred to article 4 of the Constitution of Zambia which, read together with sections 8 and 9 of the Societies Act, provides that the pursuit of political activities by any group or association outside the constitutionally recognised party is prohibited. Any expression of opinion, meeting or activity by any such group or association would be punishable under sections 24 and 25 of the Societies Act with imprisonment (involving, by virtue of section 75 of the Prisons Act, an obligation to perform labour). The Committee noted that in its 1983 report the Government indicated that the question arising in connection with article 4 of the Constitution of Zambia, read with sections 8 and 9 of the Societies Act and section 75 of the Prisons Act, was still under study, with a view to bringing the provisions in line with the requirements of the Convention; and that the examination of the provisions required extensive consultation with many agencies of the Government.

The Committee notes the statement by the Government representative to the 1987 Conference Committee that a comprehensive

response to the Committee of Experts' comments would be supplied following the necessary consultations.

The Committee notes the Government's statement in its most recent report that no decision has been taken yet on these matters, and that when consideration is finalised and a decision taken, the Committee will be informed.

The Committee is concerned that legislation providing for imprisonment (involving compulsory labour) as a punishment in circumstances falling within Article 1(a) of the Convention remains in force.

The Committee refers again to the explanations provided in paragraphs 102 to 109, 133 and 140 of its 1979 General Survey on the Abolition of Forced Labour and trusts that measures will be taken soon by the Government to bring the legislation concerned into conformity with the Convention, and that the Government will supply information on the measures taken, including copies of any revising legislation. Pending adoption of the necessary amendments, the Government is again requested to provide information on the application of sections 8, 9, 24 and 25 of the Societies Act, including copies of court decisions made thereunder and statistical information on convictions.

2. In comments made since 1973, the Committee has been requesting information concerning any measures taken in relation to certain provisions of the Preservation of Public Security Regulations to ensure that no form of forced or compulsory labour (including labour required by virtue of section 75 of the Prisons Act) may be imposed in circumstances falling within Article 1(a) of the Convention. The Committee recalls that under the Preservation of Public Security Regulations:

- (a) the police enjoy wide discretionary powers to prohibit meetings, whether held in public or in private premises, and may also prohibit any person or class of persons from addressing any meeting or any gathering of three or more people, whether in public or private (regulation 4);
- (b) the authorities may impose such terms or conditions as they consider expedient in connection with the relaxation of restriction orders (regulation 16(4));
- (c) restrictions may similarly be imposed in connection with conditional suspension of a detention order, for example, as regards association or communication with other persons (regulation 33(3) and (4));
- (d) persons contravening any of the above-mentioned prohibitions, conditions or restrictions are liable to be punished by imprisonment (regulation 47), involving, by virtue of the Prisons Act, an obligation to perform labour.

The Committee notes the statement by the Government representative to the Conference Committee in 1987 that there had been little time to consult on this matter. In its latest report, the Government expresses the view that labour performed while in prison in consequence of a prison term passed by a competent court is not forced labour but labour given in the ordinary service of a prison term and that therefore, the provisions of the Preservation of Public Security Regulations are not at variance with the Convention.

Referring to the explanations provided in paragraphs 102-109 of its 1979 General Survey on the Abolition of Forced Labour, the Committee must once more point out that while the Convention does not prohibit the exaction of prison labour from common offenders, compulsory labour in any form, including compulsory prison labour, is covered by the Convention in so far as it is exacted in one of the five cases specified in Article 1 of the Convention. In the case of persons convicted for expressing certain political views, an intention to reform or educate them through labour would in itself be covered by the express terms of the Convention, which applies *inter alia* to any form of compulsory labour as a means of political education.

Referring also to paragraphs 133 and 139 of the previously mentioned 1979 General Survey, the Committee again expresses the hope that the necessary measures will soon be taken in relation to the Preservation of Public Security Regulations to ensure that no form of forced or compulsory labour (including penal labour) may be imposed in circumstances falling within Article 1(a) of the Convention, and that the Government will indicate the action taken to this end.

#### Article 1(c) and (d)

3. In its previous comments the Committee had expressed its hope that the Government would review a number of legislative provisions under which imprisonment (involving compulsory labour) may be imposed as a means of labour discipline or as a punishment for having participated in strikes. These included: (i) section 124 of the Penal Code, under which employees in the public service who wilfully neglect any duty imposed on them by common law, statute or ordinance are liable to imprisonment involving an obligation to work, and (ii) sections 221 to 224 and 225(1)(b), (c) and (e) of the United Kingdom Merchant Shipping Act, 1894, as applied to Zambia by the Merchant Shipping (Temporary Provisions) Act, under which breaches of discipline not involving a danger to the ship or to the life or health of persons may be punished with sanctions involving compulsory labour and seafarers deserting their employment may be forcibly conveyed on board ship. The Committee notes from the Government's latest report that no decisions have been taken concerning section 124 of the Penal Code and sections 221 to 224 and 225(1)(b), (c) and (e) of the United Kingdom Merchant Shipping Act. The Committee also notes the request by the Government to the Conference Committee in 1987 that the Committee give the Government more time to review the matter especially to revise the 1894 Act, as it was obvious that this piece of legislation was rather obsolete and needed updating. Recalling also the Government's statement in its report for the period 1971-73 that section 124 of the Penal Code was under active review, the Committee hopes that the necessary legislative changes will soon be made to ensure the observance of the Convention on these points, and that the Government will indicate the action taken.

4. In previous comments, the Committee noted that under section 117 of the Industrial Relations Act, 1971, any person employed in an essential service who is guilty of any act or omission which is likely to hinder or interfere with the carrying on of that service or who takes part in a strike may be punished with imprisonment (involving,

by virtue of the Prisons Act, an obligation to perform labour). The Committee observed that the definition of "essential services" in section 3 of the Act of 1971, in addition to services falling within this strict meaning of the expression, also covers services whose interruption would not necessarily endanger the life, personal safety or health of the whole or part of the population. The same applies to the provisions prohibiting strikes in "necessary services" contained in regulation 31 DD of the Preservation of Public Security Regulations (inserted by S.I. No. 239 of 1970).

The Committee notes the statement by the Government representative to the Conference Committee in 1987 that employers' and workers' organisations had met with the Government in late 1985 to examine a draft industrial relations Bill. One of the matters considered was the redefinition of essential services with a view to narrowing as required by the Convention. Once the draft Bill had been enacted into law a copy would be submitted to the Office. In its latest report, the Government indicates that the Industrial Relations Act as it relates to the definition of essential services has not been altered yet, but that this is a matter which is being considered for amendment. The Committee hopes that the measures contemplated will soon be taken, that similar amendments will be made in the Preservation of Public Security Regulations, and that the Government will supply copies of the provisions adopted.

#### Article 1(d)

5. The Committee previously noted that under section 95 of the Industrial Relations Act, 1971, any collective dispute not settled by conciliation shall be referred to the Industrial Relations Court which shall consider the issues involved and pronounce a decision thereon. Since the Court's decision shall be final and binding upon the parties to the dispute for such period as the Court may specify, this provision makes it possible in practice to render all strikes illegal and, under sections 116 and 122, punishable by imprisonment (involving compulsory prison labour).

The Committee notes the statement by the Government's representative to the Conference Committee in 1987 that these provisions of the Industrial Relations Act render strikes illegal in that any strike action taken after the Court's ruling is illegal. This situation still existed because there was no provision for appeal to any other court after the Industrial Relations Court had given its award in arbitration; in the draft Industrial Relations Bill, there was, however, a provision for appeal to the Supreme Court. The Government representative expressed the hope that when this Bill, which was still subject to further debate by Parliament, was passed into law, the actual issue - that is, at which point parties to the dispute could resort to strike action or lock-out - would be made clearer to the parties involved. At present, the parties did not seem to know just when a legal strike could take place. When adopted - and the government representative hoped it would not be very long from June 1987 - the actual text of the legislation would be submitted for examination and further comments by the Committee of Experts. In its latest report, the Government no longer refers to the amendments

considered but expresses the view that a person who proceeds on strike in circumstances where it is prohibited, is in violation of the law forbidding striking and such a strike is unlawful. Unlawful action, the Government continues, should ordinarily be visited by sanctions and there is no question of a person being punished for going on lawful strike and this is in accord with Article 1(2) of the Convention.

Referring again to the explanations provided in paragraph 130 of its 1979 General Survey on the Abolition of Forced Labour, the Committee recalls that compulsory arbitration systems which result in binding awards allowing practically all strikes to be prohibited or rapidly stopped are contrary to Article 1(d) of the Convention when such systems provide for sanctions involving compulsory work. Where this is laid down in national legislation the law itself is contrary to the Convention. The mere introduction of a right of appeal would not resolve the difficulty since it would not change the compulsory nature of the arbitration. The Committee again expresses the hope that the necessary action will be pursued to bring the Industrial Relations Act into conformity with the Convention on this point, and that the Government will indicate the provisions adopted to this end.

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

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In addition, requests regarding certain points are being addressed directly to the following States: Bahamas, Bangladesh, Barbados, Brazil, Cape Verde, Central African Republic, Colombia, Cuba, Democratic Yemen, Djibouti, Dominica, Ecuador, Fiji, Ghana, Grenada, Iraq, Italy, Jamaica, Kenya, Kuwait, Mauritius, Nigeria, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Seychelles, United Republic of Tanzania, Zambia.

### Convention No. 106: Weekly Rest (Commerce and Offices), 1957

#### Bolivia (ratification: 1973)

The Committee notes the information supplied by the Government in its last report concerning the new General Labour Act prepared with the technical assistance of the ILO. It trusts that this legislation will be adopted in the near future and that it will take into account the Committee's previous comments concerning the application of Article 8, paragraph 3, of the Convention which provides for compensatory rest irrespective of any supplementary payment in the event of work on a weekly rest day.

#### Colombia (ratification: 1969)

Article 8, paragraph 3, of the Convention. In the direct requests that it has been making for many years, the Committee has been drawing the Government's attention to the fact that section 180

of the Labour Code, under which persons working exceptionally on the weekly rest-day may choose between compensatory rest and compensation payment, is not in conformity with this provision of the Convention. In reply, the Government states that section 180 is only applied occasionally, and that, in these circumstances, it would be inappropriate to deprive workers of the freedom of choice between compensatory rest and additional remuneration.

The Committee wishes to point out that all the persons covered by the Convention, even if they only work quite exceptionally on the weekly rest-day, must in practice benefit from compensatory rest irrespective of any compensatory payment. It therefore requests the Government to re-examine its position and to take the necessary measures to bring the national legislation into conformity with the Convention on this point.

Egypt (ratification: 1958)

In its previous observations, the Committee noted that section 140 of the Labour Code of 1981 (under which the wage is doubled for work carried out on the weekly rest day unless the worker takes another rest day during the following week) is not consistent with Article 8, paragraph 3, of the Convention which prescribes that persons working on their weekly rest day must be granted compensatory rest regardless of any supplementary remuneration. In reply, the Government indicates that it has submitted a draft amendment to section 140 of the Labour Code to bring it into line with this provision of the Convention. The Committee expresses the hope that this draft will be adopted shortly.

Kuwait (ratification: 1961)

Article 2 of the Convention. For many years, the Committee has been drawing the Government's attention to the need to adopt provisions to guarantee a weekly rest period of 24 consecutive hours for workers covered by the Convention but excluded from the scope of the Labour Law (Private Sector) of 1964, namely temporary workers employed for a period of less than six months and workers in enterprises employing fewer than five persons. The Committee notes with regret that, despite the assurances given on several occasions by the Government that it would bring the national legislation on the above points into conformity with the Convention, no progress has yet been made in this respect. The Committee trusts that the Government will not fail to take the necessary measures without delay.

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In addition, requests regarding certain points are being addressed directly to the following States: Haiti, Islamic Republic of Iran, Sri Lanka.



**Convention No. 107: Indigenous and Tribal Populations, 1957**Bangladesh (ratification: 1972)

1. The Committee recalls that it has previously made comments on the application of this Convention, and that the question has also been discussed in the Conference Committee on the Application of Standards, most recently in 1987. A direct contacts mission visited the country in 1985, and following the 1987 discussion in the Conference Committee the Government requested further direct contacts. Consequently, a representative of the Director-General visited the country in April 1988.

2. Before its last session the Committee had received observations on the application of the Convention from the International Confederation of Free Trade Unions (ICFTU), which were forwarded to the Government for its comments. These comments were received during the Committee's previous session. In view of the impending direct contacts mission, the Committee decided to postpone detailed consideration of this matter until its present session, when it would have more information before it.

3. The report of the mission of direct contacts was forwarded to the Government, which has provided comments on it. These comments are taken into consideration below.

4. The Committee notes that in August 1987 the Government established a National Committee on the Chittagong Hill Tracts, under the chairmanship of the Minister of Planning, to examine the root causes of the current situation in this region and to formulate appropriate recommendations. It has also been informed by the Government of important legislation adopted in February 1989, which will be examined below. It notes with satisfaction that these new measures are consistent with the Committee's previous recommendations and with the recommendations made by the direct contacts mission.

**I. Comments of the ICFTU**

5. In its communication of 22 December 1987, the ICFTU raised a number of separate issues. First, it suggested that the Committee seek information on alleged cases of ill-treatment, including the reported involvement of the Bangladesh Armed Forces in instances of human rights abuse against the tribal populations of the Chittagong Hill Tracts (CHT).

6. Second, the ICFTU asked whether government policies and programmes in the area of land rights and development activities were consistent with its obligations under various Articles of the Convention, particularly in view of the extensive movement of non-tribals into the CHT. In view of numerous reports alleging that the non-tribal population at present equals or exceeds the tribal population of the CHT, the ICFTU considered that the present ethnic structure of the area cast doubt on the Government's stated desire to advance the material well-being of the tribal populations. The ICFTU considered furthermore that the severe disruption of the ethnic balance resulting from massive migration of non-tribal populations into the area seemed to constitute the main cause of communal violence

affecting both tribal and non-tribal populations of the CHT; and it expressed the view that any population transfers into the CHT should only be carried out to the extent that the Government could ensure the protection of the tribal populations. With regard to development activities, the ICFTU stated that most components of the Multi-Sectoral CHT Development Project and the Special Five-Year Plan for the CHT were designed to benefit non-tribal settlers as well as tribals in the CHT, and it therefore questioned whether government policies are consistent with the requirement of Article 6 of the Convention that high priority be given to the populations concerned in plans for the overall economic development of areas inhabited by these populations. Regarding land rights, the ICFTU referred, inter alia, to reports according to which non-tribal settlers regularly resort to violence and extortion in order to encroach upon land owned by members of the tribal populations. It asked what measures had been taken by the Government to give adequate consideration to tribal claims of ownership (Article 11 of the Convention) and to prevent encroachment on tribal lands (Article 13 of the Convention). Furthermore, the ICFTU asked what measures had been adopted to provide adequate compensation for tribals removed from their traditional lands following the construction of the Kaptai hydroelectric project in the 1960s, as well as measures to avoid such situations arising in the future (Article 12 of the Convention).

7. Regarding the situation of tribal refugees, the ICFTU stated that the number of Chakma, Marma and other tribal refugees seeking asylum in India had been steadily increasing. It referred to reports that each new wave of refugees is preceded by violence, which occurs each time a new settlement of non-tribal persons is set up in the CHT on land traditionally occupied by tribals, and it requested the Committee to seek from the Government information as to any change of policies concerning population distribution in the CHT. The ICFTU stated furthermore that plans agreed between the Governments of Bangladesh and India to start repatriations in January 1987 were repeatedly postponed, mainly because of the fears expressed by the tribal refugees' representatives concerning their physical safety.

8. In its reply to these observations, in a communication of 16 March 1988, the Government categorically rejected the ICFTU's allegations of human rights abuses, stating that no arrest or detention is carried out in Bangladesh except through due process of law and when it is felt to be absolutely necessary on grounds of public safety and order. As regards population transfers, the Government stated that the people of Bangladesh are entitled by law to settle anywhere in the country, but that it has been careful to ensure that such migration does not take place at the expense of the local people and their economic concerns. The Government pointed out that the tribal population in the CHT has actually increased in recent years. With regard to land rights, the Government referred to steps enabling tribal people to obtain definitive title over their land, and stated that under the present arrangements tribal people can and do own land; and that the average size of their holdings is five times greater than is allowed to people elsewhere in Bangladesh. The Government stated moreover that it had initiated a number of steps for the resettlement and rehabilitation of landless tribals, and that

recently measures have also been taken to ensure that the local tribal population are not affected by the arrival of people from outside the CHT. Concerning compensation, the Government stated that the entire population displaced by the construction of the Kaptai dam was duly compensated and rehabilitated before the independence of Bangladesh.

9. Regarding development activities, the Government stated that it has always been mindful of the interest of the local population in carrying out development projects in the CHT. With regard to the situation of tribal refugees, the Government stated that positive measures to facilitate an early return of the refugees had suffered as a result of the escalation of acts of violence by insurgent groups, and of other obstacles beyond the control of the Bangladesh Government. It stated, moreover, that 7,000 persons who had earlier crossed the border have already returned to their homes in the CHT, and that others were also in the process of doing so. In conclusion, the Government stated that it had always been responsive to the development needs and problems of the CHT; and that this is demonstrated by the fact that in August 1987 the President established a National Committee headed by the Minister for Planning, to address the problems of the CHT in their entirety and make recommendations to the Government. It noted that this National Committee had undertaken a series of visits to the CHT, holding extensive discussions with tribal leaders; and that the report of the National Committee, which would include long-term as well as short-term recommendations, was in the final stages of preparation.

## II. Legislation on local government councils

10. The Committee has been informed, as indicated above, of the adoption of legislation on 28 February 1989 providing for the constitution of local government councils in the Hill districts of Rangamati, Khagrachari and Banderban; and of the adoption on 26 February 1989 of the Hill Districts (Repeal and Application of Law and Special Regulation) Act. While the Committee has not yet been able to examine the text of these laws, the Government has indicated that the latter Act repeals the Chittagong Hill Tracts Regulations 1900, a copy of which the Committee has requested on a number of previous occasions.

11. The Committee has also been informed that the three Local Government Council Acts provide for the establishment of Zilla Parishads (district councils) in each district, each of which will be composed of two-thirds tribal membership and one-third non-tribal. Among other provisions, it has been indicated that the Zilla Parishads will decide on the question of transfer of land and settlement of land within the district, and that they will initiate resettlement and rehabilitation of landless tribals within the district. They will also be responsible for the maintenance of law and order within the district, and will appoint all members of the police force up to the rank of assistant sub-inspectors, from among the permanent residents of the district. They will also have sole responsibility, within the context of national policy, for such matters as primary health care, primary education and agriculture.

12. The Committee notes with interest the adoption of these laws, which from the information available would appear to be

consistent with the recommendations it has made previously and with those of the mission of direct contacts. It hopes that the Government will provide copies of them in the next report, and will also indicate how they are functioning in practice.

### III. The direct contacts mission

13. The Committee notes that a representative of the Director-General was able to have extensive discussions with government authorities, concerning the earlier comments of the Committee of Experts and of the Conference Committee as well as the ICFTU observations, during a direct contacts mission in April 1988. It notes that, under the terms of reference previously agreed with the Government, contacts were requested with the responsible national authorities, with both civil and military authorities responsible for the CHT, with tribal leaders from the CHT, and with other international agencies working in tribal areas. It was agreed furthermore that the mission would include visits to one or more tribal areas, and that it would be accorded facilities to meet in private with tribal leaders.

14. The Committee notes that the mission was generally able to carry out its programme, in accordance with these terms of reference. The mission expressed its satisfaction that the Government took pains to facilitate all the contacts desired, including meetings at the ministerial level. It also undertook a three-day visit to the CHT region, where meetings took place with civil and military authorities, and also with representative tribal leaders in the towns of Bandarban and Rangamati.

15. The Committee notes from the mission's report that government policy towards tribal populations in the CHT is now undergoing thorough re-evaluation. It notes that the major role in determining new policies and programmes has been allocated to the National Committee. It notes furthermore from other sources that negotiations between the Government and certain tribal groups have resulted in the conclusion in February 1989 of a nine-point peace plan between a Tribal Leaders Committee and the National Committee, which is intended to constitute a negotiated settlement to the conflict that has affected the CHT for most of the past two decades. Finally, it notes that the full programme of action eventually adopted in accordance with the National Committee's recommendations is certain to have important implications for the manner in which the Convention is applied in the future. The Committee has already noted the new legislation on administrative arrangements; it understands that further new programmes and policies may be announced with regard to, inter alia, land rights and development policies, measures to improve the overall security of tribal populations in the CHT, and the investigation of human rights abuses. The Committee notes that, although the mission held extensive discussions with individual members of the National Committee, the National Committee's final report was not made available to the mission and has not as yet been forwarded to the Committee of Experts itself; however, the extensive information provided to the mission enabled it to have a better understanding of the manner in which the Convention is currently

applied, and also to assess some outstanding issues of concern. The Committee refers in particular to the following issues.

16. Population distribution in the CHT (Article 1 of the Convention). In its previous comments, the Committee has requested information concerning population distribution and movement in the CHT. The Committee notes that full information was provided to the mission concerning the number of tribals and non-tribals in the CHT as a whole, as well as their respective numbers in the three administrative districts of Bandarban, Khagrachari and Rangamati. By the end of 1987, according to these figures, there were 497,147 tribals and 311,267 non-tribals in the CHT as a whole. The Government has stated furthermore that there has been no official policy to promote settlement of non-tribals in the CHT region since the early 1980s. Moreover, in its comments on the report of the mission, the Government states that it has already implemented a recommendation of the National Committee to restrict entry into the Hill Tracts region by non-tribals. The Committee notes the provisions of the new legislation referred to above, and hopes that the Government will indicate in its next report any further measures which may have been taken.

17. Administrative arrangements (Articles 2 and 27). In its previous comments, the Committee raised questions concerning the overall administration of policy towards tribal populations, and also recommended the establishment of an inter-ministerial committee to evaluate government policy in this regard. The Committee notes with interest the steps to improve the co-ordination and implementation of policy towards tribals in the CHT, in particular the establishment of the National Committee. It notes that the National Committee has carried out its deliberations in consultation with tribal leaders and has formulated a number of interim recommendations, some of which are already being implemented.

18. The Committee notes with interest the developments which have already taken place, and hopes that the Government will continue to report on further developments, including the practical implementation of these new administrative arrangements, in future reports.

19. Development programmes and activities (Article 6). In its previous comments the Committee has raised questions concerning the appropriateness of development activities in the CHT, in particular those being carried out by the Chittagong Hill Tracts Development Board (CHTDB), to meet the specific characteristics of tribal populations. The Committee notes also the concerns expressed by the ICFTU in this regard. It notes that the mission was able to discuss these issues extensively, with government authorities including National Committee members and the Chairman of the CHTDB, with the representatives of inter-governmental organisations including the Asian Development Bank (ADB) and UNICEF, and with representative tribal leaders. The CHTDB Chairman referred to consultations with tribals at both the central and local levels, to ensure that their views were taken fully into consideration. He stated furthermore that approximately 70 per cent of the CHTDB staff were tribals, and that tribals were thus extensively involved in CHTDB activities at the local level. The tribal leaders with whom the representative of the Director-General spoke during the mission were critical of the

existing arrangements, and felt that the tribal people had too little influence over the plans and activities of the CHTDB. Moreover, the Committee understands that the National Committee has concluded that the tribal population, while benefiting from development work in the CHT, has not been participating meaningfully in the development process.

20. The Committee notes that the National Committee has now formulated certain recommendations, to rectify these shortcomings. These include measures to ensure that 10 per cent of all development work and contracts in the CHT be reserved for the tribal population, and that 10 per cent of the labour force required for each development project be recruited from the tribal population. The Committee notes that measures of this kind may promote more participation by tribals in the development process. It notes furthermore that, under the proposed measures for local government referred to above, the tribal population should be involved more actively in determining the development process at the local level. At the broader level, the Committee hopes that adequate procedures will be established to ensure that representative tribal leaders and organisations are fully consulted in the planning and preparation of large-scale development activities affecting the CHT region as a whole. In particular, the Committee hopes that the Government will indicate in its next report how tribal populations are involved in the planning, selection and implementation of development programmes and projects undertaken by the CHTDB.

21. Land rights and land ownership (Articles 11 to 14). In previous comments, the Committee has requested the Government to provide an analysis of land distribution in the CHT, indicating, inter alia, the amount of land acquired by non-tribals in recent years, the legal status of the lands acquired by non-tribals, and also the patterns of land ownership, tenure and use among the tribal populations themselves.

22. The Committee notes that the Government provided no statistical information to the mission, concerning the distribution of lands in the CHT between tribals and non-tribals. Tribal leaders informed the mission that an estimated 300,000 non-tribals had entered the CHT between 1979 and 1982 and that many of these were settled on lands which, though deemed to be government-owned, had in fact been in the possession of tribals. The representative of the Director-General was, however, informed during the mission that past policies which had allowed for extensive outsider settlement of the CHT without adequate safeguards for the protection of tribal lands would be corrected. The mission was informed that high priority was now being given to the question of tribal land rights, and that a programme was being undertaken to resettle approximately 30,000 tribals who had lost their homesteads due to inundation resulting from the construction of the Kaptai dam. It also learned that tribal lands were being demarcated through a cadastral survey for the establishment of legal rights over tribal landholdings.

23. The Committee notes the importance of these measures. It notes, however, that several governmental authorities, as well as representatives of inter-governmental organisations, pointed to difficulties in carrying out a full cadastral survey under present

conditions. It was stated that the survey might take several more years to complete, and was not at present being carried out in the northern regions of the CHT where the conflicts between tribals and settlers are most intense. Moreover, documentation studied by the mission indicated that the absence of adequate surveys was creating problems for development projects, where government lands designated for the settlement of tribals were in the de facto possession of non-tribals.

24. The Committee notes that, in its comments on the mission's report, the Government states that it is fully concerned about the need for protection of land rights; that it is further intended to regulate such land rights of tribals through a cadastral survey which is likely to be completed soon; and that the Government has also taken steps to rehabilitate tribal refugees to the lands they occupied before fleeing the country. The Committee has referred above to the Local Government Council Acts. It hopes that further measures will be taken to recognise the ownership of tribal populations in the CHT over the lands traditionally occupied by them, and to safeguard this right of ownership. It hopes that the land survey will indeed be completed as a matter of urgency, in consultation with representative tribal leaders and organisations, in order to determine the present patterns of land ownership and use in the CHT. The Committee recommends additional measures to determine which tribal lands may have been lost to non-tribals through government-sponsored or spontaneous settlement programmes in recent years, and to establish appropriate procedures to deal with claims by tribals for the recovery of traditional lands lost in this way.

25. Law enforcement and human rights protection. The Committee notes that the mission raised a number of questions with regard to law and order issues, and the protection of the human rights of the tribal populations. These concerned in particular (a) the measures taken to safeguard tribal populations in the CHT in the context of actions taken by the security forces against tribal insurgents, and (b) the outstanding comments of the Committee proposing an investigation into allegations of massacres and other abuses against the tribal populations.

26. Government authorities, including the Secretary of the Ministry of Home Affairs and National Committee members, referred to recent instructions issued to the security forces in order to guarantee increased protection for tribal civilians. They informed the mission that these instructions explicitly prohibited retaliation against tribal civilians, and insisted that these measures had brought about an improvement in the overall security of the CHT. Government authorities also referred at some length to the findings of a January 1988 mission by Amnesty International, the report of which has been studied by the Committee. The Committee notes that this Amnesty International report suggests that there have been improvements in the human rights situation in the CHT since early 1987, and observes that the new instructions given to the security forces may have done much to enhance the protection of the basic rights of the tribal populations. However, it also stresses the importance of investigations into past abuses, observing that impartial and thorough

investigation of human rights violations is of crucial importance in preventing their possible future repetition.

27. The mission raised the matter of investigations into past abuses with the Army Commander of the Chittagong Division. It provided him with a copy of the "partial list of violence reportedly committed by units of the armed forces of Bangladesh and non-tribal settlers against the civilian population of the CHT, January 1986-March 1987", which had been forwarded by the ICFTU in its recent communications to the ILO and to the Government. The mission requested the Army Commander to comment on these and other similar allegations, and to indicate what measures had thus far been taken to investigate such allegations. The Army Commander stated that he had retained a copy of every incident reported to him, and had reached the conclusions that in 70 per cent of cases the incident had never occurred, in other instances there had been at least 25 per cent exaggeration, and in some cases there had indeed been reprisals. Regarding investigation procedures, he stated that these were always conducted locally, and that the Army strictly followed the law of criminal procedure.

28. The Committee notes that the mandate of the direct contacts mission did not provide for it to undertake any assessment of the human rights situation in practice. It notes that tribal leaders with whom the representative of the Director-General spoke accepted that there had been some improvements in recent months, but expressed their concern that there were no guarantees that this improved situation would be maintained if the present military authorities were to be replaced by others of less high quality.

29. The Committee notes that the question of human rights investigations is one of the issues being addressed by the National Committee. It notes the provisions on police powers in the Local Government Council Acts, and understands that the National Committee and tribal leaders have agreed to the formation of a joint committee, comprising government officials and tribal leaders, to investigate each incident of killing, assault and abduction in order to determine responsibility. The Committee hopes that such a joint committee will be established at the earliest opportunity, and that it will be provided with full facilities to investigate past and present cases of alleged human rights abuse in the CHT. These investigations should, as recommended by the direct contacts mission, aim to identify, and lead to penal sanctions against, the agents of any acts of violence.

30. The situation of tribal refugees. In previous comments, the Committee has requested the Government to provide clarifications as to the present situation of tribal refugees who are in refugee camps in India. It notes the information provided to the mission by different government authorities, and by tribal leaders. The Government estimates that the present number of refugees does not exceed 30,000. It was stated that there has been no further refugee movement to India since early 1987, and that a number of these refugees are now returning to Bangladesh of their own accord. Measures to persuade tribal refugees to return to Bangladesh have been one of the principal concerns of the National Committee. The Minister of Planning stated to the mission that the Government has now established the necessary security conditions to enable refugees to return, and that the



Government is willing to provide all necessary support with regard to financial assistance, the provision of land and the construction of homesteads. The Foreign Secretary pointed out that the Government has sought the collaboration of tribal leaders in seeking a solution to the refugee problem, including a proposed visit by a delegation of tribal leaders to the refugee camps. In this regard, tribal leaders informed the mission that the lands vacated by refugees had been occupied by outsiders, and that these outsiders would need to be ejected in order to allow for an effective rehabilitation programme for the tribal refugees.

31. The Committee notes the additional information furnished by the Government in its comments on the mission's report. On 11 July 1988, the Bangladesh High Commissioner to India visited various refugee camps in the Indian state of Tripura, accompanied by 11 tribal leaders. The delegation assured the refugees that a congenial atmosphere existed in the CHT, and that on their return the Government would take all necessary steps for their rehabilitation and would provide relief both in cash and in food. Furthermore, during a visit to India on 29 September 1988, the President of Bangladesh reiterated the commitment of his Government to receive back all tribal refugees of Bangladesh origin presently in Tripura. According to the latest information available to the Government, nearly 9,000 refugees of tribal origin have already returned to the CHT from Tripura and have been resettled in their original ancestral homelands. All returned refugees have gone back to their homes and villages of origin.

32. The Committee takes note of this additional information. It hopes that the Government will provide full information in its next report on measures to facilitate the return of tribal refugees, indicating the numbers that return and the nature of any rehabilitation programmes undertaken on their behalf.

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33. In conclusion, the Committee expresses its appreciation of the way in which the visit of the representative of the Director-General was received; this has enabled the Committee to have a far better understanding of the manner in which the Convention is currently applied in Bangladesh, and of the new measures which have already been taken or which are under consideration. It notes with particular interest the initiatives of the National Committee, and the measures taken to seek an improvement in the overall human rights situation in the CHT. The Committee notes, however, that there are a number of outstanding issues of concern. It notes the need for firm measures with regard to issues including the investigation of alleged human rights violations, the recognition of tribal land rights and the demarcation of tribal lands, the settlement of land disputes between tribals and non-tribals, and procedures to involve tribals more fully in the development process.

34. The Committee hopes that the Government will provide further information on these issues in its next report, and will in particular:

(a) provide copies of all special laws and regulations currently in force in the CHT, in particular those adopted in February 1989;

- (b) provide the full recommendations of the National Committee, and information on how they are being implemented;
- (c) further clarify the situation of land ownership in the CHT, indicating: (i) how land ownership by tribals will now be recognised in law and practice; (ii) what procedures may be established to deal with tribal land claims, and land disputes between tribals and non-tribals; and (iii) the progress made in conducting a cadastral survey of land ownership and use in the CHT;
- (d) indicate the progress made in settling landless tribals, as recommended by the National Committee;
- (e) indicate any measures taken to improve procedures for consultation with tribals in the planning and implementation of development projects and programmes;
- (f) indicate any measures taken to allow for independent investigations, with tribal participation, into alleged human rights abuse in the CHT; and
- (g) indicate any further progress made in seeking a negotiated settlement to the present conflict situation and in facilitating the return of tribal refugees.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]

#### Bolivia (ratification: 1962)

The Committee notes the information communicated by the Government in its report, as well as the information communicated by a Government representative to the Conference Committee in 1988.

The Committee recalls that in its previous comments, it had requested the Government to indicate the measures taken to demarcate the lands occupied by indigenous populations, in particular in the eastern part of the country, and to prevent the assignment of title to these lands to persons who do not belong to these groups. In its report, the Government states that reliable information on land titling and land ownership in the forest regions is generally lacking, that there is some duplication in the existing procedures for land registration, and that there is a need for studies and for the establishment of strong institutions with the capacity to legislate and to implement policies directed towards indigenous populations.

The Committee recalls that during the discussion in the Conference Committee in 1988, the Government representative requested the Office's assistance in responding to the comments made by the present Committee. It notes with interest that such assistance has been provided jointly by the ILO and the Inter-American Indian Institute (III), with a view to formulating appropriate legislation and policies for the protection of the indigenous populations of the Amazon region, with particular reference to the protection of their land rights. The Government has referred in its report to the importance it attaches to this assistance, and also states that there is a need for further technical assistance, in order to carry out detailed surveys concerning the economic and social conditions of

indigenous populations in the Amazonian region. The Committee hopes that it will prove possible to provide such further assistance.

The Committee notes that the report of the ILO/III expert, which is now being evaluated by the Government, contains a number of recommendations, including the adoption of new legislation dealing in particular with the rights of forest dwellers to their traditional lands and natural resources; the centralisation of land registration procedures in one government agency; the creation of a high-level Inter-Institutional Technical Committee, comprising indigenous as well as government representatives, to plan, guide, assess and evaluate indigenous programmes; and the co-ordination of decision-making relating to these populations.

The Committee notes these developments with interest. It recalls that it has been raising questions for a number of years, concerning administrative responsibility for indigenous populations in forest regions (Articles 2 and 27 of the Convention), and in particular concerning the need for legislative and administrative measures to recognise and safeguard the right of ownership of these populations over their traditional lands (Article 11). The Committee notes that the report of the ILO/III technical expert, which includes a proposed draft law on indigenous policies, can provide a firm basis for the reassessment of government policies and the eventual adoption of new legislation in this area. It notes furthermore that the proposed studies of the social and economic situation of indigenous groups in the Amazon region, which may include a detailed survey of land tenure arrangements and development programmes, may provide the necessary information for the implementation of constructive policies and programmes. The Committee hopes that the Government will provide full details in its next report of the consideration given to these measures and to the legislative and other measures which have been taken or are contemplated to deal with these matters.

The Committee draws particular attention to the conclusions of the report relating to the adjudication of land rights of indigenous populations and to internal colonisation. It hopes that urgent measures will be taken to ensure that no colonisation of areas inhabited by indigenous populations will take place until the rights of these populations to the lands they inhabit has been resolved.

#### Brazil (ratification: 1965)

1. The Committee notes with interest the adoption of the new Constitution on 5 October 1988, of which Chapter VIII is devoted to indigenous populations; and of other recent legislation affecting these populations. It also notes with interest the information provided by the Government to the Conference at its 1988 Session, and the detailed reports communicated by the Government on the application of the Convention.

2. The Committee notes that intensive consideration has been given recently to regulating through legislation the situation of Indian lands in the Amazon region, access to the areas they inhabit, and the exploitation of resources and protection of the environment of the Amazon. The Committee notes also that it has continued to receive

information concerning invasions of Indian lands by prospectors, and the execution of development projects which have negative effects on their communities. It notes as well that the work of delimitation and protection of Indian areas is not complete, and that although some progress has been made this work is proceeding very slowly.

3. The Committee hopes that the Government will furnish detailed information on the situation in practice, and in particular on confrontations between Indians and non-Indians entering the lands they inhabit, with or without official authorisation.

4. The establishment of the Yanomami Park. The Committee notes that the Government indicated to the Conference in 1988 that the work of delimiting the area was proceeding slowly, but that it was a priority for the National Indian Foundation (FUNAI) and that the Government had adopted measures to guarantee the integrity of the Yanomami Indians. It indicated in the same connection that the statements by the International Confederation of Free Trade Unions (ICFTU) in this connection (see previous observation), were not accurate in that Indians were not prohibited from inhabiting border zones, and that the Calha Norte project would not result in the expulsion of Indians from these lands. The Government also stated in this connection that it had expelled some 1,200 invaders from this region with the assistance of the military.

5. The Committee notes in this connection that the establishment of the Yanomami Reserve has been under way for many years, and that threats to the continued existence of these Indians continue from invasions of colonists and prospectors. It does not appear that the Government has been able to provide effective protection to them. The Committee also notes that concern continues to be expressed by organisations working for the protection of the Indians, over the effects on them of development projects such as the Calha Norte project and the construction of the BR-364 motorway. At the same time, it notes the Government's assurance during the Conference that neither of these two projects has halted the delimitation of Indian lands or caused Indians to be excluded from frontier areas.

6. The Committee therefore hopes that in its next report the Government will be able to indicate that effective measures have been taken to protect the Yanomami Indians from further invasions of their lands, and to expel all the invaders currently found there, pending the final establishment of the Reserve intended for them. Please indicate what measures have been taken in this connection.

7. The Committee understands from information submitted to the United Nations Commission on Human Rights at its Forty-fifth session (1989) that the Government has prohibited access by non-Indians to areas occupied by the Yanomami, and that this has had the effect of denying them medical attention. It understands further that because of the unauthorised influx of large numbers of gold prospectors, diseases to which they have no immunity are causing widespread illness and death among these groups. Please indicate what measures are being taken to provide adequate health services to these populations as required by Article 20 of the Convention, and indicate what the situation is in practice.

8. Demarcation of Indian lands generally. The Committee has noted with interest the recognition in articles 231 and 232 of the new Constitution of the protected status of Indian lands. It notes further the adoption of Decree No. 94,945 of 23 September 1987, replacing Decree No. 88,118 of 1983 on administrative procedures for the demarcation of Indian lands; and of Decree No. 94,946 of 23 September 1987 providing for lands inhabited by these peoples to be designated "indigenous areas" or "indigenous colonies" depending on the degree of acculturation of the Indians concerned. It also notes that article 67 of the transitional provisions of the new Constitution requires that the Government conclude the demarcation of Indian lands within five years of the promulgation of the new Constitution.

9. The Committee notes from the information provided that some 20 million hectares of Indian lands were delimited between 1985 and 1987, and that the Government's goal is to guarantee about 80 million hectares to the Indians. The Committee also notes, however, that "delimitation" is only the first of several steps in guaranteeing full protection of Indian lands. It notes that according to a 1987 publication by the Ecumenical Centre for Documentation and Information and the National Museum (Terras Indigenas no Brasil), only some 3.88 per cent of Indian lands have been fully regularised in conformity with the procedures for providing this protection.

10. The Committee therefore hopes that the Government will indicate in its next report what proportion of Indian lands have now been fully protected in law, and what further progress it has made towards completing this work within the time-limits laid down by the new Constitution.

11. Indigenous populations in frontier areas. The Committee notes with interest the Government's intention to develop a series of projects aimed at indigenous communities in frontier areas, to be undertaken together with other countries when Indian groups live in both the countries concerned. It notes with interest the preparatory work for the "Model Brazil-Colombia Plan for the Integrated Development of Neighbouring Communities of Eixo Tabatinga-Apaporis". The Committee would be grateful if the Government would communicate information on the measures which have been taken to implement this project, as well as other similar projects which may be under consideration with other neighbouring States.

12. Exploitation of resources on Indian lands. The Committee recalls that Decree No. 88,985 of 10 November 1983 allows the Government to grant authorisation to state undertakings, and exceptionally to private companies, to explore and exploit mineral resources on Indian lands. The Government has stated that regulations have now been issued under this Decree, and the Committee requests the Government to provide a copy of them in its next report. It notes the statement in the report, and from the information provided to the Conference, that no authorisations have been granted under this Decree for exploration of minerals in Indian areas.

13. The Committee has also received information, however, that would indicate that large numbers of requests have been received to carry out prospecting or extractive operations in indigenous lands, and that many authorisations have been granted. According to a 1988 study by the Ecumenical Centre for Documentation and Information and

the National Co-ordination of Geologists (Empresas de Mineracao e Terras Indigenas na Amazonia) in June 1987, authorisations were in force for 560 projects of mineral exploitation in Indian areas, and there were 1,685 outstanding requests for such authorisations. According to this same information, 325 of these authorisations had been granted to Brazilian private companies, 193 to multinational undertakings and 52 to state undertakings.

14. The Committee notes that article 231(3) of the new Constitution provides that authorisation for resources exploitation in Indian lands can take place only with the agreement of the national Congress, and that the Indians shall be assured of participating in the benefits of the exploitation of these resources. Please indicate how many such authorisations are now in force and how the interests of the Indians living in these areas are protected. Please also communicate a copy of the regulations which have been adopted for Decree No. 88,985.

15. Finally, the Committee notes that article 231(6) of the new Constitution contains general principles protecting Indian lands against occupation by non-Indians or exploitation of the natural resources found there, except when the public interest is involved; but the conditions under which these principles are to be applied are to be defined by legislation. Please indicate what measures have been taken or are contemplated to regulate by legislation this and other provisions of the new Constitution.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Panama (ratification: 1971)

The Committee has noted with interest the detailed report and additional information provided by the Government.

While a certain number of points are being raised in the request being addressed directly to the Government, the Committee wishes to take special note of the approach to relations between the national authorities and the indigenous communities of the country, which appears from the report. It welcomes in particular the fact that problems appear to be settled by discussion and negotiation, including questions related to the resettlement of Indian communities when they are affected by economic development projects, and compensation for the exploitation of natural resources on their lands and participation in the benefits of such exploitation.

The Committee hopes that the Government will continue to provide information in future reports on developments in relation to this Convention.

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In addition, requests regarding certain points are being addressed directly to the following States: Bolivia, Brazil, Panama.

**Convention No. 108: Seafarers' Identity Documents, 1958**

A request regarding certain points is being addressed directly to Cameroon.

**Convention No. 110: Plantations, 1958**

Guatemala (ratification: 1961)

Part X of the Convention. See the observation concerning Convention No. 87.

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In addition, requests regarding certain points are being addressed directly to the following States: Cuba, Ecuador, Guatemala, Panama, Philippines, Uruguay.

**Convention No. 111: Discrimination (Employment and Occupation), 1958**

With regard to certain of the socialist countries mentioned under this Convention, Messrs. Ivanov and Gubinski refer to their observation concerning Conventions Nos. 87 and 98.

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Argentina (ratification: 1968)

1. The Committee takes note with satisfaction of Act No. 32592 of 3 August 1988 concerning discrimination, establishing sanctions for discriminatory acts or omissions on grounds such as race, religion, nationality, ideology, political opinion or trade union leanings, sex, economic or social status, or physical characteristics.

2. In earlier comments, the Committee has been referring to the provisions of sections 8(g) and 33(g) of Act No. 22140 of 1980 concerning the basic terms and conditions of employment in the public service, under which entry into the national public administration can be refused and public servants can be dismissed for belonging, or having belonged to groups advocating the denial of the principles of the Constitution or for adhering personally to a doctrine of this kind.

The Committee notes with interest that, according to the Government's report, the sections of Act No. 22140 which have been the subject of past comments are to be considered as having been tacitly repealed by virtue of the adoption of the Act concerning discrimination. The Government also indicates that the Public Education Secretariat is in the process of conducting an analytical study of the regime approved by Act No. 22140.

The Committee hopes that, to avoid all uncertainty as to the application of sections 8(g) and 33(g) of Act No. 22140, these sections will be explicitly repealed and that the Government will provide information on the measures taken to this end.

Austria (ratification: 1973)

The Committee notes the information supplied by the Government in its report and the comments of the Austrian Congress of Chambers of Labour on the application of the Convention. The Committee is addressing a request directly to the Government on the points raised in these comments and on other matters.

Barbados (ratification: 1974)

1. Further to its previous comments, the Committee notes with satisfaction that section 8(1)(c) of the Public Employees Pension Act, 1961, as well as section 11(1)(c) of the Pensions Act, Cap. 25, which provided that female employees may be required to retire from service upon marriage, were repealed by the Pensions (Miscellaneous Provisions) Act, 1985-18.

2. The Committee likewise notes with satisfaction that a new section 5 of the Immigration Act, Cap. 190, substituted by the Immigration (Amendment) Act, 1979-27, gives foreign husbands of Barbadian women the same rights as foreign wives of Barbadian men as regards employment in Barbados.

3. In earlier comments, the Committee noted that the Government had declared a policy of non-discrimination against women and that measures aimed at achieving this objective were to include, inter alia, the preparation of an Employment and Related Provisions Bill to prohibit discrimination on grounds of sex, as well as discrimination based on race, colour, creed, political opinion or social origin, and to provide to persons who consider themselves subjected to any discriminatory practice in employment a right of appeal to a tribunal. The Committee noted from the Government's report received in 1984 that there had been no further progress on the Employment and Related Provisions Bill and that it was highly unlikely that the Bill would be further considered in its present form. The Committee asks again that the Government supply detailed information on further measures taken in application of its policy of non-discrimination, including any legislative provisions to prohibit discrimination in employment and occupation and to provide means of redress. A direct request on a number of related matters is again being addressed to the Government.

Burkina Faso (ratification: 1962)

Referring to its previous comments on the subject of the conditions imposed for reinstatement in the public service of teachers who were dismissed for having participated in a strike, the Committee



notes with satisfaction the information provided by the Government in its report according to which, by the Popular Front's Circular No. 5 published in Le Sidwava, No. 879 of 19 October 1987, all the teachers dismissed in 1984 for having participated in a strike have been reinstated in their former positions, sanctions against officials have been lifted, and political prisoners and internees have been released.

Chile (ratification: 1971)

1. The Committee notes the Government's report and the information supplied by the Government representative to the Conference Committee in 1988.

The Committee also notes the comments submitted by the National Confederation of Federations and Trade Unions of Workers in the Food, Catering, Hotel and Allied Sectors (CTGACH).

In the comments that it has been making for various years, the Committee has referred to article 8 of the Constitution of Chile, under which any act by any person or group intended to propagate certain doctrines, including those advocating a conception of society, the State or law "of a totalitarian character or based on class war", is illegal and contrary to the institutional order of the Republic. Similarly, organisations and political movements or parties that, by their aims or by the activities of their followers, tend towards such objectives, are deemed unconstitutional. According to the same article, persons who have committed the above offences are barred for ten years from access to any public post or position, automatically lose any such employment or office they may hold, and may not during the same period be directors or principals of educational establishments, teachers or trade union leaders, nor may they exercise any function in the mass media relating to the publication or dissemination of opinions or information.

In its previous observation, the Committee noted the comments made by the National Grouping of Workers ("Comando Nacional de Trabajadores") (CNT) regarding the adoption of Act No. 18662 of 23 October 1987, laying down standards to give effect to the rulings of the Constitutional Court under article 8 of the Constitution. The adoption of the above Act took place after the Government had referred in its statements to the difficulties that would be involved in amending article 8 due to its constitutional character.

The Committee observed that the provisions of Act No. 18662 provide for the exclusion from certain posts or positions of persons who, by whatever manner or means, promote, or participate in, the activities of organisations, political movements or parties declared to be unconstitutional by the Constitutional Court under article 8 of the Constitution, and persons engaging in acts intended to continue or re-organise the existence or activities of any such entities (section 2). Section 3 of the same Act establishes that persons who, in an electoral process, seek the support of organisations, political movements or parties declared to be unconstitutional, shall be barred from holding certain public positions. The same section lays down that ordinary courts of law shall be competent to decide whether such

entities have carried out acts intended to continue their activities or re-organise under a different name.

The Committee also noted the decision rendered by the Constitutional Court on 21 December 1987, to the effect that Mr. Clodomiro Almeyda Medina had personally violated the first clause of article 8 of the Constitution by reason of the fact that he was the leader of a political organisation which the same Court had declared unconstitutional. That decision is evidence that article 8 of the Constitution is not of a purely abstract nature but applies concretely to persons coming within its scope.

The Committee notes the Government's statement in its report that the purpose of the provision contained in article 8 of the Constitution is the defence of democracy against the dissemination of doctrines which, by reason of their content, constitute a negation of democracy. The text of the Constitution guarantees the expression of opinions, but penalises acts which, as determined by a number of objective and subjective aspects, involve the dissemination of doctrines which attack certain bases of the democratic institution. The Government also indicates that violations of article 8 are judged by an independent and collegial civil court of justice and, with reference to Act No. 18662, states that the purpose of the Act is to enforce the rulings of the Constitutional Court.

The Government adds that the provision contained in article 8 lies within the scope of the exception set out in Article 4 of the Convention.

The Committee wishes to refer to paragraphs 134 et seq. of its 1988 General Survey on Equality in Employment and Occupation in which it indicates that "as an exceptional clause, Article 4 must be applied stricto jure in order to avoid undue limitations on the protection which the Convention seeks to guarantee". In the above paragraphs the Committee reiterated the opinion that it expressed in the observation it made in 1982 on article 8 of the Constitution of Chile, namely that:

The definition of 'activities prejudicial to the security of the State' must be sufficiently narrow to avoid conflict with the main protection provided for in the Convention in respect of political opinion. Article 8 of the Constitution of Chile, in providing for the exclusion of persons from certain employments by reason of their propagation of certain doctrines, appears not to observe the limits of Article 4 of the Convention.

The Committee also recalls the opinion referred to in paragraph 57 of the 1988 General Survey on Equality in Employment and Occupation, according to which:

The protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his mind, but rather - and especially as regards the expression of political opinions - at giving him an opportunity to seek to influence decisions in the political, economic and social life of his society. For his political views to have an impact, the individual generally acts in conjunction with others. Political organisations and parties constitute a framework within which the member seeks to secure wider acceptance of their opinions. To be meaningful, the protection of political opinions must therefore extend to their collective

advocacy within such entities. Measures taken against a person by reference to the aims of an organisation or party to which he belongs imply that he must not associate himself with those aims, and accordingly restrict his freedom to manifest his opinions.

The Committee regrets to note that, despite having repeatedly requested the Government to take the necessary measures to repeal or amend article 8 of the Constitution, not only has no progress been reported in this respect, but that moreover arguments are once again being used that had recently given way to practical considerations such as the inherent difficulties in amending the Constitution.

The Committee recalls once again that, in accordance with Article 3(c) of the Convention each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice, to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the principles of equality provided for by the Convention.

The Committee requests the Government to provide information on any measure that has been taken or is envisaged to amend or repeal article 8 of the Constitution and Act No. 18662 of 27 October 1987 in order to ensure observance of the policy of non-discrimination set forth in the Convention. The Committee also requests the Government to provide a copy of any decisions made in application of the above provisions.

2. In its previous comments, the Committee referred to section 157(6) of the Labour Code (formerly section 15(6) of Decree No. 2200), under which an employment contract lapses immediately and without entitlement to compensation when the employer terminates it on the grounds that an offence has been committed under Act No. 12927 on State security, as amended by Act No. 18256. This Act defines as offences, *inter alia*, the unauthorised calling of collective public acts in public places and of any other kind of public demonstration permitting or facilitating the disturbance of public tranquillity.

In its report, the Government states once again that the types of conduct that may be sanctioned by this provision are the disturbance of public order, resulting from acts that are punishable under the law, and which have a direct bearing on work.

The Committee observes once again that section 157, subsections 1 to 5, refer to illegal acts that have a direct bearing on work, such as acts which prevent workers going to work or fulfilling their employment duties (157.1) or acts against the property of the enterprise (157.2), but that subsection 6, which was the subject of its previous comments, makes it possible to terminate the worker's contract without entitlement to compensation on the grounds of his participation in collective public acts, which have no bearing on the duties resulting from the employment relationship.

The Committee also refers to the indications set out in point 1 of its observation concerning the protection afforded by the Convention for activities by which opposition to the established political principles is expressed or demonstrated. The Committee hopes that the Government will take the necessary measures to repeal section 157, subsection 6, of the Labour Code and that it will indicate the progress that has been achieved in this respect.

3. In the comments that it has been making for various years, the Committee has requested the Government to explicitly repeal Decrees Nos. 112 and 139 of 1973, 473 and 762 of 1974, 1321 and 1412 of 1976, which grant broad discretionary powers to university rectors (who, in most cases, are directly appointed by the Government) to dismiss teaching and administrative staff.

The Committee noted that the Government, referring to the request to repeal these provisions, invoked firstly the independence of universities and the non-interference by the Government in their rules. The Government also stated in a previous report that Decrees Nos. 148 to 164 of 1982, issuing rules in this respect, had been tacitly repealed when the university regulations were adopted.

The Committee noted, with regard to the independence of universities, that it had requested the repeal of Decrees adopted by the Government and not by the university authorities and that, furthermore, the obligation deriving from Article 3 of the Convention for the countries that have ratified it includes the modification of any administrative instructions which are inconsistent with the policy set out in the Convention. With regard to the tacit repeal of the Decrees, the Committee notes that at a later date than the tacit repeal referred to by the Government, namely on 21 November 1984, Decree No. 84655 (Statute of the University of Concepcion) was adopted under the powers conferred, *inter alia*, by Legislative Decree No. 139, of 1973, which is one of the Decrees that is supposed to have been repealed tacitly and whose explicit repeal has been requested by the Committee.

The Committee once again requests the Government to take the necessary measures to bring the tacit repeal of the above-mentioned decrees to the attention of the public, including those entrusted with powers under those decrees, so that any texts still adopted under them be deemed invalid and no new texts can be adopted.

4. In its previous comments, the Committee has referred to section 55 of Legislative Decree No. 153 (Statute of the University of Chile), under which teaching staff, students and administrative staff can be expelled from, or refused admission to, the University of Chile if they have been expelled from another higher education institution for having breached the legal order. It also referred to section 35 of Legislative Decree No. 149 (Statute of the University of Santiago de Chile), under which persons participating in party political activities with a view to disturbing the public order who have been punished by the competent authority cannot be admitted to the University of Santiago de Chile, even if they have all the necessary qualifications for studying there. Similarly, students participating in activities of the same nature as those referred to in the preceding provision lose their status as students.

In its previous observation, the Committee noted the comments of the National Grouping of Workers (CNT) alleging that these powers have been used to dismiss academics and officials and initiate disciplinary proceedings against more than 300 students at the University of Chile.

The Committee regrets to note the Government's statement in its report that it is not appropriate to repeal the above provisions, the purpose of which is to prevent the use of higher educational teaching for the purposes of ideological and political indoctrination and to

sanction party political activities intended to disturb the public order.

The Committee once again urges the Government to take the necessary measures to ensure that, in conformity with the Convention, no one is refused admission to universities and other educational institutions, or expelled from such establishments, whether as students, or as teaching or administrative staff, on the grounds of the expression of political opinion.

The Committee requests the Government to report on any measure that has been taken or is envisaged to repeal or amend section 55 of Legislative Decree No. 153 and section 35 of Legislative Decree No. 149.

[The Committee requests the Government to report in detail for the period ending 30 June 1989.]

#### Colombia (ratification: 1969)

The Committee notes the Government's report and the comments submitted by the United Central Workers' Organisation (CUT) in a communication dated 3 March 1989 concerning the application of the Convention.

##### 1. Discrimination for political reasons in the public service

In its previous comments, the Committee noted that posts in the public service are career administration posts or posts subject to "free appointment and dismissal" ("cargo de libre nombramiento y remoción", section 3 of Decree No. 2400 of 1968 and 18 of Decree No. 1950 of 1973) and that the latter posts can be declared abolished at any time "in accordance with the power held by the Government freely to appoint and dismiss its employees" (section 107 of Decree No. 1950 of 1973). The Committee also noted that for ten years, as a result of the declaration of the state of emergency, the Decrees on administrative careers had been suspended and all officials who entered the public service at that period were subject to "free appointment and dismissal".

When the state of emergency was lifted, the Decrees on administrative careers came back into force, but non-permanent posts continue to be subject to "free appointment and dismissal".

The Committee referred to section 3 of Decree No. 2400 and section 18 of Decree No. 1950, concerning the offices of "free appointment and dismissal", which include staff members of the secretariats of certain administrative authorities which perform auxiliary functions, part-time employees and those coming, inter alia, under the staff regulations of public establishments.

The Committee requested the Government to supply information concerning the authorities which exercise the power of "free appointment and dismissal" and concerning the number of employees in posts of this type.

With reference to the power of free appointment and dismissal, the Government indicates that this is exercised, firstly, by the

President of the Republic, who appoints ministers, junior ministers, heads of administrative departments, superintendents, managers of national public establishments and governors. These in turn appoint employees who are subject to "free appointment and dismissal" in the bodies for which they are responsible.

With regard to declaring jobs abolished, the Government indicates that this is a manner of dismissing a public employee from his post, as a result of the wish of the administration, and that the latter is not obliged to give reasons for the act of declaring the post abolished, although there must exist just causes for its decision.

The Committee wishes to refer to paragraphs 112 et seq. of its 1988 General Survey on Equality in Employment and Occupation in which it indicates that "in the context of efforts to promote equality of opportunity and treatment in employment, the concept of security of tenure denotes in effect the guarantee that dismissal must not take place on discriminatory grounds, but must be justified by reasons connected with the worker's conduct, his or her ability or fitness to perform his or her functions ..."

The Committee notes that under the above provisions of the national legislation, the power of free appointment and dismissal can be exercised for a fairly large number of employees and can include a large number of posts. This broad discretionary power to appoint and dismiss employees opens up the possibility of arbitrary decisions that are contrary to the Convention, without those affected being able to defend themselves effectively.

The Committee notes that the concerns that it has been expressing for several years in this connection coincide with the comments submitted by three national workers' organisations concerning the effect given in practice to the Convention.

In its comments set out in a communication dated 3 March 1989, the CUT alleges the existence in practice of discrimination for political reasons in the public service. Many workers have been dismissed from their posts when there have been political changes in the public authorities. By way of illustration, the CUT alleges that more than 100 workers, who did not belong to the political party of the Governor who was appointed in 1987, were dismissed in Sucre; more than 50 employees in the District Treasury and Health Secretariat were dismissed following changes in the political coalitions in the Council of Bogotá at the end of 1988 and many public employees in various municipalities in the Valle del Cauca were dismissed following the election of mayors in 1988.

The CUT states that the absence of a true administrative career structure and the use of the procedure of declaring jobs abolished (a procedure under which an official appointed to a post that is subject to "free appointment and dismissal" may be dismissed without giving reasons for so doing) facilitates a practice known as "patronage" and that the implementation of an administrative career structure appears to be a prerequisite for the eradication of such discriminatory practices.

In previous comments, the Committee referred to the same issues, which had been the subject of comments (on the application of the Convention) submitted by various workers' organisations; by the



Workers' Union of Colombia (UTC) in 1979 and the General Confederation of Labour (CGT) in 1982.

The Committee notes that the allegations of the above organisations coincide in referring to the existence of discrimination on grounds of political affiliation in the public service, where posts are attributed on the basis of quotas reserved for the political leaders, the use of the procedure of declaring jobs abolished for this purpose and the urgent need to introduce an administrative career structure as a means of eradicating these practices.

The Committee requests the Government to examine the provisions respecting the power to freely appoint and dismiss in the light of the Convention so that decisions respecting the appointment and dismissal of employees are subject to objective criteria and guarantees that are explicitly set out in law and ensure the observance of the Convention, which is to protect workers against discrimination on grounds of political opinion.

The Committee also requests the Government to supply information on the distinction that exists between "public employees" and "official workers" and to specify employees who belong to one or the other category and the rules which are applicable to them.

The Committee hopes that the Government will supply detailed information on the questions that have been raised and on the allegations of the CUT concerning the dismissal of workers in the public sector in Bogotá, Sucre, Valle del Cauca (Candelaria, Roldanillo) and Antioquia. The Committee also hopes that the Government will supply information on the measures that have been taken or are envisaged to give effect to the Convention on these matters.

## 2. Discrimination on grounds of sex

The Committee notes the information contained in the report submitted by the Government of Colombia to the Committee on the Elimination of Discrimination against Women (CEDAW/C/5/Add.32) of 21 January 1986, according to which discrimination in employment on grounds of sex exists, due to the legislation that is in force and to cultural attitudes.

The CUT also refers in its comments to the existence in practice of discrimination on grounds of sex, since many enterprises in practice require a negative pregnancy test before employing a woman and since the wages of women in enterprises are lower in percentage terms. Furthermore, the CUT alleges that there is no protection against the sexual harassment to which women workers are subject in many cases, both for access to employment and for its maintenance, and to obtain promotion and transfers.

The Committee hopes that the Government will supply detailed information regarding the allegations submitted by the United Central Workers' Organisation and on the measures that have been taken or are envisaged to implement the Convention in relation to the matters that have been raised.

Cuba (ratification: 1965)

The Committee has referred in its previous comments to a series of laws and regulations under which access to training and employment and the evaluation of workers for their selection, placement or the assessment of their occupational merits and weaknesses depends, among other factors, on their political attitude.

With regard to training, many provisions lay down that applicants must not only possess the requisite academic qualifications but also fulfil political and moral requirements and must meet ideological and political conditions and behave in accordance with the principles of the Revolution, as a prerequisite for admission to the various teachers' training schools, higher and middle education centres and technical teaching centres. Of these, Resolution No. 327, of 1982, of the Ministry of Higher Education, lays down as a prerequisite for the admission of candidates to scientific grades the fulfilment of the political and ideological conditions specified in the instructions of the Secretariat of the Central Committee of the Communist Party of Cuba in respect of the application of policy at a scientific level (section 2(1)).

The Committee also referred to the Resolution of the First Congress of the Cuban Communist Party, under which the policy relating to managerial staff must be based on an analysis of the person involving, inter alia, an assessment of that person's political reliability; similarly, when proposing or selecting employees or officials, managers must base their choice on the revolutionary fervour of the candidate.

In relation to access to employment, the Committee referred, among other texts, to the rules for inspection in education (Ministerial Resolution No. 235 of 1982) which require for the exercise of the function of inspector the observance of a political and moral conduct worthy of the principles and aims of the socialist State (section 46(a)).

The Committee also referred to Legislative Decree No. 34, of 12 March 1980, which empowers the principals of higher education centres, the heads of local people's authority bodies and directors appointed by these heads, to directly remove from their responsibilities or jobs, technical and teaching staff and administrative and maintenance personnel for behaviour such as the performance of acts contrary to the socialist morality and to the ideological principles of society.

The Committee notes the general statement contained in the Government's report, according to which the principle of non-discrimination, enshrined in the Constitution and the Labour Code, guides labour legislation, and that the process of adjusting supplementary legislation is a continuous process that is being carried out gradually.

Nevertheless, the Committee notes that the Government's report does not contain precise information on the points raised; the Committee therefore once again addresses a detailed request on these points to the Government.



Denmark (ratification: 1960)

The Committee has noted the Government's report on the application of the Convention, as well as comments alleging violation of the Convention, made by the Federation of Danish Trade Unions (LO) by letter of 19 August 1988, the Danish Seamen's Union by letters of 7 September and 7 October 1988, and the Federation of Danish Public Servants' and Salaried Employees' Organisations (FTF) by letter of 7 November 1988. The Committee also has noted the Government's reply to these comments, sent in January 1989, and the conclusions reached by the Committee on Freedom of Association in Case No. 1470 (262nd report of the Committee on Freedom of Association approved by the Governing Body at its 242nd Session, February-March 1989).

In its communication of 19 August 1988, the LO considers in particular that subsections 2 and 3 of section 10 of the Act on the Danish International Ships Register, adopted on 23 June 1988, violate the Convention.

Section 10 reads as follows:

- (1) Collective agreements on wage and working conditions for employees on vessels in this register shall explicitly state that they shall be applicable for such employment only.
- (2) Collective agreements as mentioned in subsection (1) which have been concluded by a Danish trade union organisation may only comprise persons who are considered to be residents of Denmark, or who by virtue of incurred international obligations shall be put on an equal footing with Danish citizens.
- (3) Collective agreements as mentioned in subsection (1) which have been concluded by a foreign trade union organisation, may only comprise persons who are members of the organisation concerned, or persons who are citizens in the country where the trade union organisation is domiciled, in so far as they are not members of another organisation with which an agreement as mentioned in subsection (1) has been concluded.
- (4) The Industrial Court Act shall also be applicable in cases to which a foreign trade union organisation is a party.

According to the LO, it follows from subsection 2 of section 10 that Danish wage-earner organisations can only conclude agreements for persons domiciled in Denmark. It follows from subsection 3 of section 10 that foreign wage-earner organisations may conclude parallel agreements for their own nationalities. A Danish ship registered in the Danish International Register may then for example conclude three agreements, one for Danes, one for Poles and one for Filipinos.

In its communication of 7 September 1988, the Danish Seamen's Union quotes the Minister of Industry indicating, in his written introduction of the Bill to the Danish Parliament, that "The establishment of a Danish International Ships Register will enable Danish shipowners to employ foreign crews on the wage terms applying in the native countries of those crews".

According to the same communication, the Act prevents the Danish Seamen's Union from entering into collective agreements for a significant part of its own members. The Danish Seamen's Union claims that now about 400 of its members annually cannot be embraced by the agreements entered into by it, either because - notwithstanding that

they are Danish citizens - they have no residence in Denmark, or because - despite the fact that they may have been sailing on Danish ships for several years - they are not included in the circle of persons towards whom Denmark has international obligations as is required under section 10(2). The Danish Seamen's Union points out that the Act of 23 June 1988 substantially curtailed the scope of the merchant shipping agreements applying until then, because 82 per cent (measured in terms of gross register tonnage) of the Danish merchant navy was transferred to the Danish International Ships Register and thus withheld from the provisions of the agreements hitherto in force.

In its communication dated 7 October 1988, the Danish Seamen's Union states that, after the adoption of section 10 of the Act, the largest association of shipowners (the Danish Shipowners Association) has now concluded collective agreements with shipping organisations from the Philippines and Singapore. Under these agreements, the employers agree to pay hourly wages to able-bodied seamen from these two countries at the rate of 20 kroner and 27 kroner respectively. By comparison, the employers are obliged to pay Danish seamen 54 Kroner per hour. It adds that other terms of wages and employment have been correspondingly depreciated for seamen from the Philippines and Singapore.

In its reply to these comments, the Government has expressed the view that the Act on the Danish International Ships Register contains no discriminatory provisions, and no discrimination takes place due to race, religion, sex, national origin, etc. Employment on board ships registered in the Danish International Ships Register is open to anybody. All seamen are covered by Danish legislation and have a right to organise and conclude collective agreements. All persons employed on board a ship flying the Danish flag thus have the same basic rights. In this connection, the Government observes that the alternative to ships registered in the Danish International Ships Register is ships flying a flag of convenience.

According to the Government, the fact that all persons residing in Denmark - irrespective of their race, sex, nationality, etc. - may be covered by Danish collective agreements is not in conflict with the Convention. Danish citizens who have their residence abroad are in the same manner outside the field of application of Danish collective agreements. As regards the agreements with organisations from the Philippines and Singapore mentioned by the Danish Seamen's Union, the Government indicates that these are agreements concluded following voluntary negotiations, and that this has nothing to do with discrimination.

According to the Government, the Act to set up the Danish International Ships Register was necessary to preserve jobs on board Danish ships on Danish terms of employment; the Act, which lays down general guide-lines in a new and very special field, is based on the assumption that this field is regulated by conclusion of collective agreements, and the Government considers that developments have confirmed that the field is regulated by collective agreements which do not entail actual deterioration in the living standard and employment opportunities for seamen.

The Committee takes due note of these indications. Referring to the explanations provided in paragraphs 17 to 18 and 36 to 37 of its

1988 General Survey on Equality in Employment and Occupation, the Committee observes that, while the Convention applies to all persons, whether or not they are citizens or residents of the ratifying country, distinctions made in employment and occupation on the basis of citizenship or residence are not necessarily relevant to one of the seven grounds of discrimination referred to in Article 1, paragraph 1(a), of the Convention. The relevance of such distinctions to the prohibited grounds of discrimination must be examined in the light of their concrete consequences.

In the present case, one effect of section 10, subsections 2 and 3, of the Act on the Danish International Ships Register is that non-resident seamen from the Philippines and Singapore on board Danish ships, whether or not they are members of Danish trade unions, and although Danish legislation continues to apply to them, stand deprived of the benefits of collective agreements concluded by Danish trade unions. As a further direct consequence from this, section 10, subsections 2 and 3, of the Act makes room for separate collective agreements providing for differences in wage rates between Filipino and Singaporean seafarers on board Danish ships. These differences in treatment are not based on differences regarding Danish citizenship or residence; they establish a discrimination among non-resident non-citizens on the basis of their national origin and are therefore incompatible with the Convention.

As regards the voluntary nature of different collective agreements providing for different wage rates, the Government remains responsible for a discrimination in employment which follows from its legislative interference in the free collective bargaining of Danish trade unions on board Danish ships. In this connection, the Committee refers to its comments under Convention No. 98.

Moreover, as regards the provision in section 10, subsection 2, of the Act according to which Danish trade unions may bargain on behalf of non-resident non-citizens only where by virtue of incurred international obligations these shall be put on an equal footing with Danish citizens, the Committee refers to paragraph 18 of its aforementioned General Survey of 1988, where it pointed out that reciprocity stipulations governing the application to foreign seafarers of the anti-discrimination provisions in maritime legislation are not in accordance with the Convention.

The Committee hopes that the Government will re-examine section 10 of the Act on the Danish International Ships Register in the light of the Convention as well as of the principles of freedom of association and collective bargaining, and that it will indicate measures taken or contemplated to bring national law and practice again into conformity with the Convention in this regard.

#### Dominican Republic (ratification: 1962)

With regard to the situation of Dominican sugar-cane workers of Haitian origin, the Committee refers to its observation on Convention No. 105. It requests the Government to supply information on measures that have been taken or are envisaged to ensure that Dominican

nationals of Haitian origin benefit from effective equality of opportunity and treatment in employment and training.

Ecuador (ratification: 1962)

1. The Committee notes with interest from the information supplied by the Government in its report, that an Executive Agreement is in the process of being issued to modify section 17(b) of the Regulations issued under the Co-operatives Act, to which the Committee referred in previous comments, under which a married woman needs the authorisation of her husband in order to become a member of housing, agricultural or family vegetable garden co-operative. The amendment will provide that married women need no authorisation whatsoever in order to become members of the above-mentioned co-operatives.

The Committee asks the Government to continue to provide information on this matter and to send a copy of the Agreement once it has been adopted.

2. The Committee also notes with interest that the Ministry of Labour has prepared a draft Legislative Decree which will be submitted to the National Congress, to amend provisions referred to in the Committee's previous comments, namely, section 12 of the Commercial Code, under which married women need the authorisation of their husbands in order to exercise a commercial activity, and sections 66, 80 and 105 of the same Code which prohibit single and married women from entering the stock-market or becoming stockbrokers or public auctioneers.

The Committee asks the Government to provide a copy of the Legislative Decree once it has been promulgated.

German Democratic Republic (ratification: 1975)

The Committee notes the Government's report. It has taken note also of the discussion which took place at the Conference Committee in 1987 on the application of the Convention in the German Democratic Republic, following the Committee's earlier comments calling for the elimination of discrimination on the basis of political opinion in education and training and in employment.

Education and training

In its previous comments, the Committee referred to the provisions of a number of legislative texts concerning access to, and success in, advanced education and training, which might in practice lead to discrimination on the basis of political allegiance. The Committee had referred, in this connection, to Orders of 1 July 1971, 15 April 1972 and 1 July 1973, concerning access to universities and colleges, engineering and vocational schools and correspondence and evening courses, to the Youth Act of 28 January 1974, the directive of 8 February 1973 on special studies for leading functions in vocational training, the Examination Order approved by the directive of 3 January 1975, the Order of 29 December 1978 concerning research studies and

the Order of 5 December 1981 concerning admission to the polytechnical secondary school.

The Committee considered that a number of the criteria included in the conditions for access to, and for success in, advanced education and training (in so far as involving reference to political outlook, partisan conduct, or the achievement of parents in building socialism) as well as the role assigned in evaluating fulfilment of these criteria to an organisation responsible for implementing the objectives of a political party, are not consistent with a policy designed to eliminate any discrimination on the basis of political opinion or social origin. The Committee expressed the hope that the Government would re-examine the relevant legislation and that it would indicate measures taken or envisaged in this regard to ensure equality of opportunity and treatment under the Convention.

### Employment

In its previous comments, the Committee noted the resolution of 7 June 1977 of the secretariat of the Central Committee of the Socialist Unity Party concerning work with cadres. Apart from moral and job-related qualifications, the resolution calls for political qualifications of cadres such as "unconditional faithfulness to the working class and its Party and to Marxism-Leninism, uncompromising fight against all manifestations of bourgeois ideology, and partisanship". The resolution provides for the creation of a cadre reserve for "Nomenclature functions". Under section 14 of the Act of 16 October 1972, concerning the Council of Ministers, members of the Council of Ministers and heads of central state institutions are to put into effect the resolutions of the Party and of the Council. By virtue of section 2(3) of the Order of 19 February 1969 concerning the duties, rights and responsibilities of the collaborators of state bodies, these are to implement the decisions of the Party in their fields of responsibility.

These principles have been reflected in a number of legislative provisions of which the Committee noted examples in section 13(1) of the Act of 1 March 1981 concerning collegial bodies of lawyers, section 7 of the Regulations of 12 January 1984 on the work, direction and organisation of the pharmaceutical sector, the Statutes of the Academy of Sciences of the GDR, adopted by decision of the Council of Ministers of 28 June 1984, and section 4(1) and (5) of the Order of 22 April 1986 concerning the promotion of teachers. The Committee also noted that under section 4(2) of the Driving School Regulations of 24 May 1982, a driving instructor's licence is to be granted only to an applicant who has the political, pedagogical and professional qualifications for comprehensive education of the driving students.

The Committee asked for explanations regarding the relevance of the political qualifications in question to the inherent requirements of the job and noted that indeed explanations provided by the Government relate to inherent requirements of the job, e.g. the responsibility of a driving instructor for accident-free driving of the students, the responsibility of pharmaceutical workers for the welfare of people, the responsibility of lawyers for defending the rule of law as well as the interests of their clients; however, the

ability to meet such a responsibility, by its very nature as an inherent requirement of a particular job, is part of the professional qualifications required of the persons concerned, and leaves the additional qualifications sought by the political requirements mentioned in the legislation to be determined. The Committee recalled that legislative provisions are liable to lead in fact to discrimination based on political opinions, when the definitions used are too vague or equivocal and the guarantees inadequate. Furthermore, realisation of the policy of the Socialist Unity Party is specifically required in certain legislative provisions, e.g. the Statutes of the Academy of Sciences adopted by decision of 28 June 1984, while other provisions already quoted call for the enforcement of socialist cadre politics, and section 2(3) of the Order of 19 February 1969, read together with the resolution of 7 June 1977, makes it a duty of the collaborators of state bodies to implement the decision of the Party calling for such political qualifications of cadres as "unconditional faithfulness to the working class and its Party".

The Committee observed that political opinions might be taken into account in connection with the requirements of certain senior administrative posts involving special responsibility in the implementation of government policy, but that, if carried beyond certain limits, for example when conditions of a political nature are laid down for all kinds of public employment or for certain other professions, such a practice comes into conflict with the provisions of the Convention, which calls for the pursuance of a policy designed to eliminate discrimination on the basis of, inter alia, political opinion, particularly in employment under the direct control of a national authority. The Committee expressed the hope that the Government would re-examine the provisions of national law referred to and that it would indicate measures taken or envisaged to ensure equality of opportunity and treatment under the Convention.

In its latest report, the Government refers to its earlier reports and to its statements to the Conference Committee in 1987. The Government considers that it has given evidence of its full compliance with the requirement, under Article 2 of the Convention, "to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof". It has pointed out that discrimination in employment and occupation is excluded according to articles 2, 17, 19, 20, 25, 26 and 27 of the Constitution of the German Democratic Republic.

The Government adds that it continues to pay great attention to ensure that Convention No. 111 is fully applied. The discussions in the Conference Committee in 1987 on the German Democratic Republic's application of the Convention and the comments of the Committee of Experts have been analysed in depth with the competent national bodies concerned. On this occasion, these bodies have reaffirmed the compliance by the German Democratic Republic with Convention No. 111 within their respective fields of competence - especially with regard to those provisions which are the subject of comments by the Committee of Experts.

The Government indicates that differences of views remain as to the content of some of the terms used in national legislation. The Government states its interest in clearing up these differences of opinion by continuing its dialogue on the basis of trusting and constructive co-operation with the ILO bodies. It adds that the competent state bodies are continuing to examine this issue.

The Committee takes due note of these indications. It observes that the Conference Committee in 1987, having heard the detailed explanations provided by the Government representative, noted with the Committee of Experts, that certain legislative, administrative and other provisions in force in the field of employment and education raised questions concerning the implementation of a policy giving effect to the Convention. The Conference Committee expressed the hope that the Government would re-examine these questions in the light of the comments of the Committee of Experts with a view to taking appropriate measures in order to ensure full compliance of legislation and administrative practice with the provisions of the Convention. The Conference Committee expressed the hope that the Government would soon be able to indicate measures taken or envisaged to this end.

Having examined the Government's indications in its report, the Committee notes the absence of information on any concrete action taken or contemplated to give effect to the Convention on the various points recalled above. It hopes that the continued examination of these issues by the competent state bodies will soon give rise to the adoption of the necessary changes, and that the Government will supply full information on the action taken.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Federal Republic of Germany (ratification: 1961)

1. The Committee has noted the information provided by the Government to the Conference Committee in 1988, in its report presented in November 1988, and in a supplementary report communicated in March 1989. It has also taken note of the discussion in the Conference Committee in 1988 and of that Committee's conclusions, in which the Committee associated itself with the hope expressed by the Committee of Experts that the Government would review the situation in consultation with workers' and employers' organisations and would adopt appropriate measures to overcome the existing difficulties, having due regard to the recommendations of the ILO Commission of Inquiry, the comments of the supervisory bodies and the dialogue in the Conference Committee. The Committee has also noted a communication from the World Federation of Trade Unions concerning certain proceedings before the Federal Administrative Court. During the Committee's session, comments were received from the German Confederation of Trade Unions, expressing concern at the position of the federal Government. Matters mentioned in this communication will be further considered by the Committee at its next session.

2. The Committee draws attention to the following developments:

(a) The Committee notes with interest from the Government's report that, following a change of government in the Land of

Schleswig-Holstein, the practice of systematic inquiry from the authority for the protection of the Constitution in regard to all applicants for employment in the public service (Regelanfrage) was abolished in July 1988.

(b) In its observations of 1988, the Committee had noted that two cases concerning admission to the public service for the purpose of preparatory service of teachers had been referred to the Federal Constitutional Court by the Federal Labour Court. The Committee notes that, following the withdrawal of the appeals to the Federal Labour Court, these references have lapsed.

(c) The Committee notes that in a number of other cases judgements have been rendered since its examination of the situation in 1988. In its previous observations, the Committee had noted a judgement of the Oldenburg Labour Court of August 1987, in which, following a review of the provisions of Convention No. 111 and the conclusions of the ILO Commission of Inquiry, the Court had ruled in favour of an applicant for employment in the public service. However, on appeal, that judgement was reversed by the Land Labour Court in June 1988. A number of other courts, including the Federal Administrative Court, have similarly ruled against the admission of applicants for employment in the public service or for dismissal of serving officials. In the various judgements available to the Committee, the courts have declined to apply the criteria stated in the report of the Commission of Inquiry as governing the application of Article 1, paragraph 2, of Convention No. 111 (in respect of the inherent requirements of particular jobs). They have consistently taken the view that neither the provisions of Convention No. 111 nor the conclusions and recommendations of the ILO Commission of Inquiry have direct binding force in the domestic law of the Federal Republic of Germany; this point has also been stressed by the Government in its report.

(d) The Committee notes that in October 1988 discussions concerning the implementation of Convention No. 111 took place between the federal authorities and representatives of the Confederation of German Employers' Associations, the German Officials' Federation, the German Salaried Employees' Union, the German Confederation of Trade Unions, the German Postal Workers' Union and the Educational and Scientific Workers' Union. The Government indicates in its supplementary report that these discussions revealed differences of opinion among the organisations concerned with respect to the compatibility with Convention No. 111 of the practice in the Federal Republic regarding the duty of faithfulness in the public service. In the light of those differences, the Government has once more set out in detail, in the supplementary report, its arguments for considering the existing law and practice in the matter to be in conformity with the Convention and for not accepting the conclusions of the Commission of Inquiry. The Government has stressed, in particular, its view that the differentiation in the application of the provisions relating to the duty of faithfulness according to the functions involved, which had been recommended by the Commission of Inquiry, is not possible and is not being seriously demanded by anyone in the Federal Republic. The Government has also communicated a decision by the Petitions



Committee of the Federal Diet, adopting a position corresponding to that of the federal Government.

3. Having regard to these developments, the Committee considers it appropriate to make the following comments:

(a) While the consultation of employers' and workers' organisations on measures to ensure the observance of the Convention is always desirable, and was indeed recommended by the ILO supervisory bodies, the fact that such consultations may have revealed differences of opinion does not absolve the Government from its obligation, under article 19 of the ILO Constitution and the provision of Convention No. 111, to make that Convention effective in law and practice.

(b) As the Committee already noted in 1988, ILO supervisory bodies are not called upon to pronounce upon the merits of the decisions of courts within the Federal Republic in ruling upon the interpretation or effect of domestic law or on the effect in domestic law of international standards. However, it remains necessary for the Committee to examine, in the light of decisions of the courts, whether national legislation and practice are compatible with the Convention. The fact that the courts consider Convention No. 111 and the conclusions of ILO supervisory bodies not to have any direct binding effect in domestic law does not absolve the Government from its obligation to make the provisions of the Convention effective. Under the Convention, it is incumbent upon the Government to pursue a national policy to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination (Articles 1 and 2) and, more particularly, to enact such legislation as may be calculated to secure the acceptance and observance of that policy (Article 3(b)) and to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the said policy (Article 3(c)).

(c) The ILO Commission of Inquiry, after an exhaustive examination of the situation with respect to exclusions from public service in application of the provisions on the duty of faithfulness, indicated in what respects that situation was not compatible with the requirements of Convention No. 111, and formulated recommendations on measures to be taken to eliminate the existing difficulties. The Commission of Inquiry recommended that, if the requisite changes could not be brought about by other means, appropriate legislative action should be taken (paragraph 588 of its report).

(d) The Committee notes that the Government maintains the position that the existing law and practice regarding the duty of faithfulness in the public service are consistent with Convention No. 111. It has taken note of the restatement of the Government's arguments and of its reasons for disagreeing with the conclusions of the Commission of Inquiry. The Committee of Experts recalls that article 29 of the ILO Constitution empowers a government which does not accept the recommendations of a commission of inquiry to refer the matter to the International Court of Justice, in which case the Court may affirm, vary or reverse any of the commission's findings or recommendation (Article 32). In the present case, the Government decided not to avail itself of this possibility.

4. The Committee accordingly once more expresses the hope that the Government will take the necessary measures to secure the

observance of Convention No. 111 in regard to the matters examined in the ILO inquiry. The Commission of Inquiry, in paragraph 586 of its report, drew attention to certain policies, practices and decisions already to be found in the Federal Republic of Germany which might provide guidance to the requisite action.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Ghana (ratification: 1961)

The Committee notes the Government's report for the period ending June 1988.

1. In its previous comments, the Committee noted that under section 32 of the Civil Service Act, 1960, the President may dismiss any civil servant if he is satisfied that it is in the public interest to do so and that under regulation 60(i) of the Civil Service (Interim) Regulations, 1960, there shall be no appeal against a decision of this sort taken by the President. In its report, the Government states that the issue of channels of appeal available to dismissed civil servants is still receiving due attention. The Committee wants to hope that the necessary action will be soon taken, both as regards legal grounds for dismissal and regarding channels of appeal, to ensure that no civil servant is discriminated in his employment on the basis of his race, colour, sex, religion, political opinion, national extraction or social origin, and that the Government will indicate the specific measures taken or under consideration to this end.

2. The Committee notes the Government's statement in its report that steps are being taken to reconstitute the "National Advisory Committee on Labour" to finalise examination of the Committee's outstanding comments. The Committee however previously noted the indication given by the Government to the Conference Committee in 1986 that the "National Labour Advisory Committee" had been reconstituted in July 1985, and was examining outstanding comments of the Committee. Recalling the obligations of the Government under Article 3(f) of the Convention to indicate in regular reports action taken in pursuance of a policy to promote equality and eliminate discrimination, the Committee hopes that the Government will soon be able to provide the details called for in a direct request which the Committee is again addressing to the Government.

Islamic Republic of Iran (ratification: 1964)

The Committee notes the statement made by the Government in its report that it considers the provisions of the Convention to be among the most important international labour standards and that it is committed to their full implementation. It notes the information provided and the discussion which took place on this case in the Conference Committee in 1988.

The Committee notes the interim report on the situation of human rights in the Islamic Republic of Iran transmitted to the General Assembly of the United Nations (A/43/705); it notes paragraphs 52

to 63 concerning consideration of the views recently expressed by the Government of the Islamic Republic of Iran. The Committee also notes the report on the human rights situation in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights pursuant to Commission Resolution 1988/69 (E/CN.4/1989/26) and the report on the implementation of the declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief (E/CN.4/1989/44; paragraphs 42 and 43).

1. Discrimination in respect of employment and occupation. In its comments since 1983, the Committee has expressed concern at the discrimination in employment and occupation practised against persons belonging to the "misguided Baha'i group"; to Freemasonry or to organisations whose constitutions imply atheism and that have been banned. This discrimination applies not only to access to employment and occupation, but also to conditions of employment and training.

The Government representatives have so far failed to provide the Conference Committee with any information concerning the situation of persons belonging to organisations whose constitutions imply atheism. With regard to persons belonging to the "misguided Baha'i group", they stated first that the measures of discrimination were due to the fact that Baha'ism is a political organisation engaged in spying; later, that it is an organisation of spies; and lastly, that even if not all Baha'is are spies, by virtue of membership of such an organisation, they must be excluded from the public sector unless they renounce their membership. The Government also mentions general considerations concerning the origin of the Baha'is, which are unrelated to the situations covered by the Convention. With regard to persons belonging to Freemasonry, the Government stated in 1987 that Freemasonry was a secret organisation whose members, affiliated to spy networks, were among the most influential and powerful in Iran and transferred billions of dollars abroad just before the victory of the Islamic Revolution. The Government concludes that, in accordance with the laws of the country, the Baha'i organisation and the Freemasons are illegal organisations and that membership of them is also illegal. Any person who is proved by a competent court to be a member of these organisations is excluded from employment in the government sector. The Government has invoked Article 4 of the Convention to justify the measures taken against the Baha'is and Freemasons.

In comments made for a number of years, the Committee considered that the general provisions of the laws and regulations and the individual administrative measures giving practical effect to them indicate clearly that the dismissal of Baha'is from their posts in the public service and state-controlled bodies is based on their adoption of, and holding on to, a faith which is not recognised under articles 12 and 13 of the Constitution of the Islamic Republic of Iran. The Committee has noted that it does not follow from the information made available to it that the substantive conditions (a measure affecting an individual who is justifiably suspected of being engaged in activities prejudicial to the security of the State) and the conditions concerning procedural guarantees (right of appeal to a competent body) are fulfilled, although they must be met to ensure that these exceptional measures do not result in discrimination on one

of the grounds listed in Article 1, paragraph (a), of the Convention. With regard to this last point, it recalls the provisions of the Directive of the Ministry of Labour, published on 8 December 1981, which prescribe that the courts are bound to withhold the issuance of any judgement in favour of dismissed employees whose membership of the "misguided Baha'i group" or organisations whose constitutions imply atheism has been ascertained. It requested the Government to ensure respect for Article 3(c) and (d) of the Convention, by repealing all statutory provisions and modifying all administrative practices inconsistent with the policy of non-discrimination that the Government must follow in respect of employment under the direct control of a national authority.

Position in employment and occupation of persons belonging to Freemasonry. As regards persons belonging to Freemasonry, whose situation is recalled above, the Government states in its report for the period ending 30 June 1988 that this was an issue that arose in the early days of the revolution, but which no longer exists at all. The Committee requests the Government to indicate the measures taken or envisaged to ensure that persons who were removed from office or dismissed for being Freemasons are reinstated without discrimination as provided for by the Convention.

Employment under direct state control. The Committee notes, *inter alia*, a notice issued by the General Employment Office in December 1987, listing the names of 13 people who were dismissed from the Melat Bank for belonging to the "misguided Baha'i group"; a notice published in the Ettela'at newspaper, issue No. 18396 of 10 February 1988, informing a person that the Commission of Investigation of Administrative Offences of the Province of Guilan had accused him of belonging to the Baha'i sect and condemned him to perpetual exclusion from public office; a notice published in the same newspaper, issue 18501 of 30 June 1988, according to which the Commission of Investigation of Administrative Offences of the Department of Ports and Shipping, "pursuant to clause 2 of section 19 of the Commissions of Investigation of Administrative Offences Act and in keeping with section 30 of the same, finds guilty (verdict No. 335 dated 3 June 1988 [14.03.1367]) and condemns to being permanently banned from government service" a person accused of being a follower of the "misguided Baha'i sect". The Committee also notes a letter from a ministry addressed to a retired civil servant, requesting him to confirm or deny that he was a member of a "misguided group outside Islam" and informing him of the consequences for the payment of his pension in the event of confirmation. Furthermore, the Committee notes the statement of a witness, a Zoroastrian convert to Baha'ism, which is reproduced in the report on the situation of human rights in the Islamic Republic of Iran (A/43/705; paragraph 20) and according to which he was condemned to pay back all the salaries he had received during his years of work.

Other salaried employment. The Committee notes the information transmitted to the Special Rapporteur appointed in accordance with resolution 1986/20 of the Commission on Human Rights, according to which pressure is put on non-Baha'i employers to dismiss their Baha'i employees (E/CN.4/1989/44; paragraph 43), thereby confirming that the

practices mentioned by the Committee in its observation in 1985 are continuing.

Non-salaried occupations and employment. As regards non-salaried occupations and employment, the Committee notes documents rejecting applications for the renewal of licences to carry on commercial activities on the grounds that the applicants themselves had admitted to being associated with the Baha'i sect. The Committee also notes the information contained in the above-mentioned report on the situation of human rights in the Islamic Republic of Iran (paragraph 43), according to which Baha'i farmers are denied membership in co-operatives and were forced to flee from their homes after many Baha'i farms had been burned or confiscated.

Article 4 of the Convention - conditions concerning procedural guarantees. In the information transmitted to the Conference Committee, the Government states that the provisions of articles 173 and 174 of the Constitution provide for fundamental safeguards concerning the consideration of appeals, complaints and grievances of misguided groups such as the Baha'is. According to the Government representative to the Conference Committee, the Directive of the Ministry of Labour was issued to ensure that the complaints of persons who mostly held key positions and resigned or arbitrarily stopped work following the victory of the Revolution, creating a difficult situation for the economy, did not disrupt the conciliation and arbitration bodies on the pretext of appealing against dismissals.

The Committee observes that the statement made by the Government representative relates to the reasons which apparently prompted the adoption of the above-mentioned Directive and fails to address the fact that the Directive instructs the courts to withhold the issuance of any judgement in favour of dismissed employees whose membership of the "misguided Baha'i group" or organisations whose constitutions imply atheism has been ascertained.

Furthermore, the Committee notes the Government's indication in its report that the Directive at issue is not in force. It requests the Government to communicate the provisions which abrogated those of the said Directive.

The Committee also notes that in notices published in the Ettela'at newspaper (issues 18396 and 18501, dated 10 February and 30 June 1988, respectively), to the effect that certain persons were excluded for life from public office because they belonged to the "misguided Baha'i sect", mention is made of a right to appeal against those decisions to the Tribunal of Administrative Justice. The Committee duly notes that information and requests the Government to supply up-to-date information on the use which may be made of the said right of appeal and the effect which has been given in practice to such appeals.

The Committee recalls the observation in paragraph 137 of its 1988 General Survey on Equality in Employment and Occupation, to the effect that the right of appeal cannot be considered as a guarantee in accordance with the provisions of Article 4 of the Convention, unless the substantive conditions have been met (a measure affecting an individual who is justifiably suspected of being engaged in activities prejudicial to the security of the State).

Article 4 of the Convention - substantive conditions. According to the Government, the measures taken against persons sharing the Baha'i faith are prompted by the fact that the Baha'is allegedly supported the regime overthrown in 1979 and now spy for foreign Powers.

The Committee has already had occasion to examine these matters, notably in the observation it made in 1985. It observes that in the texts available to it a distinction is drawn between persons whose only wrong is that they are Baha'is, on the one hand, and persons alleged to have committed acts prejudicial to the security of the State or justifiably suspected of having done so (collaboration with the former SAVAK, acts prejudicial to security such as spying, corruption or actual involvement in action aimed at reinstating the old regime), on the other. The Committee has also noted in earlier comments that the various measures taken against the Baha'is were suspended when they renounced their faith.

The Committee also notes the information contained in the report on the situation of human rights in the Islamic Republic of Iran submitted to the General Assembly of the United Nations (A/43/705; paragraph 19), according to which followers of the Baha'i faith charged with collaboration with the former regime or with spying for foreign Powers are always offered the possibility of immediate release and the restoration of their rights and property on condition that they recant their faith.

The Committee must stress that all the measures and situations described above are aimed at causing persons who profess a certain faith to renounce their religious beliefs, by removing their material means of subsistence. Such practices are utterly inconsistent with the principles of freedom of thought and religion, which are quintessential to human rights whose exercise must be guaranteed in particular by a policy designed to promote equality of opportunity and treatment in respect of employment and occupation as provided for in Article 2 of the Convention.

The Committee once again wishes to express the hope that the Government will observe its obligations under the Convention, particularly those set out in Article 3(c) and (d) thereof, by repealing all statutory provisions and modifying all administrative instructions or practices which are inconsistent with the policy of non-discrimination that the Government is bound to pursue and promote.

2. Discrimination in education and training. In its earlier comments, the Committee referred to the report on the human rights situation in the Islamic Republic of Iran submitted to the General Assembly of the United Nations (A/42/648; paragraph 35), from which it would appear that primary and secondary schools are gradually being opened to Baha'i children, but that the latter are subject to pressure and attempts at indoctrination and are threatened with exclusion from examinations unless they renounce their faith, and that admission to universities or any other higher-education establishment is prohibited to Baha'is.

According to the statement made by the Government representative to the Conference Committee in 1988, neither primary nor secondary education nor yet any other stage of training or education had ever been closed to certain children on account of their adherence to certain beliefs, and measures to combat harassment based on religion

had been or would be adopted by the Islamic Republic of Iran. The Committee must also note the information contained in the report on the situation of human rights in the Islamic Republic of Iran submitted to the General Assembly of the United Nations (A/43/705; paragraph 41), from which it would appear that Baha'is are still denied access to higher education, that their children are threatened with being denied the opportunity to take their examinations if they do not renounce their religion, but that some students have none the less been allowed to return to school.

The Committee thus once more requests the Government to continue to provide information on the measures taken to ensure access to training without discrimination under the Convention, and to report any measure taken or envisaged to combat harassment based on religion.

3. Equality of treatment. With reference to the earlier comments on the exclusion of women from the judiciary, the Government representative to the Conference Committee stated that in practice women are employed in the national judicial system where they carry on their occupations. The Government further states in its report that at present there are female judges in the Islamic Republic of Iran.

The Committee wishes to refer to article 163 of the Constitution of the Islamic Republic of Iran, whereby the qualifications required of judges are determined by the law in accordance with the norms of religious jurisprudence. On 14 May 1982, the Parliament (*Majlis*) passed an Act giving effect to that article. Under the provisions of the single article of that Act, judges must be chosen from among men who fulfil the following conditions, *inter alia*: they must profess the faith, show active devotion to Islamic norms and loyalty to the regime of the Islamic Republic, be genuinely devout, enjoy religious authority (*ijtihad*) recognised by the Supreme Judicial Council, and hold a degree in law, theology or administrative law or a degree from the Judicial College of Qom.

The Committee observes that under the single article of the Act of 14 May 1982 giving effect to article 163 of the Constitution, judges are chosen from among men only. The Committee further recalls that under articles 12 and 13 of the Constitution, the State religion is Islam, the doctrine being that of the Jafari Ithna Ashari sect, and the Iranian Zoroastrians, Israelites and Christians are the only recognised religious minorities.

The Committee requests the Government to indicate the measures taken to ensure that access to employment in the judiciary is guaranteed without discrimination on grounds of sex or religion, particularly in respect of Irainians who are not followers of the Jafari Ithna Ashari sect (Sunni Moslems, Zoroastrians, Israelites, Christians, etc.) and to provide information on the effect of such measures, stating the number and capacity of women and members of religious minorities who exercise judicial functions.

[The Government is asked to supply full particulars to the Conference at its 76th Session and to report in detail for the period ending 30 June 1989.]



Madagascar (ratification: 1961)

The Committee notes with regret that for the fifth year in succession no report has been received from the Government. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the following matters raised in its previous comments:

The Committee calls attention to paragraphs 15, 157 and 170 of its 1988 General Survey on Equality in Employment and Occupation, in which it stressed the positive nature of the steps to be taken within the framework of national policy covered by Articles 2 and 3 of the Convention, and to the need to send full particulars on the various aspects of such action. The Committee requests the Government to supply, in its next report, information on any action taken to ensure the effective promotion of equality of opportunity and treatment, irrespective of sex, religion, political opinion, national extraction or social origin, and on the results achieved, particularly with regard to:

- (a) access to training;
- (b) access to employment and to different occupations;
- (c) conditions of employment. In this context it particularly requests the Government to indicate the steps taken to promote equality of opportunity and treatment:
  - (i) in employment, vocational training and guidance under the direct authority of the Government;
  - (ii) through legislation and educational programmes;
  - (iii) with the collaboration of employers' and workers' organisations and, if necessary, other non-governmental bodies.

Pakistan (ratification: 1961)

In previous observations, the Committee referred to a resolution of the Subcommission on Prevention of Discrimination and Protection of Minorities of the United Nations Commission on Human Rights, which expressed grave concern that persons charged with and arrested for violations of the Anti-Islamic Activities of the Qadiani Group, Lahori Group and Ahmadis (Prohibition and Punishment) Ordinance, 1984 (Ordinance No. XX of 1984) and also the affected groups as a whole had been subjected to discrimination in employment and education. The Committee requested the Government to review this matter and take the measures necessary to ensure the observance of the Convention.

The Committee notes the statement of the Government in its report that there is full religious freedom for all the minorities including qadianis, that the interests of minorities are fully safeguarded, that all minorities including qadianis have the right to profess, practise and propagate their religion, that they have also the right to establish and maintain religious institutions, and that it is hence not true that in Pakistan qadianis or members of any other minority are being subjected to discrimination based on faith or religion. The Committee also notes the observation supplied by the Pakistan National



Federation of Trade Unions stating that the law does not debar the quadianis from propagating their faith as "quadianis".

The Committee takes note of these indications. It must, however, point out that under the provisions of Ordinance No. XX (section 3(2), in particular) members of the religious groups concerned may be sentenced to imprisonment, inter alia, for propagating their faith. The Committee, in its previous observation, pointed out that such punishment has a direct bearing on their opportunities regarding employment. It wishes to refer, in this context, to the allegation transmitted by a Special Rapporteur appointed in accordance with Resolution 1986/20 of the United Nations Commission on Human Rights to the Government of Pakistan that a first-class technician in the air force has been dismissed from his function for belonging to the Ahmadi faith (E/CN.4/1989/44, p. 29). The Committee also noted the written statement submitted by the Anti-Slavery Society for Protection of Human Rights to the Commission on Human Rights (E/CN.4/1987/NGO/67, 6 March 1987), in which it was alleged, among other things, that the issue of a passport is refused to a Muslim in Pakistan if he does not declare in writing that the founder of the Ahmadiyya movement in Islam was a liar and an impostor. Such measures would clearly deprive persons of the freedom to choose an employment abroad and result in discrimination in access to employment on the ground of religion.

With a view to ensuring the observance of the Convention, the Committee again expresses the hope that the Ordinance and any administrative measures affecting members of religious groups in employment will be reconsidered and that the necessary measures will be taken in this regard to bring legislation and practice into conformity with the Convention. Pending amendment of the legislation, the Committee requests the Government to supply detailed information on the status of persons covered by the Ordinance in their employment and occupation, including their freedom to seek employment abroad on the same footing as other nationals.

#### Paraguay (ratification: 1967)

1. In previous comments, the Committee has referred to section 34 of Act No. 200 establishing the Public Employees' Statute, according to which no public employee may engage in activities contrary to public order or to the democratic system established by the national Constitution.

The Committee notes the information provided by the Government in its report, concerning the practical application of section 34 of Act No. 200, to the effect that if public employees engage in activities contrary to public order they may be removed from their posts and barred from holding public office for a period of from two to five years (section 49.5 of Act No. 200).

The Committee recalls that provisions restricting the political activities of public employees may have the effect of excluding from the scope of constitutional and legal protection against discrimination with regard to employment, persons who express or manifest certain opinions or political ideas which are contrary to the opinions of the established authorities. It is therefore important to

ascertain whether, in practice, the above provisions lead to discrimination on the basis of political opinion for the categories of workers concerned.

The Committee, in order to be able to ascertain the effect given to the Convention, hopes that the new Government will provide a copy of any sentences handed down or decisions made by virtue of sections 34 and 49.5 of Act No. 200, and will supply any further information that may enable it to ascertain the scope of the provision contained in section 34 of Act No. 200.

2. The Committee has also referred to sections 10, 11 and 14 of Act No. 294 (Defence of Democracy Act) under which:

No public institution or service maintained by the State or by municipal authorities, or enterprises providing public services, may employ public servants, employees or manual workers who are members, openly or secretly, of the Communist Party or of the other organisations referred to in this Act, or who have committed any of the offences set out in the Act. (section 10);

The executive authority shall close any private teaching establishment that does not exclude from its managerial, teaching or administrative staff, persons who are members, openly or secretly, of the unlawful organisations referred to in this Act, or who have been sentenced for any of the offences punishable under the Act. (section 11);

Public servants who are convicted of any such offences shall be dismissed, and in addition to their corresponding sentences, shall be totally disqualified for twice the length of their sentence. (section 14).

In its report, the Government states that it has taken due note of the comment made by the Committee of Experts concerning sections 10, 11 and 14 of the Defence of Democracy Act.

The Committee recalls that the Convention affords protection against any discrimination on grounds, *inter alia*, of political opinion. It also recalls the indications in paragraph 57 of its 1988 General Survey on Equality in Employment and Occupation, to the effect that the protection of freedom of expression is aimed not merely at the individual's intellectual satisfaction at being able to speak his mind, but rather - and especially as regards the expression of political opinions - at giving him an opportunity to seek to influence decisions in the political, economic and social life of his society. For his political views to have an impact, the individual generally acts in conjunction with others. Political organisations and parties constitute a framework within which the members seek to secure wider acceptance of their opinions. To be meaningful, the protection of political opinions must therefore extend to their collective advocacy within such entities. Measures taken against a person by reference to the aims of an organisation or party to which he belongs imply that he must not associate himself with those aims and accordingly restrict his freedom to manifest his opinions.

The Committee wishes to recall also that, under Article 3(c) of the Convention, each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice, to repeal any statutory provisions and modify any

administrative practices which are inconsistent with the principles of equality set forth in the Convention.

The Committee firmly hopes that the new Government of Paraguay will take the necessary measures for the repeal of sections 10, 11 and 14 of Act No. 294 and that the Government will report on progress made in this respect.

The Committee is also addressing a request directly to the Government on this point.

#### Romania (ratification: 1973)

The Committee notes the Government's report on the application of the Convention. It also notes a communication by the General Confederation of Labour "Force Ouvrière" (France) of 13 March 1989 drawing attention to the Report on the Situation of the Hungarian Minority in Romania, prepared for the Hungarian Democratic Forum in Budapest in 1988, and the Resolution 1989/75 on the Human Rights Situation in Romania adopted by the United Nations Commission on Human Rights at its 45th Session in March 1989.

1. Political opinion and social origin. In comments made for several years, the Committee noted that under section 2 of the Labour Code all citizens of Romania are guaranteed the right to work without any restriction or distinction based on sex, nationality, race or religion. It noted that section 2 of the Labour Code does not cover discrimination based on political opinion or social origin, grounds expressly mentioned in Article 1(a) of the Convention.

In its latest report, the Government reiterates its earlier indications that, on the basis of the fundamental principle of equality of opportunity or treatment in employment and occupation, the Constitution and the Labour Code guarantee the right to work without any discrimination.

The Committee takes due note of this indication. It observes that article 17 of the Constitution as well as section 2 of the Labour Code omits political opinion and social origin from the prohibited grounds of discrimination.

The Committee previously also referred to various statutory instruments which require workers to have a specific political outlook:

(a) The Committee noted that according to article 1 of the Decree of the Council of State No. 413 of 5 December 1979 approving the conditions of service of civil aviation staff, the staff in question contributes to the implementation of the policy of the Romanian Communist Party. Article 2 of the Decree provides that civil aviation staff shall be highly aware politically and shall demonstrate boundless devotion to their country, the people and the Party.

In its report, the Government states that article 2 of the Decree does not govern the engagement or promotion of civil aviation staff, but establishes the qualities which staff working in civil aviation must have; the Government adds that this staff must realise state policy in the field of air transport with a view to ensuring an increase of agricultural production, emergency sanitary assistance, sport and the development of tourism.

According to the Government, article 2 of the Decree reads as follows: "Civil aviation staff must have a high political conscience; demonstrate devotion to their country and the people, give evidence of firm discipline and thorough vocational training".

The Committee notes that the reference to boundless devotion to, *inter alia*, the Party has been omitted from the wording quoted by the Government. It hopes that the Decree has been accordingly amended and that the Government will supply a copy of the amending legislation, and of any statutory instrument defining more strictly what is to be understood by "high political conscience".

As regards the provisions governing the engagement and promotion of civil aviation staff, which are laid down in articles 22 to 26 of the same Decree, the Committee notes that under article 23, persons to be promoted must fulfil, *inter alia*, the following conditions: ... (b) have a good political-ideological training; (c) give evidence of profound attachment to the socialist system and to the interests of the whole people; (d) apply with consistency the policy of Party and State.

The Committee asks the Government to supply information also on any measures taken in this regard, in conformity with Article 3(c) of the Convention, to repeal those statutory provisions which are inconsistent with a policy of equality of opportunity and treatment, without any distinction, exclusion or preference made on the basis of political opinion or social origin.

- (b) The Committee previously also referred to article 62(s) of Act No. 5 of 1978 on the organisation and management of state socialist undertakings, inserted by Act No. 24 of 23 December 1981, which provides that decisions concerning promotion to management level in the enterprise are made by the general assembly of workers taking into account political training.

In its report, the Government states that article 62(s) of the Act makes no decision but refers to the general assembly of workers which "pronounces itself" on proposals for promotion to management functions in the unit, taking into account the vocational and political training of those concerned and their contribution to the good deployment of its activity.

The Committee again requests the Government to indicate any measures taken in this regard, in conformity with Article 3(c) of the Convention, to repeal those statutory provisions which are inconsistent with a policy of equality of opportunity and treatment without any distinction, exclusion or preference made on the basis of political opinion.

2. National extraction. The Committee has taken note of the Resolution 1989/75 on the Human Rights Situation in Romania, adopted in March 1989 by the United Nations Commission on Human Rights. In this Resolution, the Human Rights Commission, *inter alia*, notes that the Romanian Government's policy of rural systematisation, which involves forcible resettlement and affects long-standing traditions, would, if implemented, lead to a further violation of the human rights of large sectors of the population; the Human Rights Commission expresses its concern at the imposition of increasingly severe

obstacles for Romania's national minorities to maintain their cultural identity.

In its comments, the General Confederation of Labour "Force Ouvrière" refers to the Report on the Situation of the Hungarian Minority in Romania mentioned in the introductory paragraph of this observation, which contains, inter alia, the following indications:

- (a) The present number of Romanian citizens of Hungarian national extraction must be, according to conservative estimates, between 2.1 and 2.2 million, i.e. 9.5 per cent of the total population. The 1977 Census showed 22 per cent of the total population of Transylvania to be Hungarian. Other national minorities inhabiting this region in substantial numbers are Germans, South Slavs, Slovaks, Ukrainians, Jews and Gypsies.
- (b) Migration from Romanian-inhabited provinces to Transylvanian towns and centres is encouraged through resettlement allowances and other economic incentives, while Hungarian intellectuals and professionals from Transylvania, upon completing their studies, are assigned to solely Romanian-inhabited districts, under a strictly centralised system of work assignment which gives authorities far-reaching freedom of manipulation so that increasingly fewer Hungarian teachers, physicians, agronomists, etc., can find jobs in Hungarian-inhabited areas.
- (c) The controlled geographical location of industrial investments, the creation or suppression of jobs and workplaces, restricted employment (the use of a numerus clausus), the designation of cities "closed" to Hungarians, deliberate manipulation of permits for resettlement, home building and flat allocation, as well as the practice of "zoning", viz. the preferred development of some settlements and the hindering or destruction of others, are all used by the authorities within a policy of discrimination against national minorities.
- (d) In early 1988, the Government announced a programme to liquidate by force some 8,000 villages on the pretext of "modernising agriculture". If the scheme is implemented, it is bound to obliterate even the memory of the existence of smaller nationalities and will deal an irreparable blow to the large community of Transylvanian Hungarians as well. As a result, hundreds of settlements having a majority or a considerable number of Hungarian inhabitants in Harghita/Harghita, Kovászna/Covasna, Kolozs/Cluj, Bihar/Bihor, Maros/Mures, Fehér/Alba and other countries will disappear from the map.
- (e) There has been a steady decline in the ratio of Hungarians in intellectual professions since 1956, the reasons for this tendency being discrimination in admission to universities, the almost complete suppression of mother-tongue teaching in higher grades of education, and wholesale emigration.
- (f) The number of unemployed in Transylvania is estimated at 300,000 to 400,000, with Hungarians constituting a very high proportion. Under the new wage regulations, workers receive only a part of their salaries. In 1985 and 1986, the loss of income was compensated for in several enterprises by the payment of special premiums, but this extra allowance was granted to very few Hungarian workers.

- (g) The effect of constitutional and legislative provisions concerning minorities is determined by the politico-legal system which lacks genuine constitutionality relying on the principle of legality and the unequivocal administration of justice. Central and local party organs, whose heads are simultaneously leading officials of administrative agencies, the councils, are given a wide scope of arbitrary action. The interpretation of legal provisions and the manner of their application must be in accordance with party instructions, which may, and occasionally even do, revise the literal text of the provision in question. For this reason, many formally unrepealed laws cease to have effect in practice or, conversely, uncodified directives are strictly followed. An especially important regulatory role is played by secret directives, which are usually oral and, thus, non-documentable sources of illegal acts and other abuses. These can be detected only indirectly through their effect. This accounts, for example, for the steady decline in the number of students of Hungarian and other ethnic origins gaining admission to universities. A significant role in legal practice is played by the police authorities and by Securitate, the state security organ. Directives of the latter are sometimes decisive in administrative decisions or judgments handed down by courts of law, especially when political importance is attached to the case in question.
- (h) The Hungarian Nationality Workers' Council was set up in the late 1960s - parallel with a German body bearing a similar name - as an "agency of interest representation", whose members were appointed by the Government. To this day the Council does not have its own statutes, membership, and apparatus. Initially, it met once a year; later, only sporadically, at widely spaced intervals and exclusively in connection with international programmes. Its meetings are conducted in Romanian and only serve a demonstrative purpose. The Government has assigned the Council the function of representing the government position. In its meetings, the compulsorily appointed speakers often have to read out texts prepared for them. Those reluctant to do so (as it happened, for example, after the Council meeting held in early 1987) are called to account at their workplace or before the authorities.
- (i) By the middle of the 1980s, all officers of ethnic minority origin had been removed from military leadership, and the dismissal of lower-echelon officers is now in progress. Among senior officers of the para-military formations (Patriotic Guards, Homeland Falcons), it is virtually impossible to find persons of minority origin, even in those territories largely inhabited by a minority population. The state security service, Securitate, employs minority members as agents and informers, but its upper echelons remain exclusively in the hands of "pure Romanians" judged to be loyal to the regime. The secret police plays a particularly important role in the implementation of anti-minority policies.
- (j) As a consequence of restrictions, mother-tongue teaching today is confined almost exclusively to the level of primary education,

but even there its possibilities have been drastically reduced. Since the middle of this decade, there has been no autonomous establishment of secondary or higher education teaching in Hungarian or any other minority language. Minority schools have thus become sections of educational institutions for mixed nationalities where, by means of internal (usually oral only) directives and intimidation, minority languages have been gradually phased out.

- (k) Legislative Decree No. 273/1973 on the organisational set up of educational establishments, issued by the Romanian State Council on 13 May 1973, is based on discrimination by language and nationality and is applicable to all minorities. It provides that "in townships where primary schools offer instruction in the languages of cohabiting nationalities ... sections or classes taught in Romanian shall be organised, irrespective of the number of students". The same decree stipulates also that the number of children shall be at least 25 in primary-school classes and 36 in secondary-school classes. Thus, a class taught in a minority language cannot be opened for less than 25 children at the primary level and 36 students in secondary schools, but there is no minimum number of students for Romanian classes. Romanian dominance can be enforced by this means even in places where national minorities constitute the majority. Elsewhere, school inspectorates were attached to different zones to ensure a Romanian majority in the given area, at the same time forbidding school children to move from one zone to another.
- (l) A special method of limiting vocational training for the minorities involves the education of skilled workers employed in new factories located in Transylvania in trade schools lying east of the Carpathians, since such specialised training is conducted only in those areas.
- (m) Act 6/1969 provides that, in the schools of cohabiting nationalities, education can be entrusted only to teaching staff familiar with the respective languages of instruction. In 1985 and 1986, however, on the basis of an oral directive of the Ministry of Education, the schools in Harghita/Harghita and Kovászna/Covasna counties, where Hungarians are in the overwhelming majority, were compelled to accept the appointment of Romanian teachers with virtually no knowledge of Hungarian. This measure has been one of the harshest ever attacks on mother-tongue education, as revealed in the following facts. In Harghita/Harghita county, where 86 per cent of the children attended Hungarian sections in 1982, 223 newly graduated teachers were posted in 1985. Of these, only eight were native Hungarian speakers, while 191 of the teachers not knowing Hungarian were assigned to Hungarian sections; according to the oral directive issued on this occasion, every teacher shall teach in the language with which he is the most familiar. In Kovászna/Covasna county, the number of teachers not knowing Hungarian who were assigned to Hungarian sections was 132 in 1985 and 150 in 1986. Until the autumn of 1986, all 23 secondary schools of Harghita/Harghita county had Hungarian headmasters. Romanians were then appointed to 17 of the schools. This was the start of



the mass dismissal of Hungarian primary-school headmasters still employed in Transylvania. It becomes readily apparent that the Government is aiming at the eradication of minority education.

- (n) The Government makes use of the university numerus clausus against ethnic minorities. Between 1970 and 1980, the proportion of university students of minority origin - as seen in various official data concerning the nationality composition of students - ranged from 8.08 per cent to 8.32 per cent, and the corresponding proportion of Hungarian students for those years ranged between 5.38 per cent and 5.80 per cent. In comparison, the 1977 Census revealed the proportion of all minorities to be 10.9 per cent, and that of Hungarians, 7.9 per cent of the total population. Assuming, however, that the census of 1977 probably distorted the picture in favour of Romanians, even moderate estimates show the effective ratio of Hungarians to have been nearly 9.3 per cent. This would mean that at least 12,000, rather than 7,497, Hungarian day-students should have been attending universities in Romania in the year 1977.
- (o) The two most important intellectual centres for Hungarians in Romania are the universities of Kolozs/Cluj and Marosvásárhely/Tirgu-Mures. The change in ethnic composition of the teaching staffs of these two institutions, as can be seen from official data presented, is additional proof of the under-representation of the Hungarian minority in higher levels of education in Romania.

The Committee has taken due note of these indications. It hopes that the Government will supply a detailed answer, including information on measures taken or envisaged to give effect to the Convention with regard to equality of opportunity and treatment in employment and occupation, including access to training, for members of national minorities.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Sierra Leone (ratification: 1966)

1. In its previous observations, the Committee noted the Government's indication that no national policy had been declared to promote equality of treatment in respect of access to employment and occupation and as regards terms and conditions of employment and that consequently, it had not been possible to appraise the effect of such a policy. The Committee pointed out that application of the Convention requires the adoption of positive measures in pursuance of a national policy designed to promote equality of opportunity, and requested the Government to supply information on a number of points to be covered by such a policy which were considered in a more detailed request addressed directly to the Government.

The Committee notes the Government's statement in its latest report that it intends to seek the views of the Tripartite Joint Consultative Committee, as soon as it is convened, as to ways in which the aims of this promotional Convention might be further pursued. In the absence of a reply concerning the various questions raised in the



direct request, the Committee wants to hope that full information on these matters will soon be provided.

2. In its previous observations, the Committee noted that the Constitution of Sierra Leone (Act No. 12 of 1978) makes provisions for a one-party system of Government and does not prohibit discrimination on the basis of political opinion, as did the previous Constitution. The Committee further noted that articles 138(3) and 139(3) of the Constitution reserve certain high public offices to members of the recognised party, and asked the Government to supply information on any further provisions adopted which would establish a link between political opinion or affiliation and qualifications for employment. The Government states in its latest report that it is not aware of any such provisions.

The Committee takes due note of this indication and asks the Government to supply full information on present conditions governing access to employment in the public sector, including copies of relevant laws and regulations.

#### Sudan (ratification: 1970)

The Committee notes the Government's reply to its previous comments.

1. In its previous comments the Committee noted the adoption in 1985 of a new Constitution which provides, under article 17, the right to equal opportunity in employment for all citizens and prohibits any discrimination made on the basis of origin, race, colour, sex, religion or political opinion. The Committee requested the Government to indicate the measures taken or envisaged to ensure the implementation of this constitutional provision in practice and the bearing of such measures on the application of the Convention.

In its reply, the Government recalls the constitutional prohibition of discrimination in employment with regard to race, religion or social origin; it adds that the Manpower Act of 1974 does not provide for any discrimination in access to employment and recalls also that under the Public Service Regulations, 1975, all candidates have an equal right to apply for vacant posts in the public administration without any distinction other than those based on their qualifications and competence. Finally, the Government states that the principles of equity and equality apply to all employment available in all regions of the country.

The Committee takes note of these indications on general legal principles. It refers however once again to the explanations provided in paragraphs 25 and 51 of its 1971 General Survey on Discrimination as well as paragraphs 15 and 240 of its 1988 General Survey on Equality in Employment and Occupation in which it stressed the positive and continuous nature of the measures to be taken within the framework of national legislation and policy under Articles 2 and 3 of the Convention and the need for governments to provide detailed information on the various aspects of such continuous action. The Committee therefore hopes that the Government will supply full information on all steps taken at the national, regional or local level to ensure effective promotion of equality of opportunity and

treatment in employment or occupation, irrespective of race, colour, sex, religion, political opinion, ethnic or social origin and that it will indicate the results obtained particularly with regard to: (a) access to vocational training; (b) access to employment and to particular occupations; (c) conditions of employment.

2. As regards measures to protect persons of a certain ethnic or social origin against the imposition of forced labour, the Committee refers to its observation under Convention No. 29.

Spain (ratification: 1967)

The Committee notes the Government's report and the comments of the Trade Union Confederation of Workers' Committees, submitted in a communication dated 7 February 1989, on the application of the Convention.

1. The Committee notes with satisfaction that new progress has been achieved on certain aspects of the implementation of the principle of equality of opportunity and treatment.

The Committee notes in particular Act No. 8 of 7 April 1988, section 12 of which qualifies as serious offences constituting violations of the social order, "unilateral decisions by employers which imply unfavourable discrimination on grounds of age or in which involve favourable or adverse discrimination with regard to remuneration, working time, training, promotion and other terms and conditions of employment on grounds of sex, origin, civil status, race, social situation, religious or political beliefs, membership or non-membership of trade unions and submission to their agreements, kinship with other workers in the enterprise, or language within the Spanish State".

The Committee also notes that, according to the Government, various judicial sentences handed down by the Central Labour Court have struck down clauses in collective agreements establishing discrimination in terms of wages (wage supplements, extraordinary payments) for women. The Government adds that the above sentences ruled that equality in terms of remuneration should be achieved through equalling up, that is increasing the remuneration of female staff and not decreasing that of male staff.

Similarly, the Committee notes that in its rulings, the Central Labour Court has maintained that bonuses awarded under agreements or regulations covering state employees to women who work at night must also be given to male staff under similar circumstances.

The Committee requests the Government to supply a copy of the judicial decisions to which it referred in its report.

2. The Committee also notes that, among plans for the immediate future, a framework agreement is to be formulated for collaboration between the Ministry of Labour and the Ministry of Social Affairs for the development of a plan for equality of opportunity for women in employment. The Committee also notes the inclusion in labour legislation of the express and specific prohibition of conduct implying sexual harassment and of the right to reserve a position of employment for one year in the event of extended maternity leave.

The Committee requests the Government to continue supplying information on the progress made regarding the above projects and to supply copies of their texts once they have been adopted.

3. The Committee notes that, in its communication dated 7 February 1989, the Trade Union Confederation of Workers' Committees alleges that the measures that should have promoted the employment of women have been a failure and that the unemployment rate for women is 27.5 per cent, as against 15.09 per cent for men.

Furthermore, according to the comments made by the same organisation, there are situations in which discrimination occurs on grounds of colour and race, particularly in the Catalan region of Maresme, where coloured workers receive wages that are much lower than those of other workers, and in Ceuta and Melilla, where the same situation applies to Muslim workers.

The Committee hopes that the Government will supply full information on the points raised by the Trade Union Confederation of Workers' Committees and on the measures that have been taken or are envisaged to give effect to the Convention with regard to these matters.

#### Turkey (ratification: 1967)

The Committee notes the information supplied by the Government in its report and the discussion in the Conference Committee in 1987 concerning the application of the Convention. The Committee also notes the comments submitted by the Confederation of Turkish Trade Unions (TURK-IS) which were communicated by the Government in its report (without observations of its own on them) and the comments forwarded directly to the Office in a letter dated 28 February 1989. The latter comments have been forwarded to the Government so that it can make the observations that it deems appropriate.

#### Discriminatory nature of measures taken under martial law (Article 4 of the Convention)

1. In the comments that it has been making for several years, the Committee has noted that section 2 of Martial Law No. 1402, as amended by Act No. 2301 of 19 September 1980, makes it mandatory for the competent authorities to execute immediately every request of the Martial Law Commanders to transfer or dismiss employees or the central Government and to suspend or dismiss officials in local administrations whose services are considered harmful from the point of view of general security, law and order or public safety, or whose work is not considered necessary. The Committee requested the Government to take measures to repeal or amend the provisions in question so as to ensure that civil servants can be transferred or dismissed only on the basis of clearly defined criteria and that such decisions concerning transferral or dismissal will follow procedures guaranteeing adequate protection against decisions that fail to observe these criteria. It also requested the Government to supply

detailed information on the application in practice of the above provisions in provinces in which Martial Law No. 1402 remains in force.

The Government supplies with its report various provisions adopted between March and June 1987 by Parliament, respecting the maintenance and extension of martial law to several provinces for determined periods. The Committee notes that the Government indicates that martial law was lifted throughout the country on 19 July 1987. The Government also states that five public servants had been dismissed since 1985 in provinces in which martial law remained in force and that the last case was in February 1986. The Government does not supply any information on the circumstances and conditions of these five dismissals.

Furthermore, the Government, referring to the provisions of article 10 of the Constitution respecting the equality of the citizens before the law and making it obligatory for all State organs and administrative authorities to act in compliance with this principle, states that it is legally impossible to establish discrimination by misusing the term "security of the State". Furthermore, in accordance with the provisions of article 125, paragraph 1, of the Constitution, recourse to judicial review shall be open against all actions and acts of the administration, and, if the court decides that the administration's act is not just and equitable, compensation will be granted. The Government indicates that some of the persons dismissed after 12 September 1980 have obtained rulings re-instating them in their jobs and granting them compensation.

The Committee understands that the decisions to which the Government refers were rendered after the lifting of martial law. It will therefore revert to these indications concerning the rulings under point 3 of its observation, in relation with the re-examination of cases of dismissal or transfer.

The Committee recalls the comments made on this subject in 1985, to the effect that the legislation in force does not require Martial Law Commanders to take account of the effect that the activities of which the civil servant is accused may have on the performance of the duties inherent in his office when they take decisions concerning transfer or dismissal under the terms of Act No. 1402. The Committee also noted that Martial Law Commanders can also take measures of transfer or dismissal when the work is not considered necessary, a criterion that is irrelevant to the protection of the security of the State and whose application should depend directly on the decision and responsibility of the authorities employing the civil servants. The Committee also refers to the indication in paragraph 136 of its 1988 General Survey that the application of measures intended to protect the security of the State must be examined in the light of the bearing which the activities concerned may have on the actual performance of the job, tasks or occupation of the person concerned.

With reference to the documents communicated by the Confederation of Turkish Trade Unions (TURK-IS), the Committee notes that a Bill to amend certain sections of Martial Law No. 1402 has been submitted to Parliament. The Bill retains the powers previously granted to Martial Law Commanders to request the dismissal or transfer of public servants. However, it limits the duration of dismissal or transfer measures to the martial law period and provides that, while martial

law is in force, the situation of dismissed or transferred persons may, on their application, be re-investigated every six months, and establishes a time limit (30 days) for the administration to reply to a re-investigation request. While noting the progress achieved by the Bill by restricting certain aspects of the powers of Martial Law Commanders, the Committee notes that the Bill does not define or delimit measures intended to ensure the security of the State, for example by strictly defining the criteria on which dismissals and transfers are based. Furthermore, the Committee points out that the existence of the right to appeal can only be considered to be a guarantee to the extent that the substantive conditions to which the Committee refers above are fulfilled.

The Committee requests the Government to indicate any progress achieved, particularly during the adoption procedure of the above Bill, to ensure that measures intended to guarantee the security of the State are sufficiently well defined and delimited so as not to result in discrimination on grounds of political opinion.

2. The Committee noted in its previous comments that under the terms of section 3, paragraph (d), of Martial Law No. 1402, as amended by section 1 of Act No. 2836 of 3 June 1983, Martial Law Commanders may expel from the region under their control persons suspected of being a threat to public order or security or those previously convicted on similar grounds. It requested the Government to indicate the measures that had been taken or were envisaged to ensure that the exclusion measures adopted under the above provisions of the martial law cannot result in discrimination on grounds of political opinion.

The Committee notes that the Government has not supplied any information on this point. With reference to the documents submitted by the Confederation of Turkish Trade Unions (TURK-IS), the Committee notes that the Bill to amend certain sections of Martial Law No. 1402 that has been submitted to Parliament, does not contain provisions respecting this question.

The Committee requests the Government to indicate the measures that have been taken, particularly during the adoption procedure of the above Bill, to ensure that the expulsion measures taken under the above provisions of the Martial Law cannot result in discrimination on grounds of political opinion.

#### Re-examination of cases of dismissal and transfer

3. In its previous comments, the Committee noted that under the temporary provision incorporated into Act No. 2766 of 28 December 1982, the cases of civil servants and other public employees dismissed in accordance with the provisions of section 2 of the Martial Law, will be re-examined by the Martial Law Commanders, and that civil servants and public employees regarded as being undesirable for the public service after their cases have been re-examined by the Martial Law Commanders shall never be employed again in the public service. The Committee requested the Government to supply information on the number of persons regarded as being undesirable in the public service and on the criteria employed as a basis for deciding upon the re-instatement or otherwise of these persons and on the committees set

up in each Ministry. It also requested the Government to continue supplying information on the re-examination of cases of dismissal and on the number of persons re-instated to their former duties.

The Government indicates in its report that the general amnesty Bill, to which a Government representative to the Conference Committee in June 1985 referred, has not been adopted by Parliament. It also indicates that the number of cases of dismissals re-examined under the temporary provision of Act No. 2766 is 3,999 out of a total of 4,530 cases.

The Committee notes that this number of cases is identical with that supplied by the Government in its report for the period ending 30 June 1986 and that the procedure set out in the temporary provision of Act No. 2766 has not been applied since that date.

The Committee notes that the documents submitted by the Confederation of Turkish Trade Unions (TURK-IS) show that applications for re-instatement and compensation were only submitted to the courts after the lifting of martial law and that most of them were, at first, rejected on the grounds that no right for litigation existed. A number of rulings rendered in 1987 and 1988 by the Council of State and by regional administrative tribunals are more in accordance with the principles of law, as can be seen from the extracts of sentences that have been supplied. The Committee notes, from among other extracts, that the nature of the martial law regime requires that the measures adopted by the martial law administration terminate as soon as martial law terminates and that therefore the provisions of Act No. 1402 stipulating that persons cannot be employed in the public service should be evaluated within this context and be limited in locality and duration to the scope of martial law. It is impossible, therefore, to consider as being in accordance with the principles of a State governed by the rule of law and concepts of justice acts under which citizens are prohibited to work in the public service by administrative decisions of the Martial Law Commanders taken outside any jurisdictional supervision, without specifying the action constituting a breach of the law that has as its sanction the life-long prohibition of the person concerned from the public service.

With reference again to the documents submitted by the Confederation of Turkish Trade Unions (TURK-IS), the Committee notes that the Bill to amend certain sections of Martial Law No. 1402, which has been submitted to Parliament, provides that persons who were dismissed after 19 September 1980 will have the right, within one year from the coming into force of the Act, to present themselves for employment in the institutions in which they worked previously and request the re-examination of their cases. Those for whom no juridical obstacle is found will be re-instated in a job that is in accordance with their grade, and their rights at the time of their dismissal will be recognised. The period during which they have remained without employment will not be taken into consideration for the purposes of pension benefits and no payment in compensation for wages or remuneration for this period will be due. Furthermore, students who were expelled from educational institutions after 19 September 1980 will have the right to apply for their cases to be re-examined.

The Committee notes the allegations contained in the documents submitted by the Confederation of Turkish Trade Unions (TURK-IS) to the effect that a number of the provisions of the Bill appear to offer a lower level of guarantees and protection than that offered by the sentences of which extracts are quoted.

The Committee regrets that it has not been in a position to examine the complete texts of the judgements and requests the Government to supply copies of any judgment concerning the re-instatement of persons dismissed under the provisions of Martial Law No. 1402. It hopes that the Bill eventually adopted will not constitute a move backwards from the above-mentioned judgements and that it will ensure the observance of the provisions of the Convention. It requests the Government to continue supplying full information on the re-instatement of persons dismissed during the martial law period.

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In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Argentina, Austria, Bangladesh, Barbados, Bolivia, Brazil, Burkina Faso, Cape Verde, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Ethiopia, Federal Republic of Germany, Ghana, Guatemala, Guyana, Italy, Jamaica, Kuwait, Libyan Arab Jamahiriya, Malawi, Malta, Mauritania, Mexico, Mongolia, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Qatar, Romania, Rwanda, Sierra Leone, Spain, Sudan, Swaziland, Trinidad and Tobago, Turkey, Venezuela, Yugoslavia, Zambia.

#### **Convention No. 112: Minimum Age (Fishermen), 1959**

A request regarding certain points is being addressed directly to Suriname.

#### **Convention No. 113: Medical Examination (Fishermen), 1959**

A request regarding certain points is being addressed directly to Ecuador.

#### **Convention No. 114: Fishermen's Articles of Agreement, 1959**

Cyprus (ratification: 1966)

With reference to its previous observation, the Committee notes from the Government's report that the drafting of the legislative provisions to ensure the application of the Convention has not yet

been completed. The Committee hopes that the Government will soon be able to indicate that the above legislation has been enacted.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, a request regarding certain points is being addressed directly to Panama.

### **Convention No. 115: Radiation Protection, 1960**

Ghana (ratification: 1961)

With reference to its previous observations, the Committee notes from the Government's report that the Radiation Bill has still not been adopted, but that it will be given prompt attention upon the re-establishment of the National Advisory Committee on Labour. The Committee can only reiterate the hope that the Bill, to which reference has been made for more than 15 years, will be adopted without further delay and that a copy will be sent with the next report.

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In addition, requests regarding certain points are being addressed directly to the following States: Brazil, Guinea, Poland.

### **Convention No. 117: Social Policy (Basic Aims and Standards), 1962**

Requests regarding certain points are being addressed directly to the following States: Brazil, Venezuela.

### **Convention No. 118: Equality of Treatment (Social Security), 1962**

France (ratification: 1974)

The Committee takes note of the information supplied by the Government in its report.

1. (a) Article 3, paragraph 1, of the Convention, branch (d) (Invalidity Benefit). In reply to the Committee's previous comments concerning the grant of supplementary allowance (section L.685 of the Social Security Code) to the nationals of all the States Members parties to the Convention and not only to French nationals and nationals of countries that have signed an international reciprocity agreement (as provided by section L.707 of the above Code), the Government indicates that the supplementary allowance of the National



Solidarity Fund is an assistance-type benefit designed to guarantee to the beneficiaries a minimum amount in relation to the cost of living in France. The grant of the supplementary allowance of the National Solidarity Fund is guaranteed, as an assistance-type benefit, to nationals of member States of European Economic Community under the same conditions as it is to French nationals. Nationals of other States can obtain the supplementary allowance only if these States have signed a reciprocity agreement with France. The Committee takes note of the Government's statement. However, it must refer to its previous comments to the effect that, according to the meaning in the Convention (Article 1(b)), the term "benefits" refers to "all benefits, grants and pensions, including any supplements". The Committee observes that the award of the supplementary allowance is conditional on the right to a basic benefit (in this case, an invalidity benefit) of which this allowance is a supplement, and the nationals of all member States bound by the Convention should therefore be guaranteed entitlement to this allowance. In this connection, the Committee takes note of the Ministerial Letter of 10 June 1988 from the Ministry of Social Affairs and Employment referring to the judgement of the Court of Justice of the European Community in the case of Giletti et al. of 24 February 1988, in which the Court found that the supplementary allowance of the National Solidarity Fund is a social security benefit when it is supplementary to an old-age, survivors' or invalidity benefit; the main ground on which the Court based its judgement is the link between the supplementary allowance and an old-age and/or invalidity benefit. The Committee can only express once again the hope that the Government will adopt the necessary measures to give full effect to this provision of the Convention.

In addition in its previous comments, the Committee, which had previously taken note of the observations of the General Confederation of Labour (CGT) in relation to Convention No. 97, concerning the conditions of payment of allowance to disabled adults instituted by Act No. 75-534 of 30 June 1975, expressed the hope that the provision of this allowance could be guaranteed to nationals residing in France of all States that have accepted the obligations of the Convention (subject to the possibility open to the Government of availing itself of Article 4, paragraph 2(b), making the grant of the allowance dependent on a period of residence of up to five years). It stressed the fact that the characteristics of this allowance for disabled adults linked it in law to non-contributory social security benefits, such as those covered by Article 2, paragraph 6(a), and not to assistance benefits. In this connection, the Committee noted from the reply of the Minister of National Solidarity to the written question of a senator (Official Gazette of the Senate, 3 Apr. 1982, p. 906) that the possibility of granting all foreigners the right to allowance for disabled adults, subject to a certain period of residence, was being thoroughly examined. The Committee again expresses the hope that the next report will contain information on the progress made in implementing this provision of the Convention.

(b) Article 4, paragraph 1, branch (d) (Invalidity Benefit) and branch (f) (Survivors' Benefit). In its previous comments, the Committee noted that the legislation made the payment of social

insurance benefits (in this case, invalidity and survivors' benefits) to foreigners insured under the general scheme (section L.245 of the Social Security Code), the agricultural scheme (section 1027 of the Rural Code) and the mining sector scheme (section 1984 of Decree No. 46-2769 of 27 November 1946), conditional upon their being resident in France, except where there is an agreement between France and the country of origin of the beneficiary specifically guaranteeing the maintenance of these benefits. The Committee therefore pointed out that, under the above provision of the Convention, the right to invalidity and survivors' benefits should be guaranteed to nationals of all States Members parties to the Convention. The Committee requests the Government to indicate the measures taken or envisaged to ensure that full effect is given to the Convention on this point.

2. Article 5, paragraph 1, branch (d) (Invalidity benefit). In reply to the Committee's previous comments, the Government indicates that, in all cases and in accordance with the provisions of section L.815-11 of the Social Security Code, the supplementary allowance may not be paid abroad, whatever the nationality of the beneficiary. The Committee takes note of this information. In this connection, it refers to the comments under Article 3, paragraph 1, of the Convention concerning the nature of the supplementary allowance, and hopes that the Government will take the necessary steps to amend the national legislation (particularly section L.699 of the Social Security Code) in order to give effect to this provision of the Convention, under which the provision of invalidity benefit, in the case of residence abroad, must be guaranteed both to the country's own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch in question. The Committee requests the Government to indicate the measures contemplated to provide the persons concerned who are resident abroad with the supplementary allowance granted as a supplement to an invalidity pension.

3. Article 6. The Committee notes with regret that, once again, the Government's report contains no information in reply to its comments concerning this Article of the Convention. The Committee is therefore bound to recall that, under this provision, every State which - like France - has accepted the provisions of the Convention in respect of the "family benefits" branch must guarantee the provision of family allowances both to its own nationals and to the nationals of any other State Member that has accepted the obligations of the Convention for this branch, and also to refugees and stateless persons, in respect of children who reside in the territory of any such Member. In this connection, the Committee wishes to point out that the bilateral social security agreements concluded with Israel and Norway (which are parties to the Convention for the "family benefits" branch) do not currently provide for the payment of family allowances and that France has no agreement with certain other countries that have accepted the obligations of the Convention for this branch (namely Bolivia, Central African Republic, Guinea, Libyan Arab Jamahiriya and Viet Nam). Consequently, the Committee expresses the hope that the Government will endeavour to conclude agreements with these States Members, in so far as there is any migration of the type referred to in Article 6, in order to lay down the conditions to

give effect to this provision of the Convention, and that it will modify the agreements already concluded with Israel and Norway in such a way as to ensure the application of this Article also in its relations with these countries.

[The Government is requested to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Brazil, Central African Republic, France, Israel, Jordan, Libyan Arab Jamahiriya, Mauritania, Uruguay.

### Convention No. 119: Guarding of Machinery, 1963

Algeria (ratification: 1969)

Further to its previous comments, the Committee notes with satisfaction that Act No. 88-07 of 26 January 1988 on occupational safety and health and occupational medicine sets forth in sections 7, 8 and 9 principles respecting the guarding of machinery, which are applicable to all sectors of activity, in accordance with Article 17 of the Convention, and that it provides for penalties and supervision of the application of these provisions, in accordance with Article 15 of the Convention.

The Committee notes that, under sections 7 and 8 of the Act, the manner in which these provisions are to be implemented shall be determined by regulations; that, under section 9, standards governing the effectiveness of products, guards and equipment for guarding machinery are to be determined in accordance with the national legislation, after an opinion has been issued by the National Standardisation Commission; and that, according to the Government's last report, the implementing regulations for these provisions are being prepared. The Committee hopes that the Government will be able to indicate in its next report that the implementing regulations in question have been adopted and that they give full effect to Parts II and III of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1990.]

Central African Republic (ratification: 1964)

With reference to its observation of 1986, the Committee notes that the Government refers once again to the draft Decree provided for under section 37 of General Order No. 3,758 of 25 November 1954, as giving effect to Articles 2, 10, paragraph 1 and 11, of the Convention, which provide respectively for the determination of dangerous machines or parts of machines, for the provision of information to workers, and for the prohibition on workers from using machinery without the guards

provided being in position or after making the guards inoperative. The Committee recalls that the draft of this Decree was prepared during a direct contacts mission in 1980 and it trusts that the Government will make every effort to adopt it in the very near future so as to give full effect to these important provisions of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

#### Cyprus (ratification: 1965)

The Committee notes, from the Government's reply to its previous observation, that while the revision of the Factory Act designed to bring it into conformity with the Convention has not yet been completed, it is in the final stages and the text of the new Act will be communicated without fail with the next report. The Committee hopes that the Government will be able to indicate in its next report that the new Factory Act has been adopted and to communicate a copy of this Act.

[The Government is asked to report in detail for the period ending 30 June 1990.]

#### Ghana (ratification: 1965)

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

The Committee notes from the Government's report that its observations will be placed before the Tripartite National Advisory Committee on Labour, which has recently been revived, for consideration and the necessary action. The Committee once again trusts that provisions will be adopted soon in laws or regulations ensuring the application of the Convention in agriculture, forestry, road and rail transport and shipping, in accordance with Articles 1 and 17 of the Convention.

With regard to the application of the Convention in mines, the Committee points out that the Mining Regulations, 1970, the Mining (Amendment) Regulations, 1971 and the Explosives Regulations, 1970, have not been received and again requests the Government to furnish these texts with its next report.

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

#### Guinea (ratification: 1966)

Further to its previous observations, the Committee notes with satisfaction that Order No. 003 PRG/SGG/88 of 28 January 1988 issuing the Labour Code, contains provisions on the guarding of machinery that are applicable to all sectors of economic activity, including the maritime and agricultural sectors, in accordance with Article 17 of

the Convention. The new Labour Code also gives effect to the provisions of Article 11 of the Convention, forbidding workers to use machinery without the guards provided being in position or to make inoperative the guards provided.

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

Jordan (ratification: 1964)

See under general observations.

Madagascar (ratification: 1964)

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous observation, which read as follows:

Part II, Articles 2 to 4, of the Convention. In its previous observations, the Committee noted that although the national legislation (and in particular Order No. 889 of 20 May 1960) contains detailed provisions prohibiting the installation and use of machinery and parts of machinery of which the dangerous parts are without the appropriate guards, in accordance with Part III of the Convention, there is no reference to the prohibition of the sale, hire, transfer in any other manner or exhibition of this machinery as laid down in the provisions of Part II, Articles 2 to 4, of the Convention. The Committee therefore requested the Government to take the necessary measures to insert into the national legislation a formal provision intended to give full effect to the Convention with regard to the above.

For a number of years, the Government has been stating in its reports that it will take into account the Committee's comments, but has not indicated the positive measures that it has taken or is contemplating in this respect.

As the report received in 1987 contains no new developments in this respect, the Committee can only repeat the question once again with the hope that the Government will not fail to indicate in its next report the measures that have been taken in order to bring the national legislation fully into conformity with the Convention.

Morocco (ratification: 1974)

The Committee notes from the Government's reply to its previous direct request that the draft Labour Code which, according to the Government's previous statements, was to contain provisions giving effect to Article 11 of the Convention has not yet been adopted. The Committee trusts that the draft Labour Code, to which reference has

been made for more than ten years, will be adopted very shortly and that it will provide that no worker shall be authorised or required to use machinery without the guards provided being in position and that it is unlawful for such guards to be made inoperative, in accordance with Article 11 of the Convention.

The Committee notes that the Government has not provided the information requested in its previous direct requests concerning measures ensuring the application of the provisions of the Convention to machinery used in agriculture, in accordance with Article 17 of the Convention. It trusts that the next report will indicate the measures taken or envisaged, possibly as part of the draft Labour Code which is being prepared, to give full effect to the Convention on this point.

Niger (ratification: 1964)

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

The Committee notes from the Government's report that the draft Decree to issue the rules on safety and health to be observed in the use of machinery, which is intended to give effect to the Convention, has been amended to take account of the earlier comments of the Committee. The Committee hopes that this draft will be adopted shortly and that it will also take account of the comments made in the request being addressed directly to the Government.

Sierra Leone (ratification: 1964)

The Committee notes that the Government's report has not been received. It notes, however, the information supplied by the Government to the Conference Committee in 1988 in reply to its previous observations, to the effect that the Factories Act was adopted by Parliament in 1987 and was due to come into force in 1988. The Committee trusts that the provisions of this Act give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any manner and exhibition of unguarded machinery) and to Article 17 (application of the provisions of the Convention to all sectors of economic activity). It requests the Government to supply a copy of the new Act with its next report.

Zaire (ratification: 1967)

The Committee notes from the Government's reply to its previous observation that the draft Labour Code, which is to contain a provision establishing the principle of protection set forth in the Convention, has been adopted by the National Labour Council and is now to be adopted and promulgated by the competent national authorities. It hopes that the Labour Code will be adopted at the earliest possible date.

The Committee also expresses the hope that the draft Order on the guarding of machinery, which the Government referred to in its previous report and which was to bring the legislation into conformity with Articles 2 and 4 (prohibition of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards) and with Article 17 of the Convention (extension of the guarding of machinery to the agricultural sector) will also be adopted in the very near future.

Since the Committee has been pointing out for a number of years that measures should be taken to give effect to the above-mentioned provisions of the Convention, it trusts that the Government will be able to provide the text of the Labour Code and the above-mentioned Order with its next report.

[The Government is asked to report in detail for the period ending 30 June 1990.]

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In addition, requests regarding certain points are being addressed directly to the following States: Dominican Republic, Guinea, Kuwait, Malaysia, Niger, Panama, Paraguay.

Information supplied by Spain in answer to a direct request has been noted by the Committee.

### **Convention No. 120: Hygiene (Commerce and Offices), 1964**

#### Algeria (ratification: 1969)

With reference to its previous comments, the Committee notes with satisfaction that Act No. 88-07 of 26 January 1988 on occupational health and safety and occupational medicine gives effect to the various provisions of the Convention. The Committee is raising certain points in a request addressed directly to the Government.

#### Ecuador (ratification: 1967)

Further to its previous comments, the Committee notes with satisfaction that Decree No. 2393 of 13 November 1986 promulgating regulations on workers' safety and health and improvement of the working environment gives effect to Article 11 (layout of workplaces and arrangement of work stations) and Article 15 (facilities for changing, leaving and drying clothes) of the Convention.

#### Guinea (ratification: 1966)

Further to its previous observations, the Committee notes with satisfaction that the new Labour Code (Ordinance No. 3/PRG/SGG/88 of 28 January 1988) lays down penalties for infringements of the



provisions relating to safety and health, in accordance with Article 6, paragraph 2, of the Convention.

The Committee notes that the new Labour Code contains general provisions concerning health and safety which give effect to various Articles of the Convention and provides for ministerial orders to prescribe more specific measures for ensuring health and safety in all establishments. The Committee hopes that those measures will be prescribed shortly, that they will be framed after consultations with the representative organisations of employers and workers concerned, in accordance with Article 5 of the Convention, and that they will ensure full application of the following Articles of the Convention: Article 8 (ventilation); Article 9 (lighting); Article 12 (drinking water); Article 14 (seats for all workers); and Article 18 (noise and vibrations).

Article 1 of the Convention. The Committee notes that section 1 of the Labour Code excludes the public service from the application of the Code. It requests the Government to indicate how the Convention is applied to the public service.

Jordan (ratification: 1965)

See under general observations.

Madagascar (ratification: 1964)

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

For many years, the Committee has been calling attention to the fact that there are no specific laws or regulations to ensure the full application of Articles 14 and 18 of the Convention, which provide that seats shall be supplied to all workers without distinction of sex and that noise and vibrations likely to have harmful effects on workers shall be reduced as far as possible. Since 1975, the Government has stated in its reports that the Order provided for by the Labour Code of 1975 will give full effect to the above-mentioned provisions of the Convention. The Committee notes from the Government's report that no progress appears to have been made in the adoption of this Order. It trusts that this Order will be adopted in the near future and that it will give full effect to the provisions of the Convention. The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Paraguay (ratification: 1967)

The Committee notes from the Government's reply to its previous observation that the Bill concerning occupational safety and health and occupational medicine which, according to the previous report, is to take account of all the comments made by the Committee, is at an



advanced stage of discussion by the National Congress and will be transmitted to the Office as soon as it is adopted. As the matter has been raised for a number of years, the Committee again expresses the hope that this Bill will be adopted in the very near future in order to ensure the application of Article 10 (temperature of the premises) and Article 18 (reduction of noise and vibrations) of the Convention and, in accordance with Article 4(b), to give such effect as may be possible and desirable under national conditions to the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120).

In addition, the Committee would again request the Government to supply copies of the rules by which effect is given to the Convention in enterprises operated by the State, municipalities and other autonomous or self-governing bodies to the extent that the above-mentioned Bill does not apply to such enterprises and bodies.

Portugal (ratification: 1983)

Further to its direct request of 1987, the Committee notes with satisfaction the Regulations concerning occupational safety and health in commercial establishments, offices and services, approved by Legislative Decree No. 243 of 20 August 1986, which have been adopted in order to give effect to the Convention and to Recommendation No. 120. As provided for by Article 4 of the Convention, the Regulations apply the various provisions of the Convention and, to a large extent, the Recommendation.

The Committee is asking for further information on certain other points in a request addressed directly to the Government.

Senegal (ratification: 1968)

Further to its previous comments, the Committee takes note of the amendments made to the Labour Code by Act No. 87-29 of 18 August 1987 which contains general provisions in matters of health and safety. The Committee notes, however, that the draft Order laying down health and safety regulations has still not been adopted. The Committee must, therefore, reiterate the hope that the draft will be adopted in the very near future and that it will require the provision of seats for all workers, as called for in Article 14 of the Convention, and provide for the reduction of noise and vibrations likely to have harmful effects on workers, as required by Article 18. It also hopes that the draft will give such effect as may be possible and desirable under national conditions to the provisions of the Hygiene (Commerce and Offices) Recommendation, 1964, in accordance with Article 4(b) of the Convention.

Switzerland (ratification: 1966)

In its earlier comments, the Committee noted that the only legislative provision relating to hygiene in commerce and offices was section 6 of the Federal Labour Act, which places on employers a

general obligation to make the necessary arrangements to protect workers' life and health. It pointed out that this provision was not sufficient to ensure observance of the detailed requirements of the Convention. The Government indicated that, upon ratification, the Convention had become applicable as part of Swiss law. The Committee stressed, however, that Article 4 of the Convention required the adoption of laws or regulations to ensure the application of its provisions and that, in accordance with Article 6 of the Convention, measures were necessary to provide for the enforcement of observance of the Convention.

Since 1979, the Government has been referring to a revision of Ordinance No. 3 respecting hygiene and the prevention of accidents in industrial undertakings so as to render it applicable to non-industrial undertakings. The Committee notes that, according to the last report, Ordinance No. 3 is still in the process of revision.

The Committee is aware that in practice, Ordinance No. 3 is applied, as appropriate, by analogy in non-industrial undertakings. However the Government recognised earlier the need for binding rules on this matter. The Committee therefore trusts that the Government will very shortly take the measures necessary to formally ensure the implementation of the general principles set out in Part II of the Convention and that it will be able to communicate in its next report copies of any relevant legislation which has been adopted.

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In addition, requests regarding certain points are being addressed directly to the following States: Algeria, Bolivia, Djibouti, Portugal, Spain.

Information supplied by Sweden in answer to a direct request has been noted by the Committee.

### **Convention No. 122: Employment Policy, 1964**

#### Belgium (ratification: 1969)

The Committee notes the Government's two reports on the application of the Convention and the reply to its previous observation. The very detailed information which they contain covers a range of specific measures taken to mitigate the effects on the labour market of the programme of economic recovery put into effect since 1982.

Referring to its previous comments, the Committee notes in particular the extension by law for 1987 and 1988 of the so-called "5-3-3" agreements as well as the complementary "Employment Promotion" agreement. The 5-3-3 agreements provide for a 5 per cent reduction of working time with a 3 per cent compensatory recruitment of labour, employers being entitled to retain the product of the wage moderation which averages out at 3 per cent of the payroll. The "Employment Promotion" agreement invites enterprises to take new measures to promote employment (for example, recruitment of apprentices, part-time

work, and career interruption) at a cost of up to 1.5 per cent of their total wage bill. Non-observance by employers of the obligations set out in the two types of agreement is sanctioned by the payment of a percentage of the wage bill into the Employment Fund.

The Committee also notes a new agreement to promote employment that has been in force since 1986, namely the inter-occupational agreement of 7 November 1986, which is a model agreement for the period 1987-88, marks the return to the principle of free joint negotiation, and is concerned principally with employment promotion, in particular for young people. It provides for the use of 0.5 per cent of the total payroll for this purpose. It also contains specific provisions for the reduction of working time, and other measures concerning problems of labour market flexibility. The Committee further notes that the Government, in its recommendations for the 1989-90 inter-occupational agreement, requests the social partners to continue their efforts in the area of employment creation and considers that the improvement in purchasing power of wage earners should involve an element of solidarity with the unemployed.

The many and continued efforts made in co-operation with the social partners, as called for by Article 3 of the Convention, bear witness to the Government's determination to implement an active employment policy. The Government states, in its report, that employment promotion should be the ultimate policy objective, and that competitiveness and stability are indispensable to attaining that objective. In the absence of available or appropriate data to evaluate the general employment policy, the Committee notes that the trend towards a certain improvement in the labour market situation has been observed during the period 1986-88. Total employment continued to increase in 1986 and 1987 (although at a slower rate) and this growth can be attributed entirely to the private sector: employment has ceased to grow in the public sector with the implementation of economy measures since 1982. Unemployment shows a slight decrease while remaining at a high level. The Committee noted in its previous observation that the rate of unemployment was 12.4 per cent for the second quarter of 1986. Currently, the rate is approximately 11 per cent of the economically active population for the period 1986-88, the improvement being particularly marked among young people. On the other hand, long-term unemployment has continued to deteriorate. According to the latest edition of "Employment Perspectives" (OECD, September 1988), the incidence of long-term unemployment, that is the proportion of the unemployed who had been out of work for longer than 12 months, amounted to 70 per cent in 1987. Another cause for concern is the profound change in the type and structure of employment which the Government indicates has been the price to pay for the progress made since 1983: the "explosion" in part-time work (which has become the main source of employment creation); the appearance of precarious forms of employment and of so-called "peripheral" forms of employment, the increasing difficulty of finding the divisions between employment, unemployment and inactivity.

The Committee hopes that, in accordance with Article 2, the Government will continue to endeavour to decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives of the

Convention as set out in Article 1. It would be grateful if the Government would continue to supply information on any developments relating to the questions and concerns referred to above and if, when the appropriate data and analyses are available, it would supply a summary report on the impact on employment of economic and social policy measures (Part VI of the report form).

Bolivia (ratification: 1966)

1. The Committee notes the information supplied by the Government in reply to its previous comments. The Government recalls that, as a result of the world-wide crisis which began in 1980, and the fall in the international prices of minerals, there was a serious deterioration in the national balance of payments and a drastic reduction in income from taxation, which obliged the Government to take economic, fiscal and monetary measures to combat the serious situation. The Government repeats that it will implement emergency employment programmes including an active employment policy as referred to in Article 1, paragraph 1, of the Convention and in accordance with the measures proposed in the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169). The Government refers in particular to the Emergency Social Fund through which employment generation measures in urban and rural areas were financed, in order to implement such projects for the sectors most affected by economic restructuring.

2. The Committee notes that the major success of the stabilisation policy pursued by the authorities since the end of 1985 has been to control hyper-inflation: indeed, the inflation rate has been reduced from 2,800 per cent to 15 per cent. Nevertheless, the Committee notes with concern that, according to the information available in the Office, unemployment has increased steadily, and it can be estimated that one-fifth of the economically active population was unemployed or underemployed at the end of 1987. The informal sector has absorbed some of the workers who lost their employment as a consequence of the rationalisation measures carried out in the public sector: for example, according to the Government, a total of 23,000 workers were redeployed from the Bolivian Mining Corporation (COMIBOL) of whom 8,000 chose to enter the rural or informal sectors. Furthermore, it appears from the Government's report that the economic crisis has resulted in reductions in vocational training programmes.

3. The Committee once again trusts that the Government will declare and pursue, in accordance with Article 1, paragraph 1, of the Convention, "an active policy designed to promote full, productive and freely chosen employment". In this connection, the Committee recalls Paragraph 37(h) of Recommendation No. 169, which provides that, when adopting adjustment policies, governments should ensure that they promote employment and the satisfaction of basic needs. The Committee would be grateful if the Government would supply detailed information in its next report on the results achieved by employment programmes.

4. Article 3. In reply to its previous observation, the Government indicates that formal consultation procedures with representatives of employers' and workers' organisations will be

gradually introduced as a function of the subsidies provided to enterprises. It states that consultations with representatives of the economically active population, such as those working in the rural and informal sectors, will be deferred until reliable representatives are found, since at present it is difficult to identify, quantify, or localise them, etc.: it is impossible for the State to know what their needs and requirements are in order to be able to give its support or implement its projects. The Committee again observes that in general the provisions of the Convention and of Recommendations Nos. 122 and 169 on employment policy do not provide for the postponement or suspension of consultations; the consultations provided for in the Convention should not be limited to matters of employment policy in the narrow sense, but should be extended to all aspects of economic policy which affect employment. Furthermore, in addition to providing for consultations in the formulation of employment policies, the instruments also envisage obtaining the co-operation of representatives of employers and workers in the implementation of this policy (see paragraphs 96 and 100 of the Committee's General Survey of 1972). The Committee therefore trusts that the Government will supply detailed information in its next report on the holding of the consultations required under Article 3 of the Convention.

5. The Government refers in its report to the technical assistance projects submitted to the ILO concerning the organisation of a labour census, the improvement of working conditions and employment in the mining and rural sectors, and employment creation. The Committee hopes that, taking into account the matters raised above, technical assistance projects will receive the necessary financial support for their implementation in order to assist the Government in promoting the application of the provisions of this Convention. The Committee would be grateful if the Government would continue supplying detailed information on the action that is taken and the results that are achieved by projects undertaken with the assistance and assessment of the ILO in order to resolve the problem of unemployment and underemployment (Part V of the report form).

6. In a direct request, the Committee is asking for other information on the application of the Convention.

#### Brazil (ratification: 1963)

1. The Committee notes the Government's report for the period 1987-88. It also notes the written information communicated to the Conference and the discussion in the Conference Committee in June 1988.

2. In its last report, the Government indicates that it proposes to pursue an active employment policy, through a policy of investment and social programmes to absorb the labour force and to extend the formal sector of the labour market, through a wages policy to increase the purchasing power of employees and an industrial relations policy to promote the rights of workers. The Macro-economic Control Plan, launched in the second quarter of 1987, has the objective of achieving economic stability with specific reference to the creation of the conditions for the self-sustained growth of the

gross domestic product in order to ensure the required expansion of employment. The Government Action Plan for 1987-91 considers employment to be the right of the citizens and intends to emphasise it as a social priority. Furthermore, quantitative targets have been set for employment generation for the 1987-91 period.

The Government enumerates the employment promotion programmes undertaken by the National Employment System (SINE) to benefit the most underprivileged groups of the population and the least developed regions of the country. In its report, it also refers to the various aspects of labour and industrial relations legislation which require amendment: first of all, it is necessary to regulate collective and individual dismissals.

3. In its previous comments, the Committee expressed its deep concern at the continued increase in unemployment during the 1982-83 period. The Committee now notes that the open unemployment rate in the principal urban centres, which had reached 7.1 per cent in 1984, decreased to less than 4 per cent in 1987. The measures adopted by the Government within the context of the Cruzado Plan of 1986 resulted in rapid employment generation while at the same time, for a short while, inflation was curbed. Nevertheless, according to the information supplied by the Regional Employment Programme for Latin America and the Caribbean (PREALC), the Macro-economic Control Plan, which was launched in June 1987, has been costly in terms of the deceleration of growth and employment. The objectives of the Government Action Programme, which was commenced in July 1987, have not been achieved with regard to the labour market. Employment stagnated, the minimum wage did not increase and inflation accelerated up to the annual rate of 934 per cent. The formal sector absorbed employment slowly and 25 million workers, that is 45 per cent of the economically active population, found themselves outside the formal labour market, in conditions of underemployment or in a precarious occupational situation.

4. The Committee would be grateful if the Government would continue supplying regular information on its principal policies and on the measures adopted to promote the objective of full, productive and freely chosen employment, and if it would indicate the difficulties encountered in achieving it. This information could include, in particular, indications on investment, fiscal and monetary policy, prices and wages policy and measures to promote balanced regional development (Article 1 of the Convention). The Committee would also be grateful if the Government would describe the procedures adopted to ensure that the effects on employment of its economic and social policy have received due consideration and that the principal measures of employment policy are decided on and kept under periodical review on the basis of statistics on the volume and type of unemployment and underemployment (Article 2).

5. Article 3. The Committee recalls the importance that it attaches to the consultation of representatives of the persons to be affected by employment policy measures that are to be adopted and to taking their experience and views fully into account and securing their full co-operation in formulating and implementing employment policy. It notes with interest, from the Government's report, that when evaluating the implementation of the Programme of Social



Priorities (PPS), which was launched in May 1985, it was found that the projects undertaken with the effective participation of the communities concerned showed the best results at the lowest cost. The Government adds that, despite the few resources available to the Ministry of Labour, some units of the SINE, in collaboration with other institutions, are supporting micro-production units in close collaboration with associations and federations of beneficiaries. The Committee particularly appreciates the results achieved by the Government in establishing consultation procedures with representatives of those working in the informal sector and requests the Government to continue to supply examples of the consultations held regarding employment policy with those who work in the rural sector and the informal sector. Please supply detailed information on other consultations that have taken place in order to promote the objectives of the Convention with representatives of employers and workers.

6. Finally, the Committee notes with interest that the Government has the benefit of the technical assistance of the ILO within the context of a project concerning employment and wage policy. The Committee requests the Government to indicate in its next report the action taken as a result of the technical assistance received in various ILO projects concerning employment policy, in particular in the rural sector.

Canada (ratification: 1966)

The Committee notes the full information provided in reply to the report form and to its previous observation. The Government has described in detail the employment situation in the provinces and among various categories of the population, as well as the measures taken under the Canadian Jobs Strategy (CJS), a new approach to job creation, training and upgrading introduced in 1985. The Government has, in particular, taken steps in the field of social security to facilitate worker mobility and mitigate disadvantages workers might otherwise suffer in transferring from one job to another. It indicates that employment grew at a relatively high rate (2.8 per cent in 1987), whereas part-time employees (72 per cent of whom are women) have become a permanent and significantly large section of the workforce (15.2 per cent in 1987), which may be treated unfairly. Unemployment overall has dropped through 8.9 per cent in 1987 to 7.5 per cent in 1988, according to the Government (the OECD standardised rate for Canada in 1987 being 8.8 per cent); levels of unemployment continued to decline for all ages and across all provinces (e.g. from 12.6 per cent in 1986 to 10.8 per cent in the first half of 1988 for British Columbia).

The Committee trusts the Government will continue supplying information on the measures taken under the CJS. In particular, it hopes the Government will endeavour to show the results of its measures in terms of employment, indicating the extent to which the regions worst affected by unemployment benefit, as well as how far full-time and how far part-time seasonal or casual employment are created. The Committee would be glad if the Government would so far

as possible describe the employment consequences of overall economic policies referred to in the report, especially in the fields of trade (considering that the Free Trade Agreement with the United States which is to be phased in over a ten-year period will require adjustment of the labour force, as already suggested by the measures envisaged by the Alberta authorities), and fiscal and monetary policies. This information will enable the Committee to have a better appreciation of the manner in which effect is given to the aims of the Convention.

Finally, as regards application of Article 3 of the Convention, the Committee notes with interest that many elements of the Government's labour market policies and services include tripartite consultation and that in the Province of Alberta, in particular, consideration is being given to augmenting existing formal consultative procedures through the establishment of regional training councils. It would be grateful if the Government would continue to supply information on any further developments in this field, at the federal and provincial levels.

#### Costa Rica (ratification: 1966)

1. In its previous observation, the Committee noted the communication of 8 July 1987 from the International Confederation of Free Trade Unions (ICFTU) containing a report by the Costa Rican Confederation of Democratic Workers (CCTD). The report contained comments regarding employment policy. These comments referred, in particular, to the reduction in public spending, the increase in external dependence and the measures taken within the stabilisation and structural adjustment programmes prepared with the assistance of international financial institutions (International Monetary Fund, World Bank). The CCTD maintains that the method for stabilising and reactivating the economy imposed by the international financial institutions has resulted in amongst other things a large reduction in expenditure on social policy and therefore a considerable deterioration in the living conditions of the people. The CCTD considers that, despite the increase in minimum wages and the decrease in the open unemployment rate, the living standards of broad categories of the population continue to be seriously affected and inequalities have increased.

2. The Committee notes the detailed information supplied by the Government in a communication dated 25 February 1988, in reply to the comments of the CCTD. The Government maintains that endeavours are being made to rationalise public expenditure and contribute to the development of a more efficient State. It also refers to various measures intended to stimulate production, promote exports and, through a draft reform of the taxation system, to prevent the accentuation of inequalities in the distribution of income. In July 1987, the rate of open unemployment was 5.5 per cent (while in 1982 it had reached 9.4 per cent). Real wages, which fell by almost one-half between 1980 and 1982, regained their level of 1980 in about 1986. In order to promote employment and improve the wages of the most deprived social sectors, the Government established a national programme for



the generation of employment (Decree No. 17269-TSS of 1986, and Decree No. 17436-TSS of 1987). This programme was carried out in three main areas: the generation of productive employment and permanent incomes, training for employment, and temporary employment for the unemployed. The Government also refers to the co-operation and technical assistance provided by the ILO, through a technical co-operation agreement under the National Programme for Employment and Social Development, executed by PREALC with funds from the UNDP. The Committee also notes a brief report on the application of the Convention for the period ending 30 June 1988.

3. The Committee notes with interest that the Government has formulated and implemented an active employment policy along the lines of the objectives set out in the Convention and has achieved, in particular, a decrease in the open unemployment rate. It welcomes the fact that the Government has the benefit of technical assistance, especially the assistance of PREALC, which has promoted the implementation of the Convention. Taking into account the concerns set out by the CCTD and that there is still a need to adopt measures to harmonise the supply and demand of labour with structural adjustment, it hopes that the Government will continue to supply detailed information on the impact on employment of the measures taken to comply with its monetary and financial undertakings. The Committee considers that in order to be in a position to examine in detail the way in which effect has been given to the provisions of the Convention, it will be necessary for the Government to supply in its next report full and detailed information on the matters set out in the report form approved by the Governing Body, with particular reference to the matters raised in its comments, the particular difficulties that have arisen in achieving the objectives of the Government's employment programme, and the consultations with the representatives of the persons concerned, including those who work in the rural and informal sectors (Article 3 of the Convention).

#### Denmark (ratification: 1970)

The Committee notes that the Government's report has not been received. It notes that the level of unemployment, according to figures published by the OECD, had fallen to 7.9 per cent in 1986-87. In its previous observation, the Committee referred to various policies and measures adopted to promote the application of the Convention. It hopes the Government will supply a report for examination at its next session, containing further information in this respect.

#### Finland (ratification: 1968)

Further to its previous observations, the Committee has noted the information supplied by the Government. It has also noted the comments of the Finnish Employers' Confederation (STK), the Employers' Confederation of Service Industries (LTK) and the Commission for Local Authority Employers (KT), concerning the ways in which representatives

of the persons affected by measures of employment policy (especially the 1987 Employment Act) should be consulted in accordance with Article 3 of the Convention. The Confederation of Salaried Employees (TVK), as well as the STK and the LTK, considers that priority should be given to the development of the employment service (including the training of its staff). The KT wishes to be consulted in the labour administration advisory bodies (including the tripartite Employment Council) in its capacity as an employers' organisation. The Central Organisation of Finnish Trade Unions (SAK) states that labour policy measures are not enough in the task of promoting mobility of labour, whilst economic sanctions might conflict with the principle of voluntariness; it stresses the need for measures of housing policy in this context. The SAK also feels that the slight decrease in unemployment may be short-lived.

The Committee notes that the level of unemployment in Finland (5.1 per cent in 1987) continues to compare well with that of other OECD countries. In the light of the Convention's goals, it has noted with interest the measures provided in the 1987 Employment Act and Employment Ordinance, which aim at improving labour market operation and training - especially for the young unemployed - and correcting regional imbalances, in order to achieve full employment. It trusts that the need to apply these measures as a means of promoting the goals of the Convention will be given full weight in the context of overall economic policies (in the field of investment, fiscal and monetary affairs, trade and prices, incomes and wages), and that the next report will include information on the way in which these measures are implemented, taking all due account of the views of employers and workers and representatives of other persons affected.

#### Federal Republic of Germany (ratification: 1969)

The Committee has noted the detailed report and the information provided in reply to its previous observation. The Government has referred to the positive effect of economic growth on employment and unemployment levels, and of vocational training and placement activities of the employment services in particular. Unemployment levels have thus declined among the young, while long-term unemployment has increased, especially, apparently, among older workers. It is stated that it is demographic factors (the birth rate, immigration) which have prevented unemployment from falling further. The report analyses employment and unemployment among various groups of the population, sectors and regions, and refers to the series of measures taken under the job promotion legislation; the results of studies of the effects of the legislation were expected shortly. The Government now states that trade unions and employers' organisations were involved at all stages of discussions on the 1985 Job Promotion Act. Trade unions are said to oppose the current easing of restrictions on fixed-term contracts, and, depending on the results of research in hand, it will later be decided whether to extend this system.

The Committee notes that, according to the Government, economic and financial policy has so far succeeded only in preventing an increase in unemployment. Unemployment overall remained at 8.9 per

cent in 1987 (the standardised figure published by OECD is 6.2 per cent), with regional unemployment rates ranging from 5 to 12 per cent and an increasing concentration among certain groups. The Committee notes with interest that improvement of the employment market situation remains a major policy objective. It hopes the Government will continue to provide details of the employment policy measures taken in order to promote the aims of the Convention, and in particular that it will be able to indicate the results of its policies and measures in terms of numbers employed and unemployed. It trusts the Government will ensure consultation of employers' and workers' representatives and other persons affected as required by Article 3 of the Convention.

Ireland (ratification: 1965)

The Committee notes that the Government's report has not been received. It notes that the level of unemployment, according to figures published by the OECD, had risen to 17.7 per cent in 1987, although it was expected to have fallen to some 16.5 per cent in 1988, thus remaining one of the highest in the OECD. In its previous observation, the Committee referred to the Government's policy outlined in its White Papers on Industrial Policy (1984) and Manpower Policy (1986) and the Plan "Building on reality, 1985-87", reaffirming the objectives of increasing and maintaining employment, especially in the manufacturing and international services industries. These objectives were to be met by, inter alia, reorganising employment and training services, and by approaching industrial grants, technological and acquisition grants and employment grants to small industry more selectively. The report had included particulars of the community enterprise programme, the youth self-employment programme, and vocational training programmes. The Committee hoped that the Government would keep the measures being taken in order to implement an employment policy in terms of Article 1 of the Convention under close review, as required by Article 2, in the light of the results achieved, and ensure the necessary consultation of employers' and workers' representatives and other persons affected as required by Article 3. It hopes the Government will supply a report for examination at its next session, including full information on these matters.

Jamaica (ratification: 1975)

The Committee notes with regret that for the fourth year in succession the Government's report has not been received. It notes that since the date on which the Convention came into force, the Government has fulfilled its reporting obligation only twice. In 1985, the Committee made a direct request raising various issues concerning the application of the Convention. It notes the data published in the ILO Yearbook of Labour Statistics, concerning particularly the rate of unemployment which was approximately

24-25 per cent in 1985-86. The Committee hopes the Government will supply a full report for examination at its next session.

Madagascar (ratification: 1966)

The Committee notes with regret that for the third year in succession the Government's report has not been received. In 1984, it made a direct request raising various issues concerning the application of the Convention. It notes that Madagascar is receiving technical assistance from the ILO in the promotion of employment, notably with a view to the encouragement of labour-intensive works and vocational training. The Committee hopes the Government will supply a full report for examination at its next session.

New Zealand (ratification: 1965)

The Committee notes the detailed information provided by the Government in reply to its previous comments. It particularly welcomes the summary of the principal labour market programmes and the statistical data provided. Concerning the overall economic and development policies pursued, the Committee notes, from the information supplied under Article 1 of the Convention, that there are no development plans that incorporate objectives or targets for the growth of employment in the economy as a whole. The Government's employment policies are based on the premise that sustainable new jobs are most likely to be created in the context of a growing and flexible economy. Macro-economic policies are designed to bring about lower inflation, interest and exchange rates. Micro-economic and structural reforms aim at removing unnecessary direct controls and restrictive practices that act as barriers to jobs, new investment, higher productivity.

The Committee notes that, over the period March 1986-March 1988, the number of employed people fell by 1.1 per cent, while the number of unemployed increased by 19.4 per cent. The overall unemployment rate increased from 4.2 per cent to 5.0 per cent of the labour force. Unemployment rates were particularly high (nearly 13.0 per cent in 1988) amongst the young Maori and Pacific Island Polynesian populations, and tended to be higher for non-metropolitan areas than for metropolitan areas. These trends in employment and unemployment do not appear to reflect the general tendencies of the OECD countries as reported in the last issue of the OECD Economic Outlook (December 1988).

The Government indicates in its report that a number of reforms (e.g. deregulation, reduced fiscal deficits) led to job losses in the short term. Although the situation is expected to reverse itself in the medium to long term, the Government has given no more precise indication of the time-scale in which it expects its strategy to produce net positive effects on employment.

The Committee hopes the Government will continue to provide information on these and the other matters referred to in the report, including the development of employment in the urban, as compared to

the rural areas; the employment effects of the reduction of subsidies to employers for training; and the extent to which any specific employment goals are set by region or sector or population group and subsequently attained.

Panama (ratification: 1970)

1. The Committee notes the Government's detailed report for the period between June 1985 and June 1987. The Government indicates that it has adopted a series of diverse measures with a considerable impact on employment, although it has not been able to develop a coherent plan to promote employment. It refers to the economic and social crisis through which the country is passing, the financial restrictions and the burden of external debt, which consumes 16 per cent of the national budget. It also points out that the development strategy being formulated by the Ministry of Planning and Economic Policy is directed to laying the foundation for the private sector to reacquire the dynamism of previous years and become once again the principal generator of employment. It states that it is continuing to endeavour to establish an overall employment programme for the medium term. The Committee also notes that, in March 1986, legislation was adopted that was intended, in particular, to increase the flexibility of the labour market and promote employment. With reference to its previous comments, the Committee notes that the National Tripartite Commission set up in July 1985 did not achieve the desired results.

2. The Committee notes the technical comments supplied by the Regional Employment Programme for Latin America and the Caribbean (PREALC): during the period covered by the Government's report, there has been a reversal of the recessionary trend of the economy, which registered a growth of around 3 per cent in overall terms in 1987. Most of the growth in employment occurred in commerce and non-financial services. However, the rate of open unemployment is still high: although it fell to 10.5 per cent in 1986 (in 1985 it had reached the highest recorded rate of the decade: 12.3 per cent) it increased once again in 1987 to 11.6 per cent. The most badly affected sectors of the economically active population were women and young persons. Rural unemployment did not rise much, and there was a migratory flow from the major cities to smaller towns and rural areas.

3. The Committee refers to its previous observation and once again hopes that, as required under the terms of Article 1 of the Convention, an active employment policy will soon be formulated and implemented in order to enable the Government to promote full, productive and freely chosen employment. The Committee welcomes the technical comments supplied by PREALC, regarding the Government's report and the difficulties in promoting the objectives of the Convention. In this connection, the Committee hopes that it will continue to enjoy the technical co-operation of PREALC so as to assist the Government in preparing measures to combat the problem of unemployment and formulate employment programmes to satisfy the needs of the most badly affected categories of workers, such as women and young persons.

4. The Committee trusts that the Government will regularly supply detailed reports on the results achieved through the measures adopted under the employment policy and on the matters raised in this observation, including information on: (i) the procedures adopted to ensure that the effects on employment of measures taken to promote economic development receive due consideration, within the framework of a co-ordinated economic and social policy (Article 2); and (ii) on the manner in which representatives of employers' and workers' organisations and representatives of other sectors, such as the rural and informal, are consulted concerning employment policies (Article 3).

Paraguay (ratification: 1969)

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

1. The Committee notes the summary of the plan for population, human resources and employment contained in the National Economic and Social Plan, 1985-89, forwarded by the Government in its last report. The Plan outlines a fundamental strategy of developing the growth of the export sector and gradually implementing import substitution in view of the low level of overall internal demand, and the level and distribution of income. It also considers that priority should be given to a policy of public austerity and the need to maintain control over the expansion of the money supply and factors which may encourage costs to rise, in view of the high level of inflation. Furthermore, objectives have been put forward for implementation during the 1985-89 period regarding the labour force, employment and incomes. In this respect the Committee would be grateful if the Government would indicate in its next report the measures that have been adopted by the Government for the implementation of the 1985-89 Plan and the degree to which the employment objectives set out therein have been achieved (Article 1 of the Convention).

2. The Government also refers in its report to the National Human Resources and Employment Plan. In this connection, the Committee takes note of the objectives regarding training, and the use and promotion of human resources set forth by the National Directorate of Human Resources of the Ministry of Justice and Labour following the technical assistance project PAR/82/001 "Human Resources Planning". The Committee requests the Government to supply detailed information in its next report illustrating the results achieved through the implementation of the Plan, and concerning the measures adopted to co-ordinate teaching and vocational training policies with employment opportunities (Article 1).

3. The Committee notes that the Government's report contains no information on fluctuations in employment and unemployment. According to information available to the Office, the national open unemployment rate, after falling between 1983 and 1985, went up again in 1986. The Committee would be grateful

if the Government would indicate in its next report the measures in force to compile and analyse statistics on the labour market as a stage in the adoption of employment policy measures (Article 2). The Committee once again expresses the hope that the Government will supply statistics and any other available information on unemployment and underemployment, principally in the rural sector, and on the consequences for job creation of measures such as major public works programmes and the main colonisation and land-settlement programmes.

4. Finally, the Committee also notes that the Government's report does not contain the information requested in earlier comments on the application of Article 3. The Committee recalls its firm opinion of the need to ensure the application of Article 3 of the Convention as regards the consultation of representatives of persons affected by measures to be taken, and in particular representatives of employers and workers (paragraph 100 of Part I of its 1987 Report). It trusts that the Government will supply detailed information in its next report on the way in which the consultation and co-operation of employers' and workers' representatives and representatives of other sectors of the economically active population such as those working in the rural sector and the informal sector is secured in formulating and enlisting support for employment policies and measures.

#### Spain (ratification: 1970)

1. The Committee notes the Government's report for the period between July 1986 and June 1988. It also notes the discussion on the application of the Convention in the Conference Committee in June 1988.

2. In its previous observation, the Committee referred to a communication of the Trade Union Confederation of Workers' Committees (CCOO) in which it forwarded a document analysing the labour market in Spain in 1986. In March 1988, the Government sent its comments in this connection. The Committee notes both communications, and also the supplementary information supplied by the above workers' organisation in February 1989.

The CCOO notes, in particular, that despite the sustained growth of the Spanish economy, in most cases the most "precarious" forms of employment contract have been used when filling jobs. "Precarious" employment contracts account for more than 88 per cent of recruitment, particularly among young persons. The various types of temporary contract facilitate the substitution of "precarious" employment for fixed employment and are resulting in an ever-increasing number of dismissals. The Government recalls that the measures concerning temporary contracts were adopted under the Social and Economic Agreement concluded in October 1984 by the national authorities and representatives of employers' and workers' organisations, in view of the perceived need to adopt procedures to make the labour market more flexible and accept a degree of instability in employment. It also notes that the National Employment Institute (INEM) registers temporary contracts and intervenes to prevent abuse.

3. In its last report, the Government pointed out that employment creation is the priority objective of its economic policy. The measures that have been adopted, in addition to temporary contracts, consist of activities to promote the recruitment on a long-term basis of specific categories of workers with special difficulty in the labour market, employment support programmes through the promotion of enterprise and employment projects, and temporary employment programmes for the unemployed. To these measures is added vocational training in trades, which is considered to be an integral part of the employment policy, and which is aimed at increasing the employment opportunities of workers who lack occupational experience and promoting the reintegration of workers affected by technological changes.

4. The Committee notes that, despite a notable increase in employment since 1986 (the OECD reports that 400,000 non-agricultural jobs were created in 1987 and 1988), there is only a slight decrease in the unemployment rate, the overall level of which continues to be particularly high, at 20.5 per cent for 1987. Young persons seeking their first employment, women and the long-term unemployed continue to be the categories most affected by the current labour market situation.

5. The Committee once again hopes that the Government will continue to pursue an active employment policy, in co-operation with the representatives of the persons affected, and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted in order to secure appropriate productive employment for all who are available for and seeking work. The Committee would be grateful if the Government would specify in its next report the results achieved in satisfying the needs of all the categories of persons who frequently encounter difficulties in finding lasting employment, and in particular young workers and the long-term unemployed. It trusts that the Government will supply detailed statistics on the long-term employment generated by the various employment creation programmes supported by the Government. Finally, the Committee is addressing a request directly to the Government on other aspects of the application of the Convention.

#### Tunisia (ratification: 1966)

1. The Committee notes the information provided by the Government in its general report in 1987, and in the report on the application of the Convention for the period ending 30 June 1988. It notes with interest the adoption of the VIIth National Economic and Social Development Plan, 1987-91, and the priority which it gives to employment promotion, which the Government has stated remains a fundamental objective of the national development strategy.

2. The VIIth Plan notes an imbalance between employment offers and demand which could not be corrected by emigration during the VIth Plan because of a reversal in migratory movements. Unemployment in 1986 was estimated at 264,000 persons, or a rate of 13.8 per cent of the active population (as compared with 11.4 per cent in 1980). The VIIth Plan provides for the creation of nearly 240,000 new jobs, of which more than half are to be in the service sector. The active



population is expected to increase at an accelerated pace and, at the end of the Plan period, the Plan provides that only 69 per cent of the additional demand for employment (346,000) will be covered by job creation. In order to maintain unemployment at tolerable levels, the Plan adopts an employment strategy based on three principal options: renewal of economic growth; a "new policy for enterprises" based on improvements in competitiveness; and action on job demand aimed at attenuating present demographic increases and implementing a training policy better adapted to the needs of the economy and to the need for insertion into employment of the young unskilled.

3. The Committee also notes two categories of legislative measures taken recently in relation to economic and employment policy. One category aims at encouraging investments in the manufacturing, agriculture and fishing sectors, through various incentives contained in investment codes adopted for these activities. The other category is intended to promote the employment of young persons by the establishment of a system for voluntary early retirement which will make compensatory recruitment necessary; the granting of financial advantages (subsidies, exemption from social charges) to undertakings which hire young persons between 17 and 25 years of age who have completed a study or training curriculum; the reduction of vocational training taxes; and the implementation of a system of internships for initiation of young graduates to work.

4. The Committee notes that the programmes and measures taken indicate the Government's willingness to formulate and apply a policy which promotes the Convention's objectives. The employment situation nevertheless remains a source of concern, and the planners expect unemployment to increase. The Committee hopes that the Government will indicate in its next report the degree to which the employment objectives defined in the VIIth Plan are being achieved, indicating whether particular difficulties have been encountered in this connection. It would also be grateful if the Government would provide information on the practical effect of the measures adopted to promote the access of young persons to productive and stable employment. Finally, it would be grateful if the Government would communicate information on consultations with representatives of the persons affected, as provided in Article 3 of the Convention, concerning the implementation of the employment policy in the framework of the VIIth Plan.

#### Turkey (ratification: 1977)

The Committee notes the information provided in reply to its previous comments. The report provides certain data on employment and refers to overall economic policies (relating to investment, taxation and money supply, trade, and incomes), as well as policies of regional development and labour market policy measures. The Government states that the GNP has increased by 8.0 per cent in 1986 and 6.8 per cent in 1987 and that unemployment fell from 15.8 per cent in 1986 to 15.2 per cent in 1987 in response to its policies, although it continues to worsen among the young, in particular for the age group 20-24 and 25-29.

The Committee has also noted the communication from the Turkish Confederation of Employer Associations (TISK), drawing attention to certain aspects of the unemployment problem. In particular, the Confederation points to the rapid growth of population, inflation, lack of investment, and educational and training inadequacies. In the Confederation's view, burdens imposed on employers with a social purpose have a negative effect on employment. It calls for the encouragement of exports, the simplification of formalities for new businesses, a fair wage system, the encouragement of short-term and part-time employment, support for employment in the public sector and in smaller enterprises, more effective placement services, an increased influx of foreign capital, improved labour market information, and the development of tripartite dialogue.

The Committee welcomes the information in the report concerning employment-related projects in which the ILO and other international agencies have co-operated. It would, however, also welcome more precise information on employment goals - especially for the young - in terms of the numbers of jobs to be created in specific projects or through overall economic policy measures and the extent to which the goals are achieved. The Committee is addressing a direct request to the Government on several questions.

#### United Kingdom (ratification: 1966)

1. In its previous observations in 1987 and 1988, the Committee referred to, amongst other things, the comments received from the Trades Union Congress (TUC) on 16 February 1987 expressing concern about various aspects of the application of the Convention. The Committee expressed its hope that full information would be provided by the Government in due time. It notes the Government's full report for the period ending 30 June 1988 received in February 1989 and the information in reply to its previous observations and to many of the TUC's comments of 1987.

2. The TUC considers that the Committee's comments have offered a constructive approach to tackling mass unemployment in Britain. It drew attention to the continuing high level of unemployment; it pointed out that many of the jobs being created were part-time rather than full-time ones. It referred to distortions caused by changes in the basis of unemployment statistics, which make it impossible to say how many are in or out of work and thus greatly reduce first the usefulness of a means of assessing employment trends formerly available and, secondly, the ability of the Government to fulfil its obligations under the Convention. Special government schemes were designed to discourage registration or temporarily remove groups of the unemployed from the official count: the TUC estimated that, without changes in the basis of calculation, unemployment would be over 400,000 higher.

The TUC indicated that the Government has consistently failed to use economic opportunities - such as those presented by self-sufficiency in energy - to reduce unemployment. The Government, it was pointed out, still refuses to give any indication as to when its strategy may be expected to reduce unemployment substantially.

As regards regional policies, the TUC indicated that the North-South incomes gap has widened, and the Government has cut regional aid. As regards the relation between wages and employment, it pointed to OECD research, which has shown there is no direct link between national wage levels and national unemployment, or between national rates of job mobility and employment: the TUC therefore does not accept government criticism of the well-established system of national pay bargaining. The TUC referred to an EEC Commission study (of March 1986), naming lack of effective demand as the greatest obstacle to the development of manufacturing industry. The TUC stated that the Government has frequently rejected its proposals for a constructive dialogue with employers and workers on employment problems. It stated that the Government has continued to have no regard to its commitment under the Convention to give priority to the achievement of full employment and has refused to review an approach which has clearly failed. The Committee has in addition taken due note of the TUC's comments in relation to Convention No. 142 concerning measures which, it is stated, will have the effect of forcing young people into jobs, education or training, by removing certain social security entitlements.

3. According to information provided by the Government in its last report, employment rose over the period of 1986-88, mainly in the service sector, while national unemployment stood at 10.7 per cent in 1987 and continued to fall until May 1988, when it was 8.5 per cent for Great Britain and 17.1 per cent for Northern Ireland. The Government supplies extracts from official publications explaining the recent revisions of the basis of unemployment statistics. The Government indicates that inflation is a major cause of high unemployment and that its macro-economic policies are designed to keep inflation low and stable, while its micro-economic policies promote an efficient and competitive market economy, thus creating new employment opportunities. In reply to the TUC observations, the Government sees a much greater role than the TUC in wage and labour market flexibility as a means to reduce unemployment and improve the operation of the labour market; but the OECD study referred to by the TUC, differs in its view of the effects of wages on employment. The Government again stresses the influences on employment beyond its control, in particular the world economy and the level of wage settlements. The Government states that its research shows that if wages were to increase more slowly 110,000 to 220,000 more jobs would be created; it will continue to draw attention to the concept of greater geographical variation in pay, despite the unfavourable response of the TUC. It indicates that frictional unemployment associated with structural change may be higher when such change is more rapid. It refers to cuts in income tax and the promotion of the multilateral trading system as enhancing employment prospects. Its industrial policy has been marked by a series of "initiatives" aimed at encouraging wealth creation through advice and assistance. It states that it has aimed to promote small firms, particularly in the regions and in inner cities. It has reorganised the public employment service to place an emphasis on advice for those going into business for themselves. The report again refers to a variety of employment measures, said to be aimed primarily at long-term and young unemployed and includes

detailed information on these and the above-mentioned measures and policies. The Government indicates that consultations on employment take place in the tripartite National Economic Development Council (NEDC). The NEDC Annual Report, 1986-87, supplied by the Government, indicates in particular that the Council spent much of its time considering how the prospects for employment could be improved and continued more intensively to explore the relationship between pay and employment.

4. The Committee notes that studies published by the OECD (in particular the 1988 Economic Survey of the United Kingdom) indicate that employment growth was confined mainly to the service sector, self-employment and part-time employment; about a third of the total workforce is estimated now to be in "flexible" categories (temporary workers, permanent part-time workers or permanent self-employed). As regards employment, the OECD Economic Survey indicates that the rate of unemployment has fallen partly due to greater strength of activity, partly due to the effects of specific government programmes such as RESTART or YTS, which have reduced the numbers of unemployed on the registers, especially the numbers of young unemployed. OECD expects unemployment to rise again slightly in 1990. Inflation has remained above the OECD average and has recently accelerated.

The Committee notes that, whilst the rate of unemployment has shown a clear improvement over the figures reached in the early 1980s, it is, as the Government observes, still high by historical standards: according to the 1988 OECD Economic Survey, the average unemployment rate from 1980 to date of 9.6 per cent is more than twice the rate in the 1973-79 cycle. In this light, in view of the relation drawn by the Government over many years between inflation and unemployment, and in view of the difficulties mentioned by the TUC - not least that of establishing a constructive dialogue with employers and workers and other persons affected by employment policies in conformity with Article 3 of the Convention - the Committee continues to entertain concern as to the extent to which an active policy for full, productive and freely chosen employment in the terms of Article 1 of the Convention has been pursued. As regards certain questions of vocational guidance and training, it would again refer to its comments under Convention No. 142. It again expresses the hope that the next report will be supplied by the due date, in order to facilitate the necessary tripartite consideration as well as the Committee's own examination.

#### Zambia (ratification: 1979)

1. Further to its previous comments, the Committee has noted the information in the Government's report, and the policies and objectives laid down in the 1987-88 Interim National Development Plan (INDP). It notes that in May 1987 it was decided to abandon the IMF restructuring programme due to its negative effects on the overall performance of the economy in 1985-86 (involving serious unemployment and underemployment, particularly among the young in urban areas), and the INDP is consequently aimed at formulating a New Economic Recovery Programme based on the country's own resources. The Committee notes

with interest the efforts made in co-operation with the ILO's Southern African Team for Employment Promotion (SATEP) to devise policies in line with the Convention's aims of full, productive and freely chosen employment. It notes in particular the emphasis placed on employment in the rural sector under the land settlement and "village service" schemes, based on a "self-help" approach. The Committee hopes the next report will include further information on these and other matters raised in a direct request.

2. Article 3 of the Convention. The Committee notes with interest that the social partners took part in the Employment Committee which has been drawing up employment objectives and strategies for the Fourth National Development Plan. The Government has referred to improving formal consultation of employers and workers through the Industrial Relations Act and promoting participatory democracy: the INDP has also outlined discussion procedures at village and higher levels relating to production targets and their achievement. The Committee hopes these consultations will cover employment policies in terms of the Convention, and that the next report will include further information.

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In addition, requests regarding certain points are being addressed directly to the following States: Austria, Barbados, Bolivia, Byelorussian SSR, Cameroon, Cuba, Czechoslovakia, Djibouti, Greece, Guinea, Hungary, Islamic Republic of Iran, Iraq, Jamaica, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mongolia, Morocco, Papua New Guinea, Poland, Romania, Senegal, Spain, Suriname, Thailand, Turkey, Ukrainian SSR, USSR, Zambia.

#### **Convention No. 123: Minimum Age (Underground Work), 1965**

A request regarding certain points is being addressed directly to Ecuador.

#### **Convention No. 124: Medical Examination of Young Persons (Underground Work) 1965**

Jordan (ratification: 1966)

See under general observations.

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In addition, requests regarding certain points are being addressed directly to the following States: Argentina, Madagascar, Tunisia.

**Convention No. 125: Fishermen's Competency Certificates, 1966**Sierra Leone (ratification: 1967)

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

Further to its previous observations and direct requests over a number of years, the Committee notes the Government's statement that in Sierra Leone the fishing industry is carried on mostly by vessels of less than 25 GRT, which are not covered by the Convention. The Government indicates that, in so far as there may be larger vessels to which the Convention does apply, efforts are being made to obtain information from the responsible authorities. In its previous observation, the Committee noted that under section 57(n) of the Fisheries Management and Development Bill, the Minister would have the power to prescribe qualifications for fishing vessels manning and thus to draft regulations to apply the Convention. The Committee hopes that in its next report the Government will be able to indicate, as far as vessels covered by the Convention are concerned, whether it has been possible to prepare the regulations necessary in order to apply the Convention and to supply full details.

Trinidad and Tobago (ratification: 1972)

Further to its previous observation, the Committee notes with interest that, following discussions with IMO officials in 1986, a new Shipping Act (No. 24 of 1987) has been proclaimed. The Committee also notes that certain fishing and safety training has commenced in the Caribbean Fisheries Institute, following IMO assistance. However, it again observes that no legislation has yet been enacted to give effect to Parts II, III and IV of the Convention. In this light, the Committee hopes that the necessary regulations will soon be made by the Minister under section 87 of the new Act, and that the next report will include details.

[The Government is asked to report in detail for the period ending 30 June 1990.]

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In addition, requests regarding certain points are being addressed directly to the following States: Brazil, Djibouti, France, Panama.

**Convention No. 126: Accommodation of Crews (Fishermen), 1966**

Yugoslavia (ratification: 1973)

The Committee refers to its previous direct requests concerning Article 8 of the Convention, in which it noted that there is no special legislation concerning the heating of crew accommodation in vessels below 500 tons. The Government previously stated that the matter would be taken into account in the preparation at the levels of the Republic and of the Provinces of regulations on safety and health on sea-going vessels. The Committee now notes that the Government's report has not been received. It hopes that the Government will find it possible to take measures in the near future to give effect to this Article of the Convention and that a detailed report will be supplied for examination by the Committee at its next session.

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In addition, requests regarding certain points are being addressed directly to the following States: Djibouti, Sierra Leone, United Kingdom.

**Convention No. 127: Maximum Weight, 1967**

Algeria (ratification: 1969)

The Committee notes the information supplied by the Government in reply to its previous observation. It notes the adoption of Act No. 88-07 of 26 January 1988 on occupational health and safety and occupational medicine, which establishes the principles applicable in this respect and only affects the application of the Convention in a very general manner.

The Government once again indicates that the provisions limiting the weight of loads which can be transported by one worker are issued in the form of circulars and service notes for each sector of economic activity, and it quotes the limits that have been fixed for the weight of loads that may be transported by women and persons under 18 years of age. As the texts of the circulars, service notes and other provisions that may give effect to the Convention have not been supplied up to the present time, despite repeated requests by the Committee, and, according to the information supplied previously by the Government, there is no legislation giving effect to the Convention in all sectors of economic activity, the Committee is bound to urge once again that the necessary measures be taken to give full effect to the Convention, possibly within the context of implementing regulations issued under Act No. 88-07. The Committee recalls that according to the information supplied by the Government to the Conference Committee in 1987 and in its reports received at the beginning of 1988, a dozen of these texts were being prepared and awaited the definitive adoption of Act No. 88-07.

Tunisia (ratification: 1970)

1. Further to its previous observations and direct requests, the Committee notes with satisfaction that the Order of 5 May 1988 establishing the maximum permissible weight to be carried by one worker gives effect to Article 7, paragraph 2, of the Convention, under which the maximum weight of loads that may be transported regularly by women and young workers of less than 18 years of age shall be substantially less than that permitted for men.

2. As concerns other provisions of the Convention, the Committee wishes to make the following observations:

Article 3 of the Convention. The Committee notes that section 1 of the above Order establishes the maximum permissible weight to be carried regularly by men at 100 kg, which considerably exceeds the maximum of 55 kg recommended in Paragraph 14 of the Maximum Weight Recommendation, 1967 (No. 128). The Committee points out that under Article 3 of the Convention no worker shall be required or permitted to engage in the manual transport of a load which, by reason of its weight, is likely to jeopardise his health or safety. In the Committee's opinion, the regular manual transportation by a man of loads that may weigh up to 100 kg is likely to jeopardise his health or safety, when it is not accompanied by any measure of medical supervision, as would appear to be the case from the text of the Order. The Committee consequently hopes that the Government will be able to take the necessary measures in the near future to give full effect to Article 3 of the Convention, for example, by reducing the maximum weight established by section 1 of the Order to the level recommended in Recommendation No. 128 and/or by providing for the medical supervision of workers who are regularly assigned to the manual transport of loads other than light loads. It hopes that the next report will indicate the measures that have been taken or are under consideration in this respect.

Article 5. The Committee notes, from the Government's report, that the Tunisian Association for Safety and the Improvement of Working Conditions is making workers and enterprise managers aware of the methods of carrying loads, particularly through the organisation of seminars and the dissemination of posters. In view of the extremely high maximum weight established in section 1 of the above Order, the Committee emphasises the particular importance of the training measures provided for in Article 5 of the Convention to safeguard health and prevent accidents. It requests the Government to supply more detailed information in its next report on the training activities undertaken in accordance with this Article of the Convention and, more particularly, on the frequency and content of the above-mentioned seminars, and it requests the Government to send copies of the posters disseminated by the above Association.

Article 6. The Committee notes from the Government's report that ever-increasing mechanisation is being noted in enterprises, which limits and facilitates the manual transport of loads. It requests the Government to supply more detailed information on the technical devices used in accordance with Article 6 of the Convention to limit or facilitate the manual transport of loads.



Article 7, paragraph 1. The Committee notes that the Order of 5 May 1988 does not contain a provision giving effect to Article 7, paragraph 1, of the Convention, under which the assignment of women and young workers to the manual transport of loads other than light loads shall be limited. It requests the Government to indicate the measures that have been taken or are envisaged in this respect.

The Committee invites the Government, in its examination of the measures that are necessary to give full effect to the above provisions of the Convention, to base its examination on Recommendation No. 128 and the ILO publication: Maximum Weights in Load Lifting and Carrying (Occupational Safety and Health Series No. 59, Geneva, 1988).

### **Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967**

#### General observation

See the general observation under Convention No. 102. The comments in respect of the application of Article 65(10) and Article 66(8) also apply to Article 29 of Convention No. 128.

#### Finland (ratification: 1976)

Part III (Old-age benefit), Article 15, paragraph 3, of the Convention (in conjunction with Article 18). With reference to its earlier comments (concerning the lowering of the age of retirement below 65 years in respect of persons employed in arduous or unhealthy occupations), the Committee has examined the Government's detailed report and noted with satisfaction the introduction of a flexible retirement scheme for workers in the private sector, both salaried and self-employed (including agricultural workers and seafarers). It also notes that the introduction of a similar retirement scheme in the public sector is envisaged for July 1989, and that a bill on that subject has already been submitted to Parliament. The new scheme provides for an early retirement pension to be granted to persons over 55 years of age whose working capacity has been reduced due to ageing and the arduous nature of their work. The rate of such pensions is equivalent to that of a full invalidity pension, and they are granted until the age of 65 whereupon they are replaced by an old-age pension. The new scheme also provides for an early old age (from 58 years) or delayed pension and a part-time old-age pension intended to supplement the income of an elderly person working part time.

The Committee also notes with interest from the information provided in the report that in the public service, although the minimum age for entitlement to an old-age pension is generally 63 years, there are certain categories of arduous or unhealthy occupation in respect of which the minimum age is set at 55, 58 or 60 according to the nature of the occupation.

Furthermore, the Committee notes the comments made by the Finnish Employers' Federation, which considers that the introduction of the

new flexible retirement scheme was a matter of necessity, despite the increase in contributions to the contributory pension scheme.

Libyan Arab Jamahiriya (ratification: 1975)

The Committee observes that the Government has failed to submit a report. However, it notes the information provided in connection with Convention No. 130 and has also examined the various decisions taken by the People's General Committee on Social Security in pursuance of Act No. 13 of 14 April 1980, copies of which were transmitted by the Government together with its report on the said Convention.

The Committee notes that those decisions give no reply to the comments which it has been making for a number of years and which it can only repeat in another direct request.

The Committee trusts that the Government will submit a report for examination at its next session and that the report will contain comprehensive and detailed information, including statistical data, on all the points raised.

Uruguay (ratification: 1973)

Article 29 of the Convention (review of cash benefits currently payable). The Committee has examined the information supplied by the Government to the Conference Committee in June 1988 and contained in its report, in reply to the 1988 observation concerning the review of old-age pensions and other long-term benefits currently payable. The Committee has also examined the legislation communicated by the Government, in particular Act No. 15.900 of 17 October 1987 which came into force in 1988, under which the various pensions and cash benefits paid by the Bank for Social Welfare are to be reviewed annually in the light of wage index increases.

The Committee hopes that the Government will make every effort to implement the above-mentioned Act - thereby giving effect to this provision of the Convention - and that, in all future reports, it will not fail to provide the statistical data required under Article 29 by the report form adopted by the Governing Body.

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In addition, requests regarding certain points are being addressed directly to the following States: Austria, Barbados, Bolivia, Ecuador, Finland, Federal Republic of Germany, Libyan Arab Jamahiriya, Netherlands, Norway, Switzerland, Uruguay, Venezuela.

**Convention No. 129: Labour Inspection (Agriculture), 1969**Bolivia (ratification: 1977)

In reply to the Committee's previous comments, the Government states that, for economic reasons and owing to the weak infrastructure in rural areas, it is unable to set up and maintain an agricultural inspection system, but that it will be possible to apply the principles and standards of the Convention gradually as the country's economic conditions improve and the appropriate legal instruments are developed. The Committee trusts that the Government will not delay in taking the necessary steps to set up an inspection system for agricultural enterprises, as provided for in the Convention which was ratified 12 years ago. It requests the Government, in its next report, to provide detailed information on any progress made in this respect.

Denmark (ratification: 1972)

The Committee notes with satisfaction that section 3(2) of the Administrative Act (Act No. 571 of 19 December 1985) gives effect to the provisions of Article 20(a) of the Convention, which had been the subject of its previous comments (prohibition on labour inspectors having any interest in the enterprises under their supervision).

Italy (ratification: 1981)

The Committee notes that the report has not been received and expresses the hope that the next report will contain replies to its previous comments which address the same questions as those raised under Convention No. 81. It therefore requests the Government to refer to these comments.

Romania (ratification: 1975)Articles 26 and 27 of the Convention.

See comments under Convention No. 81.

Syrian Arab Republic (ratification: 1972)

Article 16, paragraph 3, of the Convention. For many years the Committee has been drawing the Government's attention to the fact that labour inspectors must, on the occasion of an inspection visit, notify not only the employer or his representative of their presence (as provided by section 248 of the Act to organise agricultural relations), but also the workers or their representatives. In its report for 1986, the Government stated that the Act to organise agricultural relations was to be amended in order to give full effect

to this provision of the Convention. The Committee regrets to note, from the Government's last report, that it has changed its position and considers that the legislation that is in force is in conformity with the Convention since, during inspection visits at the workplace, inspectors necessarily come into contact with workers. The Committee is bound to note that inspection visits to offices (for example, for the purposes of inspecting documents) do not automatically result in contact with the workers. It therefore requests the Government to take the necessary measures to amend section 248 of the Act, so as to provide explicitly that workers or their representatives should be informed of the presence of inspectors in the enterprise in the same way as employers or their representatives.

Articles 26 and 27. The Committee notes that the statistical tables appended to the Government's report do not contain the information required under Article 27 of the Convention. Furthermore, it recalls that, by virtue of Article 26 of the Convention, an annual report on the work of the inspection services in agriculture (either in the form of a separate report, or as part of a general annual report of the labour inspection services) must be published and communicated to the ILO within 12 months after the end of the year to which it relates. It therefore trusts that, in future, reports containing information on all the subjects laid down in Article 27 will be published and communicated to the ILO within the time limits set forth in Article 26.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: France, Guyana, Spain.

Information supplied by Kenya in answer to a direct request has been noted by the Committee.

### **Convention No. 130: Medical Care and Sickness Benefits, 1969**

#### Libyan Arab Jamahiriya (ratification: 1975)

The Committee refers to the comments that it has been making for a number of years and notes that the information supplied by the Government in its various reports replies only partially to these comments and does not contain the statistical data requested by the report form adopted by the Governing Body, without which the Committee is unable to ascertain the extent to which effect is given to the provisions of the Convention.

Consequently, the Committee is bound to raise the question again in a new direct request in the hope that the Government will not fail to transmit the information requested.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Libyan Arab Jamahiriya, Uruguay, Venezuela.

### Convention No. 131: Minimum Wage Fixing, 1970

Bolivia (ratification: 1977)

The Committee refers to its previous comments on the consultation of employers' organisations with regard to the minimum wage-fixing machinery, and to the conclusions of the Committee set up to examine the representation made by the Confederation of Private Employers of Bolivia, under article 24 of the ILO Constitution, which were approved by the Governing Body of the ILO at its 228th Session. The Committee refers in particular to the recommendations that the Government should adopt measures to ensure the required consultations with both employers' and workers' organisations concerning the establishment, operation and modification of wage-fixing machinery, and to provide information on this matter. The Committee noted the Government's statement concerning the minimum wage-fixing machinery which is based on a sliding scale of wages and salaries linked to the variations registered by the Consumer Prices Index (IPC).

The Committee notes that, in its report, the Government states that the principle of individual or collective bargaining is fully applied pursuant to the provisions of section 62 of Supreme Decree No. 21060 of 30 August 1985, designed essentially to avert inflation and the multiplicity of minimum wages formerly fixed under pressure from the workers without regard for the economic variables which should normally be taken into consideration in establishing a coherent policy suited to the circumstances and factors of a global economic crisis. The Committee observes that, under Article 1, paragraph 1 of the Convention, each Member which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage-earners whose terms of employment are such that coverage would be appropriate. The free determination of wages by agreement of the parties concerned or by negotiation between employers and workers would not appear to constitute an adequate minimum wage-fixing system in the meaning of the present Convention. Furthermore, the Government indicates that the sliding scale of wages is no longer in force and that a single national minimum wage has been established which will increase annually in proportion to the Consumer Prices Index.

The Committee requests the Government to state whether the National Wages Council set up by Supreme Decree No. 11706 of 16 August 1974 was consulted regarding the establishment of a national minimum wage which has replaced the sliding scale system, and whether the workers' and employers' organisations concerned were consulted, in accordance with the provisions of Article 4, paragraphs 2 and 3 of the Convention. It also requests the Government to provide a copy of the text repealing Supreme Decree No. 19462 of 15 March 1983.

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

Netherlands (ratification: 1973)

The Committee takes note of the information supplied by the Government in its report.

It also takes note of the comments of the Federation of Christian Trade Unions (CNV), to the effect that the Government's report does not make it clear whether, and if so to what extent, the factors referred to in Article 3(a) (needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative standard of living of other social groups) and 3(b) (economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment) of the Convention have been taken into account, considering that there have been no minimum wage adjustments since 1984. The Federation emphasises that the purchasing power of the minimum wage has dropped and that the lag in the minimum wage by comparison with wages as a whole has increased, and to refers to several recommendations of the Economic and Social Council on the adjustment of minimum wages and on minimum-level benefits, which have not been communicated to the Committee.

The Committee notes that the Government's report does appear to indicate that the basis of the decision to stabilise labour costs by freezing minimum wages was a desire to increase the level of employment, combat unemployment and generally improve the economy, and that, while some account was taken of them, the factors mentioned in Article 3(a) of the Convention had played but an insignificant part. Noting the information in the Government's report on the grant of specific benefits to the lower income groups in order to protect them from the consequences of the freezing of minimum wages, the Committee would nevertheless request the Government to indicate more specifically the extent to which and the manner in which account was taken of the factors mentioned in Article 3(a) of the Convention.

Spain (ratification: 1971)

The Committee notes with interest the information supplied by the Government and the adoption of Royal Decree No. 1424/85 of 1 August 1985, governing the special labour relations of domestic staff. It notes also Royal Decree No. 1681/87, of 30 December 1987, fixing the minimum inter-occupational wage for 1988 and Act No. 8 of 7 April 1988 on violations and penalties involving the social order.

1. Article 1, paragraph 1, of the Convention. With reference to its previous comments, the Committee notes that section 6(1) of Royal Decree No. 1424/85 establishes that the minimum inter-occupational wage determined annually by the Government is applicable to domestic staff who work for a full day. These workers receive a proportional wage if they work for part of the day.

2. The Committee also notes the comments submitted by the Trade Union Confederation of Workers' Commissions (CCOO) concerning the application of this Convention (Articles 3 and 4). In this respect, the above Confederation indicates that the average wage rise for

workers covered by collective agreements is considerably higher than the wage of workers covered by the minimum inter-occupational wage, which signifies that when the minimum inter-occupational wage is determined, account is not taken of the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups, as should be done in accordance with the provisions of Article 3(a) of the Convention. The Confederation also indicates that, among the economic factors referred to under Article 3(b), account should be taken of economic growth. In this connection, the Confederation specifies that this growth in 1988 was between 5 and 6 per cent, which resulted in an increase in productivity which should, in turn, have given rise to an increase in the minimum wage to a level higher than that determined by the Government.

The Confederation states, with reference to Article 4(2), that a representation has been submitted against the Government of Spain, since it is not observing the provisions of this Article by not carrying out the full consultation required by this provision of the Convention. The Confederation adds that the Government continues not to observe this obligation and that consultations are held merely as a "formal procedure". Finally, the Confederation states once again that the minimum wage is not automatically adjusted in line with the consumer price index (IPC), since the minimum wage is determined at the beginning of the year and only at the end of the year is it found that the IPC has been higher than the level forecast by the Government. In this connection, the Confederation indicates that in 1988 the forecast rise in the IPC was 3 per cent and that on 31 December of the same year it was found that it had risen by 5.8 per cent.

The Committee points out that the Commission set up to examine the representation submitted by the Trade Union Confederation of Workers' Commissions under article 24 of the Constitution of the ILO, alleging non-observance by Spain of the Minimum Wage Fixing Convention, 1970 (No. 131), is currently continuing its work and since the contents of the above representation are substantially similar to the comments set forth above, the Committee will not deal with them until the Commission's report has been adopted by the Governing Body.

#### Sri Lanka (ratification: 1975)

The Committee notes that the Government's report contains no information on the points raised in its previous observation.

1. On previous occasions, the Committee noted the comments submitted by the United Plantation Workers' Union in 1984, the Democratic Workers' Congress in 1985, the Lanka Jathika Estate Workers' Union and the Ceylon Workers' Congress in 1986, concerning the application of Article 4 of the Convention. According to these comments, a motion of the Wages Board for the Tea Growing and Manufacturing Trade, adopted in 1983, provided for an increase in the cost-of-living allowance for plantation workers. Contrary to usual practice, the Commissioner of Labour failed to convene a further meeting of the Board following publication of the motion, with the

result that it could not be implemented because it had not been re-examined by the Board in the light of the objections of the parties, and had not received the Minister's approval.

The Committee also noted the Government's observations in reply to these allegations, to the effect that substantial objections drawing attention to the serious implications of such an increase for the national economy were received following publication of the motion and had been examined. Furthermore, a committee under the chairmanship of the Minister of Labour was, at the request of the main unions of the plantation sector, set up to examine the whole structure of wages in the plantation sector, with the unions participating. This Committee has made an interim recommendation to increase the cost-of-living allowance by three cents per unit of one point cost-of-living index increase. The Government also indicated that, until export conditions and internal conditions are stabilised, it would not be practicable for the Committee to reach any conclusive decisions. In this connection, the Democratic Workers' Congress stated in its comments of 1985 that this committee was set up in addition to the machinery of the Wages Board and its terms of reference cover all wages whereas wages boards fix only minimum wages.

The Committee notes that, under section 29(3) of the Wages Board Ordinance, which gives legal effect to the provisions of the Convention, no motions of the Wages Board communicated to the Minister of Labour can be given effect without the approval of the latter. It also notes that under paragraph 2 of section 29 mentioned above, the Minister is empowered to refer any decision back to a wages board for re-examination.

The Committee recalls that, under Article 4 of the Convention, machinery for fixing and adjusting "from time to time" the minimum wages for groups of wage earners whose terms of employment are such that coverage would be appropriate must be established and maintained, in full consultation with the employers' and workers' organisations.

With reference to the indications in paragraphs 11 and 12 of the Minimum Wage Fixing Recommendation, 1970 (No. 135), the Committee expresses the hope that, having established a machinery for fixing and adjusting minimum wages in the plantation sector, the Government will maintain it in operation. It requests the Government to provide information on any measure taken or contemplated to ensure this.

2. The Committee took note previously of the comments of the Employers' Federation of Ceylon, to the effect that a large number of employers outside this Federation violate the regulations respecting minimum wages. The Federation considers that it is absolutely essential that the inspection machinery should be strengthened so that such employers are made to comply with minimum laws.

The Committee requests the Government to provide detailed information on the operation of the inspection service responsible for supervising the application of minimum wage standards, including the number of visits carried out, infringements recorded and penalties imposed.

[The Government is asked to report in detail for the period ending 30 June 1989.]



Uruguay (ratification: 1977)

1. The Committee notes the comments submitted by the Inter-Union Workers' Assembly - National Workers' Convention (PIT-CNT) alleging non-observance by the Government of the provisions of Articles 3 and 4 of the Convention. The PIT-CNT alleges, with regard to rural workers, that not only has the Government not encouraged the creation of effective wage-fixing machinery in which such workers participate on a basis of equality with employers, but that it has repeatedly ignored national legislation, such as Act No. 13246, which explicitly provides for the creation of wage councils in the farming, wine-producing, bee-keeping, etc. sectors. It also alleges that the wages of rural workers continue to be fixed by Government decree, without any type of consultation, despite the existence of employers' and workers' associations. With regard to domestic staff, the PIT-CNT alleges that these continue to be left outside any wage-fixing system, despite the provisions of the Conventions. The wages of these workers continue to depend on the individual contracts concluded. The PIT-CNT also alleges that the factors set out in Article 3 of Convention No. 131 are not taken into account when determining minimum wages and points out that currently the minimum family expenditure level is around 125,000 new pesos while the minimum wage fixed by the Government is 25,000 new pesos.

The above comments were forwarded to the Government on 30 June 1988 and no observations have been received from it in reply up to the present time. The Committee hopes that the Government will include the observations that it considers appropriate on the comments submitted by the PIT-CNT.

The Committee also notes that no report has been received from the Government and hopes that it will send full information on the following points:

Article 1, paragraph 3. The Committee notes the information concerning the reasons for the exclusion of domestic workers from the coverage of minimum wages legislation. It requests the Government to indicate whether measures are envisaged to ensure that these workers are provided with a system for fixing minimum wages.

Article 3. In a previous report the Government states that the wages policy currently in force is principally based on the economic factors mentioned in paragraph (b) of this Article in order that wage rises may not result in a worsening of the unemployment situation. While noting this statement, the Committee requests the Government to indicate to what extent and in what ways the elements mentioned in paragraph (a) of this Article are taken into consideration in fixing minimum wages.

Article 4, paragraphs 2 and 3. The Committee notes from the Government's report that occupational associations have been reconstituted. Please indicate the way in which consultation and participation of these organisations in fixing minimum wages is ensured, as envisaged under these paragraphs.

The Committee notes the comments submitted by the Workers' Union of Paycueros alleging non-observance of the provisions of this

Convention and the detailed comments forwarded by the Government on this subject.

[The Government is asked to report in detail for the period ending 30 June 1989.]

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In addition, requests regarding certain points are being addressed directly to the following States: Australia, Bolivia, Brazil, Burkina Faso, Costa Rica, Ecuador, Guyana, Iraq, Lybian Arab Jamahiriya, Mexico, Nepal, Portugal, Sri Lanka, Swaziland, Syrian Arab Republic, United Republic of Tanzania, Zambia.

#### **Convention No. 132: Holidays with Pay (Revised), 1970**

Requests regarding certain points are being addressed directly to the following States: Iraq, Uruguay, Yemen.

#### **Convention No. 134: Prevention of Accidents (Seafarers), 1970**

France (ratification: 1978)

Referring to its previous observations, the Committee notes that Decree No. 85-1255 of 4 November 1985, concerning committees for health, safety and conditions of work in maritime enterprises, provides for the setting up of committees including representatives of personnel responsible for overseeing the implementation of safety provisions on board ship, including inspection visits and investigations. While noting with interest that this Decree aims at improving occupational accident prevention for seafarers, the Committee notes that it contains no provisions which would give effect to the following provisions of the Convention, which have been the subject of comments for many years:

Article 4, paragraph 3(c), (g) and (i), of the Convention (measures for the personal protection of seafarers against accidents that may be caused by machinery or by anchors, chains and lines; and supply and use of personal protective equipment).

Article 5 (obligation of shipowners, seafarers and others concerned to comply with the provisions on safety and accident prevention).

Article 6, paragraph 4, and Article 9, paragraph 2 (measures to bring to the attention of seafarers the provisions on accident prevention in general and to call their attention to particular hazards).

The Committee trusts that the Government will take the necessary measures in order to ensure full application of the Convention on these points in the very near future.

Guinea (ratification: 1977)

In its previous comments, the Committee has requested the Government to supply information on the provisions which give effect to the Convention, which was ratified more than ten years ago. In reply to these comments, the Government had indicated that the labour legislation, and particularly the safety and health provisions, were being revised with the assistance of the ILO and that, during this revision, account would be taken of the Committee's comments. In its last report, which was received in 1987, the Government stated that appropriate provisions to give effect to the Convention would be adopted under the new Labour Code when that was enacted.

The Committee notes that Ordinance No. 003/PRG/SGG/88, of 28 January 1988, to issue the Labour Code, contains general provisions concerning safety and health, and that section 171(2) lays down that ministerial orders will establish the specific requirements either for certain occupations, or for certain methods of work. The Committee trusts that regulations to prevent accidents to seafarers arising out of their employment, in accordance with the Convention, will be adopted in the very near future, with the technical assistance of the ILO if necessary. It requests the Government to supply in its next report information on the progress achieved in this respect.

[The Government is asked to report in detail for the period ending 30 June 1989.]

Nigeria (ratification: 1973)

The Committee notes with regret that for the sixth consecutive year the Government's report has not been received and that consequently no information is available to it in reply to its previous comments since 1980. It is therefore bound to repeat the following points raised previously:

Article 2 of the Convention. Please supply copies, or relevant extracts, of reports of inquiry, as well as samples of statistics compiled in conformity with the provisions of paragraphs 1 to 3.

Articles 3, 8 and 9. Please supply full particulars of any measures taken for the implementation of these Articles.

Articles 4 and 5. Please provide a copy of the Life-Saving and Fire-Fighting Rules, 1968, referred to in the report, and of any further rules issued under the Merchant Shipping Act, or still in force under section 428 of that Act, that deal with the matters covered by these Articles.

Article 7. In its report of 1977 the Government referred to the appointment of inspectors or of a committee of factory inspectors to ensure accident prevention in machinery spaces on board ship. This Article, however, provides for the appointment from among the crew of a suitable person or persons or of a suitable committee responsible for accident prevention on board ships. Please describe the practice in regard to the appointment of persons or committees responsible for accident prevention on board Nigerian ships.

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

[The Government is asked to supply full particulars to the Conference at its 76th Session.]

Romania (ratification: 1975)

Further to its previous comments, the Committee notes the standards on labour protection in maritime navigation supplied by the Government and notes that these standards contain provisions giving effect to Article 4, paragraphs 2 and 3, and Article 5 of the Convention (specific provisions concerning the prevention of occupational accidents which are peculiar to maritime employment and the obligation of shipowners, seafarers and others concerned to comply with them).

The Committee also takes due note of the information supplied by the Government concerning the number, nature, causes and consequences of employment accidents, and the activities of the labour inspectorate in this field.

Uruguay (ratification: 1977)

Referring to its previous comments, the Committee notes with satisfaction that Maritime Instruction No. 18 of 28 December 1984 contains provisions relating to accident prevention on board ship which, in accordance with Article 4, paragraph 3(a), (f) and (g), of the Convention, cover the following areas: general and basic provisions; fire prevention and fire-fighting; and anchors, chains and lines. This Instruction gives effect also to Article 6, paragraph 4, of the Convention, covering provision of information to seafarers.

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In addition, requests regarding certain points are being addressed directly to the following States: Costa Rica, Egypt, Italy, New Zealand, Uruguay.

**Convention No. 135: Workers' Representatives, 1971**

Requests regarding certain points are being addressed directly to the following States: Jordan, Yemen.

**Convention No. 136: Benzene, 1971**

France (ratification: 1972)

Further to its previous direct requests, the Committee notes with satisfaction that Decree No. 86-269 of 13 February 1986 concerning the protection of workers exposed to benzene fixes the maximum permissible

concentration of benzene in the atmosphere of workplaces, in conformity with Article 6, paragraph 2, of the Convention, and forbids exposure to benzene for workers of less than 18 years of age, in conformity with Article 11, paragraph 2, of the Convention.

The Committee is also addressing a request directly to the Government on other points.

Morocco (ratification: 1974)

The Committee has taken note of the draft Labour Code communicated by the Government in response to its previous observation. It notes with interest that the regulations part of this Labour Code contains provisions that give effect to Articles 1, 2, 3(1), 4, 6(2), 11(2) and 12 of the Convention which, until now, had not been applied by national legislation. The Committee has noted, however, that section 502 of the regulations part of the draft permits labour inspectors to grant temporary exemptions from the level of percentage fixed for subjection to the relevant provisions and from the obligation to use less harmful substitute products, without providing for the consultation with the most representative organisations of employers and workers which is required by Article 3 of the Convention. It further notes that the draft does not provide for adequate means of personal protection for workers who may have skin contact with liquid benzene or liquid products containing benzene, in accordance with Article 8, paragraph 1. The Committee hopes that the draft of the regulations part of the Labour Code can be modified on these points and that it will be adopted in the very near future so as to ensure the full application of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1990.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Bolivia, Ecuador, France, Guinea, Guyana, Italy, Kuwait, Morocco, Yugoslavia, Zambia.

Information supplied by Romania in answer to a direct request has been noted by the Committee.

**Convention No. 137: Dock Work, 1973**

Requests regarding certain points are being addressed directly to the following States: Afghanistan, Costa Rica, Egypt, Guyana, Iraq, Portugal, Spain, United Republic of Tanzania, Uruguay.

**Convention No. 138: Minimum Age, 1973**Finland (ratification: 1976)

Further to its previous direct requests, the Committee notes with satisfaction that Decree No. 508 of 27 June 1986 concerning the protection of young workers, which regulates admission to dangerous work, henceforth applies to agriculture, forestry and the transport of logs by water and that it makes the employment of young persons of less than 16 years of age in dangerous work subject to the conditions set out in Article 3, paragraph 3, of the Convention.

Norway (ratification: 1980)

Further to its previous comments, the Committee notes with satisfaction that Act No. 58 of 7 June 1985 has extended the provisions on protection of children and young persons in employment of the Working Environment Act of 4 February 1977 to agriculture and forestry, thus giving effect to Article 2, paragraphs 1 and 3, of the Convention.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Dominica, Italy, Kenya, Libyan Arab Jamahiriya, Norway, Yugoslavia.

**Convention No. 139: Occupational Cancer, 1974**Ecuador (ratification: 1975)

Further to its previous direct requests, the Committee notes with satisfaction that Decree No. 2393 of 13 November 1986 laying down Regulations concerning the safety and health of workers and the improvement of the working environment gives effect to Articles 2(1), 3 and 4 of the Convention, which respectively provide for the replacement of carcinogenic substances and agents by non-carcinogenic or less harmful substances or agents; measures to protect workers against the risks of exposure and to establish an appropriate system of records; and measures to provide workers with information on the dangers involved and the precautions to be taken.

The Committee is making a direct request concerning other points.

Guinea (ratification: 1976)

With reference to its previous comments, the Committee notes Ordinance No. 003/PRG/SGG/88, of 28 January 1988, issuing the new Labour Code, which contains general provisions regarding health and safety. It also notes the Government's statements in its last report

to the effect that Orders to implement the Code, intended to give full effect to the provisions of the Convention, will be issued after its adoption and after consultations with the Tripartite Labour Advisory Commission, and that the inspection services and the occupational health services are making efforts to promote occupational health and safety.

As no specific measures have been taken since the Convention was ratified to prevent and control occupational cancer in accordance with the Convention, the Committee trusts that in its next report the Government will be able to indicate the progress achieved in the adoption of such measures, if necessary, with the technical assistance of the Office.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Denmark, Ecuador, Egypt, Guinea, Guyana, Peru, Syrian Arab Republic.

#### **Convention No. 140: Paid Educational Leave, 1974**

Requests regarding certain points are being addressed directly to the following States: Afghanistan, Guinea, United Republic of Tanzania.

#### **Convention No. 141: Rural Workers' Organisations, 1975**

Ecuador (ratification: 1977)

The Committee notes that the Ecuador Confederation of Working Class Organisations (CEDOC) sent comments on the Government's application of this Convention in a letter dated 29 March 1988 and that the Government replied thereto on 9 August 1988, giving an initial general statement that labour confederations, when commenting on governments' reports, should act responsibly and not with a view to creating difficulties and damaging the external image of the government concerned.

According to CEDOC, the Communes Act referred to by the Government is not in force since it was objected to by the President; it adds that there are thus many laws which regulate the granting of legal personality to peasants' associations. In particular, it objects to Accord No. 263 of 1985 and criticises the role of the Ministry of Agriculture in "approving" a rural workers' organisation's statutes when it applies for legal personality; CEDOC considers that the public authorities should only register such documents having verified that they comply with the normal formalities and the law.

The Government explains that the Communes Act is in force since, under article 69(2) of the Constitution, publication in the Official Journal constitutes promulgation of a law. It adds that the granting of legal personality is the responsibility of the Ministry of Agriculture without any overlapping of responsibilities.

The Committee notes that subsequent to these communications, Accord No. 263 was repealed and replaced by Ministry of Agriculture Accord No. 327 of 25 August 1988 on the recognition of agricultural, stock-raising and forestry organisations. Accord No. 327 was itself amended by Accord No. 064 of 4 November 1988 which makes it clear that all persons involved in these activities have the right to form associations of this type which upon registration receive legal personality. The Committee accordingly considers that there is now no infringement of the Convention as concerns these points.

\* \* \*

Information supplied by Afghanistan, France, Guyana in answer to a direct request has been noted by the Committee.

### **Convention No. 142: Human Resources Development, 1975**

United Kingdom (ratification: 1977)

In its previous observation, the Committee referred to comments received from the Trades Union Congress (TUC) in February 1988 and invited the Government to make known its own views on these comments. The TUC referred to the transfer of the Public Employment Service (PES) away from the Manpower Services Commission (MSC) - since renamed the Training Commission - thus removing it from tripartite supervision; it also expressed fears that the Government's statements have shown a retreat from the previous commitment to a tripartite approach to the organisation of training in accordance with Article 5 of the Convention. The TUC further referred to new legislation removing social security entitlements from young people not taking up either whatever jobs were available or training opportunities; in particular, it pointed out that provisions in the Employment Bill (now Act) of 1988 remove the requirement in previous legislation that the training opportunities should be for the purpose of becoming or keeping fit for entry or return to regular employment; this, it indicated, means that sanctions can be applied to those refusing training even though such training need not take account of their best interests and aspirations, contrary to Article 1, paragraph 5.

The Government in its report received on 1 March 1989 (which includes details and documentation relating to various aspects of the Convention) expresses the view that the local area manpower boards provide sufficient opportunities for employers' and workers' organisations to make their opinions about the PES known. On the second point, the Government does not believe it is in the best interests of young people, or society as a whole, for them to start their working lives unskilled and unemployed and so forced to rely on



social security benefits; it believes there is no reason why an unemployed person should, without good cause, refuse or leave a place on an approved training scheme. In reply to the Committee's previous observation, the Government indicates that its vocational training funding study exercise was expected to report early in 1989; and it gives a brief account of the terms of reference of the Skills Unit in the Training Commission.

The Committee notes that, under Article 1, paragraph 5, of the Convention, policies and programmes should encourage and enable the development and use of workers' abilities in their own best interests and in accordance with their own aspirations, account being taken of the needs of society. Under Article 5, those policies and programmes should be formulated as well as implemented in co-operation with employers' and workers' organisations and, where appropriate, other interested bodies. As regards the incidence of the circumstances mentioned by the TUC on a policy for full, productive and freely chosen employment, the Committee refers to its observation under Convention No. 122. As regards Article 5 of the present Convention, the Committee hopes that the Government will indicate by what means it is ensured under current arrangements in the field of vocational guidance and training that due co-operation takes place at the stage of policy and programme formulation. The Committee trusts that the next report will include details of the matters referred to here. It also hopes the Government will include in its report any comment it considers appropriate on the further observation made by the TUC in January 1989, which the Committee intends to examine at its next session. Besides referring again to Article 5, the TUC in this observation takes the view that the Government has failed to give sufficient weight to the general requirement in the first four Articles for the Government to ensure that human resources development is coherent and comprehensive and meets the needs of the economy and society.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, United Republic of Tanzania.

### **Convention No. 143: Migrant Workers (Supplementary Provisions), 1975**

#### Italy (ratification: 1981)

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

The Committee would be grateful if the Government would provide in its next report information on the practical application of Act No. 943. In particular, it hopes that the

next report will indicate the results achieved in obtaining data on migratory movements and eliminating manpower trafficking and illegal employment of migrant workers and on the practical measures taken, in accordance with Article 12 of the Convention, to promote and ensure the observance of the policy of equality of treatment.

With reference to the observations submitted in 1984 by the Italian General Confederation of Labour (CGIL) on the application of this Convention and of Convention No. 97, the Committee notes that most of the points raised in these observations are superseded by the adoption of Act No. 943. However, as regards migrant domestic workers, which represent an important proportion of the migrant labour force in Italy, the CGIL, while recognising that the relevant collective agreement is applicable to all workers in this branch of activity, stresses that the conditions prescribed are minimum ones, which in fact now only apply to foreigners. While noting that Act No. 943 has removed certain limitations which were especially applicable to the employment of migrant domestic workers, the Committee recalls that Part I of the Convention does not only call for the elimination of discrimination against migrant workers lawfully in the country. It requires action by the public authorities to promote equality of opportunity in practice (see in this regard paragraphs 285 and ff. of the Committee's 1980 General Survey on Migrant Workers). The Committee therefore hopes that the Government will be able, in co-operation with employers' and workers' organisations, to take and promote such measures as may be appropriate to secure the acceptance and observance in practice of the policy of equal opportunity and treatment in respect of domestic workers, as required by Article 12 (a) and (b) of the Convention. It hopes that the next report will contain information in this regard.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Benin, Burkina Faso, Cameroon, Cyprus, Guinea, Italy, Kenya, Norway, Portugal, San Marino.

Information supplied by Togo in answer to a direct request has been noted by the Committee.

#### **Convention No. 144: Tripartite Consultation (International Labour Standards) 1976**

##### Bahamas (ratification: 1979)

The Committee notes that the Government's report contains no reply to its previous comments. It must therefore repeat its previous observation which read as follows:

The Committee has already pointed out that genuine consultations should be held frequently so that each of the questions listed in Article 5, paragraph 1, of the Convention may

be examined when necessary, in accordance with the principle of "effective consultations" set forth in Article 2. Certain subjects (replies to questionnaires, submission to the competent authorities, reports to be made to the ILO under article 22 of the Constitution of the Organisation) imply annual consultations, whereas other subjects (for example, proposals for the denunciation of ratified Conventions), arise less frequently.

In these circumstances, the Committee requests the Government to describe the measures taken or under consideration to hold regular and frequent consultations on these matters. It requests the Government in particular to furnish detailed information concerning the consultations held (during the period covered by the next report) on the various matters listed in Article 5, paragraph 1, specifying the results that these consultations have led to.

Moreover, the Committee recalls that according to Article 6, representative organisations of employers and workers should be consulted on the necessity of producing an annual report on the working of the procedures provided for in the Convention. It requests the Government to state whether such consultations have taken place and, if so, to provide information on any results.

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

#### India (ratification: 1978)

The Committee has noted the comments presented by the Bharatiya Mazdoor Sangh relating to the application of the Convention. This organisation alleges that the Government has not convened since 1983 any meeting of the Tripartite Committee on Conventions, set up to hold consultations on matters of ratification or otherwise of the Conventions adopted by the International Labour Conference. It states that this constitutes a gross violation of the obligations under the ILO Constitution.

The Committee also notes the Government's reply to these allegations whereby the latter admits that the Tripartite Committee on Conventions has not met for a number of years, the main reason for that being that the subcommittee set up by the Tripartite Committee on Conventions in 1983, whose main task consists of selecting and examining unratified Conventions with a view to proposing their eventual ratification, has made certain recommendations with respect to a number of Conventions. The Government considered that these recommendations involved legislative changes and required detailed examination. It further considered that it would be better to convene the next meeting of the Tripartite Committee on Conventions when it was possible to report concrete results on the recommendations of the subcommittee. The Government further states that it has regularly consulted the central employers' and workers' organisations on all matters listed under Article 5, paragraph 1 (with the exception of item (e)). Considering that the process of consultation through correspondence meets the requirements of the Convention, the

Government none the less states that a meeting of the Tripartite Committee on Conventions will be convened as soon as possible.

The Committee, noting the above explanations, requests the Government to supply with its next report on the application of the Convention full information on the consultations prescribed by the Convention. The Committee trusts the Government will soon be able to inform the Office of the resumption of the meetings of the Tripartite Committee.

#### Netherlands (ratification: 1978)

1. The Committee notes the information concerning the application of Article 5, paragraph 1(e) of the Convention furnished by the Government. It also notes the comments made by the Federation of Christian Trade Unions in the Netherlands (CNV) and the Netherlands Council of Employers' Federations (RCO).

2. The Government indicates in its report that, notwithstanding the consultations, written as well as oral, held on the proposal for the denunciation of the Employment Injury Benefits Convention, 1964 (No. 121), both the organisations of employers and of workers have protested that the observance of the consultation procedure with respect to this matter was not entirely adequate.

3. In its comments on the Government's report, the CNV specifies that the objections of the social partners rose from the fact that the period for consultations was extremely short and that, as a result, little time was left for the consultations and the parliamentary procedure.

4. The Committee notes that, in reaction to these objections, the Government is drawing up a written procedure in respect of matters arising out of the denunciation of Conventions. It would be grateful if the Government would supply in its next report information on any development in this matter.

#### United Kingdom (ratification: 1977)

The Committee has noted the information communicated by the Government in its last report, in respect of Article 5, paragraph 1, of the Convention. It notes, in particular, concerning paragraph 1(e), the Government's statement that the latter initiated in December 1987 consultations with the Confederation of British Industry (CBI) and the Trades Union Congress (TUC) about its proposal to denounce the Underground Work (Women) Convention, 1935 (No. 45) and that their comments were fully considered.

The Committee has also noted the comments, dated 4 January 1989, made by the TUC alleging the lack of effective consultation on the part of the Government regarding the denunciation of Conventions and failure by the Government to consult the TUC about proposals which were adopted, for European Community rules, for the conduct of negotiations about issues arising in draft ILO instruments. These comments were copied by the TUC directly to the Government, and the

Office further transmitted a copy to the Government on 24 January 1989 for possible comments.

The Committee refers to its previous comments on similar allegations concerning the denunciation of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and the Protection of Wages Convention, 1949 (No. 95).

The Committee would be grateful if the Government would communicate its observations on the TUC allegations of 4 January 1989.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Barbados, Costa Rica, Ecuador, Greece, Guyana, Iraq, Malawi, Portugal, San Marino, Sierra Leone, Spain, Suriname, United Republic of Tanzania, Togo, Venezuela, Zambia.

Information supplied by the Syrian Arab Republic in answer to a direct request has been noted by the Committee.

#### **Convention No. 145: Continuity of Employment (Seafarers), 1976**

Requests regarding certain points are being addressed directly to the following States: Egypt, Portugal.

#### **Convention No. 146: Seafarers' Annual Leave with Pay, 1976**

Italy (ratification: 1981)

Further to its previous observation, the Committee notes the contents of the collective agreement of 20 December 1984 and the respective rulings on this subject by the Palermo Labour Court and the Court of Appeal (Labour Division). It recalls that the workers' organisation FEDERMAR (Maritime Federation) made comments with regard to certain aspects of the collective agreement, particularly the date of its coming into force in relation to that of Convention No. 146; and concerning the method of calculating the annual leave with pay to be granted in accordance with Article 3, paragraph 3, and Article 6 of the Convention.

The Government indicates in its report that in October 1987 the Court of Cassation considered a new appeal by the workers against the decision of the Court of Appeal. The Committee trusts that the Government will also, in due time, supply a copy of the ruling by the Court of Cassation and information concerning the effect given to it, with its own comments as to the way in which the Convention is

implemented, particularly with regard to the provisions of the above Articles.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Iraq, Morocco, Portugal.

### **Convention No. 147: Merchant Shipping (Minimum Standards), 1976**

Requests regarding certain points are being addressed directly to the following States: Costa Rica, Italy, Portugal.

### **Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977**

Guinea (ratification: 1982)

Further to its previous direct requests, the Committee notes with satisfaction that Ordinance No. 003/PRG/SGG/88 of 28 January 1988 to issue the Labour Code gives effect to the following provisions of the Convention: Article 5 (participation of employers' and workers' representatives in the elaboration and implementation of measures giving effect to the Convention); Article 6 (employers' responsibilities); Article 7 (workers' responsibilities and rights); Article 11 (medical surveillance); Article 12 (notification of the use of substances and machinery which involve the exposure of workers to occupational hazards); Article 13 (information and instruction concerning potential occupational hazards and measures available for their prevention and control).

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

Portugal (ratification: 1981)

Further to its previous direct request the Committee notes with satisfaction the adoption of the Legislative Decree No. 243/86 of 20 August 1986 concerning general safety and health regulations in commerce, offices and services, and Legislative Decree No. 18/85 of 15 January 1985 approving health and safety regulations for mines and quarries, which extend the scope of the legislation applying the Convention, in accordance with Article 1 of the Convention.

The Committee has also noted with satisfaction Legislative Decree No. 251 of 24 June 1987 concerning noise regulations, which provides for organisational measures, in accordance with Article 9 of the Convention, and notification to the competent authority in accordance with Article 12.

Zambia (ratification: 1980)

With reference to its previous observation, the Committee notes that there is still no legislation which applies the provisions of the Convention. It notes, from the information supplied in the Government's report, that the Ministry of Commerce and Industry is working on measures to apply the provisions of the Convention, including legislation to limit exposure to air pollution, noise and vibration, and that the delays in finalising are due to manpower and equipment problems. The Committee expresses the hope that the Government will take all necessary measures in the very near future to adopt legislation to give full effect to the Convention. It requests the Government to indicate, in its next report, any progress made in this respect and to supply copies of any relevant legislative texts if enacted.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: France, Guinea, Portugal.

**Convention No. 149: Nursing Personnel, 1977**

Requests regarding certain points are being addressed directly to the following States: Egypt, France, Guinea, Guyana, Portugal, United Republic of Tanzania, Venezuela.

**Convention No. 150: Labour Administration, 1978**

Requests regarding certain points are being addressed directly to the following States: Australia, Burkina Faso, Ghana, Greece, Guyana.

Information supplied by Iraq, Mexico, Spain, Venezuela in answer to a direct request has been noted by the Committee.

**Convention No. 151: Labour Relations (Public Service), 1978**Denmark (ratification: 1981)

With reference to its previous comments concerning the determination of terms and conditions of employment of public employees under Article 7 of the Convention, the Committee takes note of the references made in the Government's report to various cases examined by the Committee on Freedom of Association (including, for example, Case No. 1443 presented by the Danish Computer Workers' Trade Union, 259th Report, approved by the Governing Body in November 1988).

The Committee notes that various interventions by the public authorities in the collective bargaining processes for the public employees concerned are being examined under Convention No. 98. It therefore refers the Government to the comments made thereunder.

Portugal (ratification: 1981)

The Committee takes note of the comments on the application of Article 7 of the Convention presented by the National Federation of Public Service Unions (representing health sector workers except physicians and nursing personnel) in a letter dated 24 May 1988 and the Government's reply thereto dated 6 October 1988.

The Federation complains that the Ministry of Health has thwarted collective bargaining with it through the use of delaying tactics, inaction and failure to implement the few items upon which agreement had been reached. It gives details of the numerous attempts at meeting the health authorities throughout 1986, of its rallies and of its strikes which eventually resulted in agreement on certain issues being reached on 11 February 1987. The authorities failed to continue talks on the remaining issues and the Federation's correspondence and further rallies have only met with silence. The Federation refers to a complaint it presented to the Committee on Freedom of Association on the same issue (Case No. 1382, 251st Report, paras. 134 to 160, approved by the Governing Body in May-June 1987) which concluded that the Government should "ensure that the consultations [then] in progress will make it possible in the near future to adopt health service personnel regulations in which those concerned have confidence".

The Government explains that, in view of the flexibility contained in Article 7 of the Convention, it has adopted a mixed system of collective bargaining and participation through consultation (in section 1(2) of Legislative Decree No. 45-A/84), the former concerning salaries and other benefits, and the latter covering other conditions of employment. According to the Government, none of the issues raised by the Federation was appropriate for collective bargaining, but they were the subject of regular consultations between the Ministry of Health, the Federation, as well as other organisations representing health workers. The Government gives a list of action taken on the various items which the Federation claims were ignored by the authorities; it stresses that it took - and has always taken - account of the positions communicated to it by trade union organisations, including the Federation, but cannot meet demands from the Federation to be received at any moment or to change terms and conditions merely at its behest.

The Committee notes that by virtue of Legislative Decree No. 45-A/84, the Government is obliged to consult and maintain relations with the representative employees' organisations and that Article 7 of the Convention refers to the promotion and utilisation of machinery for negotiation, or of "such other methods" as will allow representatives to participate in the determination of their terms and conditions of employment. It also notes that in the present affair, consultations resulting in agreement on certain issues did take place,



albeit after many delays. Moreover, according to the list of measures taken, supplied by the Government, it appears that only three specific issues (upgrading of the post of laboratory assistant, corresponding specification of anomalous situations, and application to all workers in the auxiliary personnel category of the regional health authorities of the rules laid down in Legislative Decree No. 109/80) still await a government reaction to the Federation's proposals and are said by the Government to be under consideration. In these circumstances, and despite the regrettable delays which should be avoided in the future as far as possible, the Committee does not consider that a violation of Article 7 has been established.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Ghana, Italy.

### **Convention No. 152: Occupational Safety and Health (Dock Work), 1979**

Guinea (ratification: 1982)

Following its previous direct requests, the Committee notes with satisfaction that Ordinance No. 003/PRG/SGG/88 of 28 January 1988 to issue the Labour Code gives effect to the following provisions of the Convention: Article 5 (responsibilities of the employer); Article 6, paragraphs 1(a) and (b) and 2 (obligations and rights of the workers); Article 13 (protection of machinery); Article 36, paragraphs 1(a) and (b) and 2 (medical examinations); and Article 38, paragraph 1 (training).

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

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: France, Guinea, United Republic of Tanzania.

### **Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979**

A request regarding certain points is being addressed directly to Venezuela.

Information supplied by Mexico in answer to a direct request has been noted by the Committee.

**Convention No. 154: Collective Bargaining, 1981**Norway (ratification: 1982)

The Committee notes the information set out in the Government's report. The Committee considers that the legislative interference with the right to free collective bargaining discussed in relation to Convention No. 87 is not in conformity with the principles embodied in Articles 5 and 6 of the Convention.

Spain (ratification: 1985)

The Committee takes note of the comments made by the Trade Union Confederation of Workers' Committees (CC.OO.) on the application of the Convention and the Government's reply to them.

The CC.OO. points out that, under the State's budgetary laws for 1985, 1986 and 1987, a wages ceiling was established for collective agreements covering wage earners linked by a labour relationship to bodies dependent on the State, such as public law enterprises or public institutions having independent status and legal personality (like RENFE for the railways, RTVE for radio and television and the Mint).

The CC.OO. adds that the Finance Ministry must make a report prior to negotiations on collective agreements, the absence of which results in the nullity of such agreements. The CC.OO. considers that the legislative provisions in question do not promote collective bargaining, nor do they respect the principle of the ILO's supervisory bodies according to which where, for reasons of a stabilisation policy, "a government considers that it would not be possible for wage rates to be fixed freely by means of collective negotiations, such a restriction should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards".

The Government points out that the CC.OO. recognises that the ILO's supervisory bodies accept that States subject wage increases, which can be agreed upon during bargaining, to the fixing of certain limits. Therefore this is not a question of discussing the principle, but of determining whether the socio-economic reasons referred to in the ILO reports have occurred and whether the wage ceilings mentioned come within measures of an economic policy of the type listed in sections 40 and 131 of the Spanish Constitution. The Ministries of Finance and of Public Administration are responsible for introducing, in the budgetary laws, clauses limiting wage increases of those employed by the public administrations and enterprises. The Spanish judicial bodies have repeatedly accepted the legality of situations where a provision of a legislative character may set limits in the field of wages on collective bargaining for employees of public administrations.

The Committee points out that in ratifying the Convention the Government undertook to take measures adapted to national conditions to promote collective bargaining for determining working conditions

and terms of employment and regulating relations between employers and workers and between organisations of employers and of workers. As regards the public service, the Convention states that special modalities of application may be fixed (Articles 1, 2 and 5 of the Convention).

In these circumstances, the Committee considers that in so far as the income of public enterprises and bodies depends on state budgets, it would not be objectionable - after wide discussion and consultation between the concerned employers and employees' organisations in a system having the confidence of the parties - for wages ceilings to be fixed in state budgetary laws. Neither would it be a matter for criticism that the Ministry of Finance prepare a report prior to the commencement of collective bargaining with a view to ensuring respect of such ceilings.

\* \* \*

In addition, a request regarding certain points is being addressed directly to Zambia.

### **Convention No. 155: Occupational Safety and Health, 1981**

Spain (ratification: 1985)

The Committee has before it a communication dated 13 January 1989 from the Occupational Union of Uniformed Police (SPPU) concerning the application of the Convention in the police stations of Fuengirola and Marbella. This communication was transmitted on 7 February 1989 to the Government, which has not yet submitted its observations. The Committee requests the Government to communicate these observations so that it may examine the matter at its next session.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Portugal, Spain, Venezuela.

### **Convention No. 156: Workers with Family Responsibilities, 1981**

A request regarding certain points is being addressed directly to Venezuela.

### **Convention No. 157: Maintenance of Social Security Rights, 1982**

A request regarding certain points is being addressed directly to Spain.

**Convention No. 158: Termination of Employment, 1982**

Requests regarding certain points are being addressed directly to the following States: Cyprus, Malawi, Spain, Sweden, Venezuela.

**Convention No. 159: Vocational Rehabilitation and Employment  
(Disabled Persons), 1983**

Requests regarding certain points are being addressed directly to the following States: Finland, Greece, Hungary, San Marino.

**Convention No. 160: Labour Statistics, 1985**

A request regarding certain points is being addressed directly to Sweden.

**Appendix I. Receipt of Detailed Reports on Ratified Conventions (Member States)  
as at 22 March 1989**

*(Art. 22 of the Constitution)*

Reports requested: 1,638      Reports received: 1,230      Reports not received: 408

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Afghanistan . . . . .	0		3	95, 111, 137	3
Algeria . . . . .	21	3, 11, 13, 32, 62, 68, 77, 78, 87, 91, 92, 94, 97, 98, 99, 111, 119, 120, 122, 127, 150	0		21
Angola . . . . .	7	1, 7, 26, 68, 91, 92, 98	1	111	8
Antigua and Barbuda . . . .	4	11, 87, 98, 111	0		4
Argentina . . . . .	11	1, 3, 9, 11, 26, 30, 58, 68, 87, 98, 111	0		11
Australia . . . . .	13	7, 9, 11, 47, 87, 98, 99, 111, 112, 122, 131, 137, 144	0		13
Austria . . . . .	12	11, 26, 29, 87, 98, 99, 102, 103, 111, 122, 128, 144	0		12
Bahamas . . . . .	8	7, 11, 26, 81, 97, 98, 105, 144	0		8
Bangladesh . . . . .	9	1, 11, 29, 87, 98, 105, 107, 111, 144	0		9
Barbados . . . . .	11	7, 11, 26, 87, 97, 98, 102, 111, 122, 128, 144	0		11
Belgium . . . . .	17	1, 9, 11, 26, 68, 87, 91, 92, 97, 98, 99, 102, 111, 120, 122, 126, 144	0		17
Belize . . . . .	9	11, 22, 26, 29, 58, 87, 97, 98, 99	0		9
Benin . . . . .	6	11, 26, 87, 98, 111, 143	0		6
Bolivia . . . . .	15	1, 20, 30, 77, 78, 87, 98, 102, 103, 106, 107, 111, 120, 122, 131	1	128	16

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Brazil . . . . .	16	5, 11, 53, 58, 91, 92, 95, 97, 98, 103, 107, 111, 117, 118, 122, 131	7	94, 100, 105, 113, 115, 120, 125	23
Bulgaria . . . . .	11	1, 3, 9, 11, 26, 30, 68, 87, 98, 111, 120	0		11
Burkina Faso . . . . .	9	3, 11, 87, 97, 98, 111, 131, 143, 150	0		9
Burma . . . . .	4	1, 11, 26, 87	0		4
Burundi . . . . .	3	1, 11, 26	0		3
Byelorussian SSR . . . . .	10	11, 47, 52, 87, 98, 103, 111, 119, 120, 122	0		10
Cameroon . . . . .	12	3, 9, 11, 29, 87, 97, 98, 108, 122, 131, 143, 146	0		12
Canada . . . . .	7	1, 26, 58, 68, 87, 111, 122	0		7
Cape Verde . . . . .	0		7	19, 29, 81, 98, 100, 105, 111	7
Central African Republic . .	7	3, 11, 26, 52, 99, 111, 119	5	18, 29, 87, 98, 105	12
Chad . . . . .	5	11, 26, 87, 98, 111	0		5
Chile . . . . .	13	1, 3, 7, 9, 11, 26, 30, 35, 36, 37, 38, 111, 122	0		13
China . . . . .	3	7, 11, 26	0		3
Colombia . . . . .	11	1, 3, 7, 9, 11, 20, 26, 30, 99, 106, 111	3	22, 87, 98	14
Comoros . . . . .	8	1, 11, 13, 26, 87, 98, 99, 122	0		8
Congo . . . . .	0		11	5, 11, 13, 26, 29, 33, 87, 119, 149, 150, 152	11
Costa Rica . . . . .	17	1, 87, 92, 96, 98, 100, 101, 102, 111, 113, 120, 122, 131, 134, 137, 144, 147	1	11	18
Côte d'Ivoire . . . . .	9	3, 11, 26, 52, 87, 98, 99, 110, 111	0		9
Cuba . . . . .	16	1, 9, 11, 30, 87, 91, 92, 97, 98, 103, 110, 111, 120, 122, 131, 137	0		16
Cyprus . . . . .	11	11, 87, 97, 98, 111, 114, 119, 122, 128, 143, 144	0		11

## OBSERVATIONS CONCERNING RATIFIED CONVENTIONS

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Czechoslovakia . . . . .	8	1, 11, 26, 87, 98, 99, 111, 122	0		8
Democratic Yemen . . . . .	0		9	16, 19, 29, 58, 59, 94, 95, 98, 105	9
Denmark . . . . .	15	9, 11, 58, 62, 81, 87, 92, 111, 112, 120, 126, 129, 139, 144, 159	4	98, 102, 122, 142	19
Djibouti . . . . .	0		32	1, 5, 9, 10, 11, 13, 16, 19, 26, 29, 33, 36, 37, 38, 53, 58, 63, 69, 73, 81, 87, 91, 96, 98, 99, 100, 105, 120, 122, 123, 125, 126	32
Dominica . . . . .	3	11, 16, 26	6	22, 87, 94, 97, 98, 111	9
Dominican Republic . . . . .	0		15	1, 5, 7, 10, 19, 26, 29, 81, 87, 95, 98, 100, 105, 111, 119	15
Ecuador . . . . .	15	11, 87, 97, 98, 103, 110, 111, 112, 119, 120, 122, 123, 128, 131, 144	1	105	16
Egypt . . . . .	17	1, 9, 11, 30, 55, 56, 68, 71, 87, 92, 98, 106, 111, 131, 137, 144, 145	0		17
El Salvador . . . . .	0		1	159	1
Equatorial Guinea . . . . .	3	1, 30, 103	0		3
Ethiopia . . . . .	4	11, 87, 98, 111	0		4
Fiji . . . . .	8	11, 19, 26, 29, 59, 84, 85, 98	3	8, 58, 105	11
Finland . . . . .	14	9, 11, 30, 87, 91, 92, 98, 111, 119, 120, 122, 128, 137, 144	0		14
France . . . . .	40	3, 8, 9, 11, 22, 35, 36, 37, 38, 53, 55, 58, 68, 69, 71, 74, 77, 78, 81, 87, 92, 97, 98, 100, 102, 108, 111, 112, 118, 120, 122, 126, 127, 131, 140, 141, 142, 144, 145, 146	2	123, 137	42
Gabon . . . . .	7	3, 11, 26, 87, 98, 99, 111	0		7

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
German Democratic Republic . . . . .	8	11, 47, 87, 98, 103, 111, 120, 122	0		8
Germany, Federal Republic of . . . . .	16	3, 9, 11, 26, 87, 92, 97, 98, 99, 102, 111, 120, 122, 126, 128, 144	0		16
Ghana . . . . .	9	22, 87, 103, 105, 111, 115, 149, 150, 151	12	1, 11, 26, 29, 30, 58, 92, 98, 100, 119, 120, 148	21
Greece . . . . .	11	1, 9, 11, 42, 68, 71, 92, 98, 103, 111, 115	6	29, 87, 102, 122, 138, 144	17
Grenada . . . . .	0		11	5, 8, 10, 11, 16, 19, 26, 58, 97, 98, 99	11
Guatemala . . . . .	13	26, 30, 58, 87, 97, 98, 99, 105, 110, 111, 112, 119, 120	0		13
Guinea . . . . .	16	3, 11, 26, 81, 87, 98, 99, 111, 112, 115, 119, 120, 122, 140, 143, 150	1	149	17
Guinea-Bissau . . . . .	9	1, 7, 18, 26, 68, 91, 92, 98, 111	0		9
Guyana . . . . .	1	141	17	7, 11, 29, 42, 81, 87, 97, 98, 111, 129, 131, 136, 137, 139, 144, 149, 150	18
Haiti . . . . .	7	42, 87, 98, 100, 105, 106, 111	5	1, 30, 78, 81, 107	12
Honduras . . . . .	4	87, 98, 111, 122	0		4
Hungary . . . . .	9	7, 26, 87, 98, 99, 103, 111, 122, 159	0		9
Iceland . . . . .	7	11, 58, 91, 98, 102, 111, 144	1	87	8
India . . . . .	5	1, 11, 26, 111, 144	0		5
Indonesia . . . . .	2	98, 120	0		2
Iran, Islamic Republic of . . . . .	3	29, 111, 122	1	19	4
Iraq . . . . .	13	1, 11, 30, 94, 98, 111, 122, 131, 137, 144, 145, 146, 153	5	92, 107, 108, 147, 152	18
Ireland . . . . .	6	23, 29, 32, 68, 73, 92	11	11, 26, 87, 98, 99, 102, 105, 122, 142, 144, 159	17



## OBSERVATIONS CONCERNING RATIFIED CONVENTIONS

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Israel . . . . .	11	1, 9, 30, 87, 91, 92, 97, 98, 102, 111, 122	0		11
Italy . . . . .	16	9, 11, 19, 26, 69, 81, 96, 99, 103, 119, 122, 137, 144, 146, 148, 150	16	27, 29, 68, 87, 92, 94, 97, 98, 102, 105, 111, 118, 120, 129, 134, 143	32
Jamaica . . . . .	6	11, 19, 26, 97, 105, 150	9	8, 16, 29, 58, 87, 98, 111, 122, 149	15
Japan . . . . .	9	9, 58, 87, 98, 102, 119, 122, 131, 142	0		9
Jordan . . . . .	6	98, 119, 120, 122, 123, 124	1	111	7
Democratic Kampuchea . . .	0		5	4, 6, 13, 29, 122	5
Kenya . . . . .	13	11, 17, 29, 97, 98, 99, 105, 129, 131, 137, 138, 142, 143	0		13
Kuwait . . . . .	9	1, 29, 30, 81, 87, 105, 106, 119, 136	1	111	10
Lao People's Democratic Republic . . . . .	0		2	13, 29	2
Lebanon . . . . .	0		27	1, 14, 15, 17, 19, 29, 30, 45, 52, 59, 77, 78, 81, 88, 89, 90, 95, 98, 100, 105, 106, 111, 115, 120, 122, 127, 131	27
Lesotho . . . . .	3	11, 87, 98	1	26	4
Liberia . . . . .	0		10	29, 55, 58, 87, 92, 98, 105, 111, 112, 147	10
Libyan Arab Jamahiriya . . . . .	0		9	1, 96, 98, 102, 103, 111, 122, 128, 131	9
Luxembourg . . . . .	9	1, 9, 11, 26, 30, 87, 98, 102, 103	0		9
Madagascar . . . . .	0		8	11, 26, 87, 111, 119, 120, 122, 124	8
Malawi . . . . .	8	11, 26, 97, 98, 99, 111, 144, 158	2	149, 159	10
Malaysia . . . . .	2	98, 119	3	7, 11, 97	5
Peninsular Malaysia . . . .	1	11	0		1

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State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Sabah . . . . .	1	97	0		1
Sarawak . . . . .	2	7, 11	0		2
Mali . . . . .	5	11, 26, 87, 98, 111	0		5
Malta . . . . .	7	7, 11, 26, 87, 98, 99, 111	0		7
Mauritania . . . . .	4	29, 53, 62, 81	24	3, 5, 11, 13, 14, 19, 22, 23, 26, 33, 52, 58, 84, 87, 91, 94, 96, 101, 102, 111, 112, 114, 118, 122	28
Mauritius . . . . .	5	11, 32, 58, 84, 97	4	26, 94, 98, 99	9
Mexico . . . . .	17	9, 11, 30, 56, 58, 87, 102, 110, 111, 112, 115, 120, 131, 144, 150, 153, 155	0		17
Mongolia . . . . .	0		5	87, 98, 103, 111, 122	5
Morocco . . . . .	13	11, 26, 30, 52, 98, 99, 100, 111, 119, 122, 136, 146, 147	0		13
Mozambique . . . . .	4	1, 11, 30, 111	0		4
Nepal . . . . .	2	111, 131	0		2
Netherlands . . . . .	17	9, 11, 29, 68, 87, 92, 97, 102, 103, 111, 122, 126, 128, 131, 137, 144, 146	0		17
New Zealand . . . . .	14	1, 9, 11, 26, 30, 47, 49, 58, 68, 92, 97, 99, 111, 122	0		14
Nicaragua . . . . .	8	77, 78, 87, 98, 110, 122, 144, 146	9	1, 3, 9, 11, 30, 111, 119, 131, 137	17
Niger . . . . .	2	81, 138	10	11, 87, 98, 102, 111, 119, 131, 154, 156, 158	12
Nigeria . . . . .	6	11, 26, 87, 97, 98, 105	4	8, 19, 58, 134	10
Norway . . . . .	24	9, 11, 26, 30, 47, 53, 68, 69, 87, 91, 92, 97, 98, 102, 111, 119, 120, 122, 126, 128, 137, 143, 144, 159	0		24
Pakistan . . . . .	5	1, 11, 87, 98, 111	2	29, 105	7
Panama . . . . .	17	3, 11, 15, 26, 30, 58, 68, 87, 92, 96, 98, 110, 111, 112, 119, 120, 126	2	9, 122	19

## OBSERVATIONS CONCERNING RATIFIED CONVENTIONS

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Papua New Guinea . . . . .	4	7, 8, 11, 19	9	10, 26, 27, 29, 85, 98, 99, 105, 122	13
Paraguay . . . . .	10	1, 11, 26, 30, 87, 98, 99, 111, 119, 120	1	122	11
Peru . . . . .	28	1, 9, 11, 20, 22, 26, 27, 35, 36, 37, 38, 39, 40, 56, 58, 67, 68, 77, 78, 98, 99, 102, 105, 111, 112, 122, 156, 159	1	87	29
Philippines . . . . .	9	23, 87, 94, 95, 98, 99, 110, 111, 122	0		9
Poland . . . . .	20	9, 11, 35, 36, 37, 38, 39, 40, 68, 87, 91, 92, 98, 99, 103, 111, 119, 120, 122, 137	0		20
Portugal . . . . .	25	1, 7, 8, 11, 22, 23, 68, 77, 78, 87, 92, 95, 97, 98, 103, 111, 120, 122, 131, 137, 143, 144, 145, 146, 149	0		25
Qatar . . . . .	1	111	0		1
Romania . . . . .	16	1, 3, 9, 11, 13, 29, 81, 87, 98, 111, 122, 129, 131, 134, 136, 137	0		16
Rwanda . . . . .	2	11, 26	1	111	3
Saint Lucia . . . . .	7	7, 11, 26, 87, 97, 98, 111	0		7
San Marino . . . . .	5	87, 98, 111, 143, 144	0		5
Sao Tome and Principe . . .	6	18, 19, 81, 88, 100, 111	0		6
Saudi Arabia . . . . .	3	1, 30, 111	0		3
Senegal . . . . .	9	11, 26, 87, 98, 99, 102, 111, 120, 122	0		9
Seychelles . . . . .	0		10	5, 10, 11, 16, 26, 29, 58, 87, 99, 105	10
Sierra Leone . . . . .	0		16	16, 19, 26, 29, 58, 59, 87, 98, 99, 100, 105, 111, 119, 125, 126, 144	16
Singapore . . . . .	4	7, 11, 29, 98	0		4
Solomon Islands . . . . .	3	11, 26, 84	0		3
Somalia . . . . .	1	111	0		1

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State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
Spain . . . . .	22	1. 9. 11. 30. 68. 87. 92. 97. 98. 103. 111. 119. 120. 122. 126. 131. 137. 144. 146. 150. 153. 158	0		22
Sri Lanka . . . . .	6	11. 58. 95. 98. 106. 131	1	115	7
Sudan . . . . .	4	26. 98. 111. 122	0		4
Suriname . . . . .	5	11. 87. 112. 122. 144	0		5
Swaziland . . . . .	5	11. 87. 98. 131. 144	1	111	6
Sweden . . . . .	20	9. 11. 47. 58. 87. 92. 98. 102. 111. 119. 120. 122. 128. 137. 143. 144. 146. 159. 160. 161	1	158	21
Switzerland . . . . .	9	11. 26. 58. 87. 102. 111. 120. 128. 153	0		9
Syrian Arab Republic . . . .	10	1. 11. 30. 87. 98. 111. 119. 120. 131. 144	0		10
Tanzania, United Republic of . . . . .	9	11. 29. 58. 97. 98. 105. 131. 137. 144	1	85	10
Zanzibar . . . . .	3	58. 85. 97	0		3
Thailand . . . . .	1	105	1	122	2
Togo . . . . .	7	11. 26. 87. 98. 111. 143. 144	0		7
Trinidad and Tobago . . . .	8	16. 19. 87. 97. 98. 105. 111. 125	0		8
Tunisia . . . . .	16	11. 26. 29. 55. 58. 87. 91. 98. 99. 111. 112. 119. 120. 122. 124. 127	0		16
Turkey . . . . .	10	11. 26. 58. 77. 98. 99. 102. 111. 119. 122	0		10
Uganda . . . . .	9	5. 11. 17. 19. 26. 98. 105. 122. 143	0		9
Ukrainian SSR . . . . .	12	11. 47. 52. 87. 92. 98. 103. 111. 119. 120. 122. 126	0		12
USSR . . . . .	12	11. 47. 52. 87. 92. 98. 103. 111. 119. 120. 122. 126	0		12
United Arab Emirates . . . .	1	1	0		1

## OBSERVATIONS CONCERNING RATIFIED CONVENTIONS

State Member	Reports received		Reports not received		Grand total
	Total	Conventions Nos.	Total	Conventions Nos.	
United Kingdom . . . . .	14	7, 11, 68, 69, 87, 92, 97, 98, 99, 120, 122, 126, 142, 144	1	102	15
United States . . . . .	1	58	0		1
Uruguay . . . . .	15	1, 9, 11, 30, 87, 97, 98, 103, 110, 119, 122, 128, 130, 132, 137	1	131	16
Venezuela . . . . .	16	1, 3, 11, 22, 26, 95, 97, 111, 120, 122, 128, 140, 143, 144, 150, 156	7	87, 98, 102, 117, 130, 149, 153	23
Yemen . . . . .	9	29, 81, 87, 98, 100, 111, 131, 132, 135	0		9
Yugoslavia . . . . .	5	102, 119, 122, 131, 142	18	9, 11, 29, 53, 69, 74, 87, 91, 92, 97, 98, 103, 111, 126, 135, 138, 143, 158	23
Zaire . . . . .	5	11, 26, 98, 119, 120	0		5
Zambia . . . . .	9	11, 97, 103, 105, 111, 122, 131, 144, 154	1	136	10
<i>Other States</i>					
Albania <sup>1</sup> . . . . .	0		14	6, 10, 11, 16, 29, 52, 58, 59, 77, 78, 87, 98, 100, 112	14
Nauru . . . . .	0		5	19, 27, 29, 42, 105	5
Samoa . . . . .	0		2	14, 29	2
South Africa <sup>1</sup> . . . . .	1	26	0		1

<sup>1</sup> Albania and South Africa have withdrawn from the ILO, but these States continue to be bound by the Conventions which they have ratified (article 1, paragraph 5, of the Constitution).

# Appendix II. Statistical Table of Reports Received on Ratified Conventions as at 22 March 1989

(Article 22 of the Constitution)

Period	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
		Number	Percentage	Number	Percentage	Number	Percentage
1931-1932	447	—	—	406	90.8	423	94.6
1932-1933	522	—	—	435	83.3	453	86.7
1933-1934	601	—	—	508	84.5	544	90.5
1934-1935	630	—	—	584	92.7	620	98.4
1935-1936	662	—	—	577	87.2	604	91.2
1936-1937	702	—	—	580	82.6	634	90.3
1937-1938	748	—	—	616	82.4	635	84.9
1938-1939	766	—	—	588	76.8	—	—
1943-1944	583	—	—	251	43.1	314	53.9
1944-1945	725	—	—	351	48.4	523	72.2
1945-1946	731	—	—	370	50.6	578	79.1
1946-1947	763	—	—	581	76.1	666	87.3
1947-1948	799	—	—	521	65.2	648	81.1
1948-1949	806	134 <sup>1</sup>	16.6	666	82.6	695	86.2
1949-1950	831	253	30.4	597	71.8	666	80.1
1950-1951	907	288	31.7	705	77.7	761	83.9
1951-1952	981	268	27.3	743	75.7	826	84.2
1952-1953	1 026	212	20.6	840	81.8	917	89.3
1953-1954	1 175	268	22.8	1 077	91.7	1 119	95.2
1954-1955	1 234	283	22.9	1 063	86.1	1 170	94.8
1955-1956	1 333	332	24.9	1 234	92.5	1 283	96.2
1956-1957	1 418	210	14.7	1 295	91.3	1 349	95.1
1957-1958	1 558	340	21.8	1 484	95.2	1 509	96.8
1958-1959	995 <sup>2</sup>	200	20.4	864	86.8	902	90.6
1958-1960	1 100	256	23.2	838	76.1	963	87.4
1959-1961	1 362	243	18.1	1 090	80.0	1 142	83.8
1960-1962	1 309	200	15.5	1 059	80.9	1 121	85.6
1961-1963	1 624	280	17.2	1 314	80.9	1 430	88.0
1962-1964	1 495	213	14.2	1 268	84.8	1 356	90.7
1963-1965	1 700	282	16.6	1 444	84.9	1 527	89.8
1964-1966	1 562	245	16.3	1 330	85.1	1 395	89.3
1965-1967	1 883	323	17.4	1 551	84.5	1 643	89.6
1966-1968	1 647	281	17.1	1 409	85.5	1 470	89.1
1967-1969	1 821	249	13.4	1 501	82.4	1 601	87.9
1968-1970	1 894	360	18.9	1 463	77.0	1 549	81.6
1969-1971	1 992	237	11.8	1 504	75.5	1 707	85.6
1970-1972	2 025	297	14.6	1 572	77.6	1 753	86.5
1971-1973	2 048	300	14.6	1 521	74.3	1 691	82.5
1972-1974	2 189	370	16.5	1 854	84.6	1 958	89.4
1973-1975	2 034	301	14.8	1 663	81.7	1 764	86.7
1974-1976	2 200	292	13.2	1 831	83.0	1 914	87.0
-1977	1 529 <sup>3</sup>	215	14.0	1 120	73.2	1 328	87.0
-1978	1 701	251	14.7	1 289	75.7	1 391	81.7
-1979	1 593	234	14.7	1 270	79.8	1 376	86.4
-1980	1 581	168	10.6	1 302	82.2	1 437	90.8
-1981	1 543	127	8.1	1 210	78.4	1 340	86.7
-1982	1 695	332	19.4	1 382	81.4	1 493	88.0
-1983	1 737	236	13.5	1 388	79.9	1 558	89.6
-1984	1 669	189	11.3	1 286	77.0	1 412	84.6
-1985	1 666	189	11.3	1 312	78.7	1 471	88.2
-1986	1 752	207	11.8	1 388	79.2	1 529	87.3
-1987	1 793	171	9.5	1 408	78.4	1 542	86.0
-1988	1 638	149	9.0	1 230	75.9	—	—

<sup>1</sup> First year for which this figure is available.

<sup>2</sup> As a result of a decision by the Governing Body, detailed reports were requested as from 1958-59 until 1976 only on certain ratified Conventions.

<sup>3</sup> As a result of a decision by the Governing Body (November 1976), detailed reports are now requested, according to certain criteria, at yearly, two-yearly or four-yearly intervals.

## **II. Observations on the Application of Conventions in Non-Metropolitan Territories (Article 22 and Article 35, Paragraphs 6 and 8, of the Constitution)**

### **A. GENERAL OBSERVATIONS**

#### Denmark

##### Faeroe Islands

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply the reports due on the application of ratified Conventions.

#### France

##### French Southern Antarctic Territories

In its 1987 and 1988 general observations concerning France, the Committee noted the communications concerning Conventions Nos. 8, 9, 22, 53, 55, 58, 69, 71, 74, 87, 98, 108, 111, 145 and 146 in the French Southern Antarctic Territories, following the adoption in 1986 of an Order permitting the registration in the Territories of vessels on which the proportion of crew members of French nationality may not be less than 25 per cent of the seafarers registered on the crew list. According to the National Federation of Maritime Trade Unions (FNSM), this signified that 75 per cent of the crews of vessels registered in these Territories would be made up of foreign seafarers engaged under discriminatory conditions, while French seafarers would be left unemployed.

The Committee notes the written and oral information supplied by the Government to the Conference Committee in 1988, the discussion that took place in the Committee, and the information contained in the Government's last report concerning the questions raised in its previous general observations. The Government indicates the texts which are currently applicable to the registration procedure in the French Southern Antarctic Territories, and the conditions to which registrations are thereby subject, which, in its opinion, fully observe the provisions of the Conventions that have been ratified by France. It also states that this Territory is a non-metropolitan territory, in the sense of article 35 of the Constitution of the ILO, to which the Government has not yet declared applicable the

Conventions ratified by France, and that it is the Government's intention to examine the application to this Territory of the Conventions ratified by France in the maritime field.

The Committee takes due note of the fact that, according to the Government, the French Southern Antarctic Territories are a non-metropolitan territory in the sense of article 35 of the Constitution of the ILO. It points out that under the terms of paragraph 1 of that article, the Members undertake that Conventions which they have ratified shall be applied to the non-metropolitan territories for whose international relations they are responsible, except where the Convention is inapplicable owing to the local conditions or subject to such modifications as may be necessary to adapt the Convention to local conditions. Under the terms of paragraph 2, each Member which ratifies a Convention shall as soon as possible after ratification communicate to the Director-General of the ILO a declaration stating in respect of the territories referred to above, the extent to which it undertakes that the provisions of the Convention shall be applied and giving such particulars as may be prescribed by the Convention. The Committee trusts that the Government will be able to communicate to the Director-General of the ILO, as soon as possible, the declarations provided for under article 35, paragraph 2, of the Constitution in respect of the application to the French Southern Antarctic Territories of the Conventions ratified by France, and in particular of the Conventions applicable to labour in the maritime field. While awaiting the communications of the above declarations, the Committee is suspending examination of the matters raised by the FNSM.

#### New Zealand

The Committee notes with regret that the Government has not supplied for the eighth year in succession the reports due in respect of the application of Conventions in the Cook Islands, and that the reports due for the fourth year in succession in respect of Niue Island have not been received. It trusts that the Government will not fail to take the necessary steps to ensure that the reports in question are available for examination by the Committee at its next session.

#### Netherlands

##### Aruba, Netherlands Antilles

The Committee notes that the reports due have not been received. It trusts that the Government will not fail in future to discharge its obligation to supply all the reports due on the application of ratified Conventions.



## B. INDIVIDUAL OBSERVATIONS

**Convention No. 3: Maternity Protection, 1919**

A request regarding certain points is being addressed directly to France (French Polynesia).

**Convention No. 9: Placing of Seamen, 1920**

Requests regarding certain points are being addressed directly to the following States: Denmark (Faeroe Islands), France (French Polynesia, New Caledonia).

**Convention No. 11: Right of Association (Agriculture), 1921**

A request regarding certain points is being addressed directly to the Netherlands (Aruba).

Information supplied by Australia (Norfolk Island) in answer to a direct request has been noted by the Committee.

**Convention No. 14: Weekly Rest (Industry), 1921**

A request regarding certain points is being addressed directly to the Netherlands (Aruba).

**Convention No. 17: Workmen's Compensation (Accidents), 1925**United KingdomMontserrat

With reference to its previous comments, the Committee notes with satisfaction the adoption of Ordinance No. 12 of 1987, amending the Workmen's Compensation Ordinance, CAP.323, and thereby giving effect to Article 2, paragraph 2(c), and to Articles 5 and 7, of the Convention.

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

\* \* \*

In addition, a request regarding certain points is being addressed directly to the United Kingdom (Montserrat).

**Convention No. 26: Minimum Wage-Fixing Machinery, 1928**

A request regarding certain points is being addressed directly to the United Kingdom (Anguilla).

**Convention No. 33: Minimum Age (Non-Industrial Employment), 1932**NetherlandsNetherlands Antilles

Article 5 of the Convention. Further to its previous observation, the Committee notes from the information provided by the Government in its last report and to the Conference Committee in 1988 that a new tripartite Labour Committee has been established and that it will deal with the draft Order on dangerous and unhealthy activities prohibited to young persons under the age of 18 years. The Committee therefore trusts that the draft Order, which has been in preparation for many years, will be adopted in the very near future so as to give effect to Article 5 of the Convention.

[The Government is asked to report in detail for the period ending 30 June 1989.]

\* \* \*

In addition, a request regarding certain points is being addressed directly to the Netherlands (Aruba).

**Convention No. 35: Old-Age Insurance (Industry, etc.), 1933**France

Overseas Departments (French Guiana,  
Guadeloupe, Martinique, Réunion)

See under Convention No. 35, France.

Territorial Community of St. Pierre  
and Miquelon

The Committee notes with satisfaction the adoption of Act No. 87-563 of 17 July 1987 amending the old-age insurance scheme applicable to St. Pierre and Miquelon, which gives effect to the fundamental provisions of the Convention and thereby implements the following Articles which were the subject of its previous comments: Article 2 (it is compulsory for all persons exercising an occupational activity to be affiliated to the basic old-age insurance scheme, in accordance with this provision of the Convention); Article 5 (the provision of the retirement pension awarded under the basic old-age

insurance scheme is not conditional upon resources, in accordance with this provision of the Convention).

Overseas Territory (New Caledonia)

Article 12, paragraph 5, of the Convention. Further to its earlier comments, the Committee notes that the draft resolution to harmonise the CAFAT regulations with the standards of international Conventions concerning old-age insurance is still in the process of statutory examination. It notes with interest that under the above draft, the benefits provided for in the legislation apply, on the same terms, to foreign workers residing on the territory of any member State bound by Conventions Nos. 35 and 36.

The Committee requests the Government to indicate any progress made in this respect in its next report.

\* \* \*

In addition, requests regarding certain points are being addressed directly to France (Overseas Departments: French Guiana, Guadeloupe, Martinique, Réunion).

**Convention No. 36: Old-Age Insurance (Agriculture), 1933**

France

Overseas Departments (French Guiana, Guadeloupe, Martinique, Réunion)

See under Convention No. 35, France.

Territorial Community of St. Pierre and Miquelon

See under Convention No. 35.

Overseas Territory (New Caledonia)

See the comments under Convention No. 35, which also apply to Convention No. 36 (Article 12, paragraph 5, of the Convention).

\* \* \*

In addition, requests regarding certain points are being addressed directly to France (Overseas Departments: French Guiana, Guadeloupe, Martinique, Réunion).

**Convention No. 37: Invalidity Insurance (Industry, etc.), 1933**France

Overseas Departments (French Guiana, Guadeloupe, Martinique, Réunion)

See under Convention No. 35, France.

\* \* \*

In addition, requests regarding certain points are being addressed directly to France (Overseas Departments: French Guiana, Guadeloupe, Martinique, Réunion; Overseas Territory: French Polynesia).

**Convention No. 38: Invalidity Insurance (Agriculture), 1933**France

Overseas Departments (French Guiana, Guadeloupe, Martinique, Réunion)

See under Convention No. 35, France.

\* \* \*

In addition, requests regarding certain points are being addressed directly to France (Overseas Departments: French Guiana, Guadeloupe, Martinique, Réunion; Overseas Territory: French Polynesia).

**Convention No. 53: Officers' Competency Certificates, 1936**

A request regarding certain points is being addressed directly to Denmark (Faeroe Islands).

**Convention No. 58: Minimum Age (Sea) (Revised), 1936**NetherlandsNetherlands Antilles

Further to its previous observation, the Committee notes from the Government's report that the bills to put the present legal position into conformity with the Convention are now at an advanced stage. The Committee hopes that the Government will be able to adopt in the near

future provisions to stipulate a minimum age of at least 15 years for admission to employment at sea, and will communicate the text of this legislation.

[The Government is asked to report in detail for the period ending 30 June 1990.]

### **Convention No. 63: Statistics of Wages and Hours of Work, 1938**

Requests regarding certain points are being addressed directly to France (Territorial Community of St. Pierre and Miquelon, New Caledonia).

### **Convention No. 68: Food and Catering (Ships' Crews), 1946**

A request regarding certain points is being addressed directly to the United Kingdom (Isle of Man).

### **Convention No. 69: Certification of Ships' Cooks, 1946**

#### Netherlands

#### Netherlands Antilles

In previous observations, the Committee drew attention to the absence of legislation to give effect to the Convention, and it noted that the Government would bear the requirements of the Convention in mind when reassessing the situation. In its latest report the Government reiterates that there is no popular interest in maritime careers, and that legislation to apply the Convention would be a dead letter, since it could not be applied in practice. The Government does indicate, however, that the competent authority has the power to recognise a certificate of qualification as ship's cook issued in another country. The Committee notes with interest that such recognition appears to be in conformity with Article 6 of the Convention. It hopes that, in the absence of legislation in Netherlands Antilles to apply the Convention, recourse to the recognition of foreign certificates may be had systematically, and that by this means the requirement of Article 3(1) that no persons should be engaged as ship's cook unless they hold a certificate of qualification as such may be fulfilled. It trusts the Government will continue to supply full information in this respect.

\* \* \*

In addition, a request regarding certain points is being addressed directly to Netherlands (Aruba).

**Convention No. 74: Certification of Able Seamen, 1946**

Requests regarding certain points are being addressed directly to Netherlands (Aruba, Netherlands Antilles).

**Convention No. 81: Labour Inspection, 1947**

Requests regarding certain points are being addressed directly to the following States: Netherlands (Aruba) and United Kingdom (Isle of Man).

**Convention No. 85: Labour Inspectorates (Non-Metropolitan Territories), 1947**

Information supplied by the United Kingdom (Anguilla) in answer to a direct request has been noted by the Committee.

**Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948**

In addition, requests regarding certain points are being addressed directly to the United Kingdom (Hong Kong, Isle of Man).

**Convention No. 95: Protection of Wages, 1949**

A request regarding certain points is being addressed directly to Netherlands (Aruba).

**Convention No. 97: Migration for Employment (Revised), 1949**

A request regarding certain points is being addressed directly to the United Kingdom (Montserrat).

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

Requests regarding certain points are being addressed directly to the following States: Australia (Norfolk Island) and United Kingdom (Hong Kong and Isle of Man).

**Convention No. 99: Minimum Wage Fixing Machinery (Agriculture), 1951**

A request regarding certain points is being addressed directly to the United Kingdom (Anguilla).

Information supplied by the United Kingdom (Jersey) in answer to a direct request has been noted by the Committee.

**Convention No. 100: Equal Remuneration, 1951**

A request regarding certain points is being addressed directly to New Zealand (Tokelau).

**Convention No. 101: Holidays with Pay (Agriculture), 1952**

A request regarding certain points is being addressed directly to the Netherlands (Aruba).

**Convention No. 105: Abolition of Forced Labour, 1957**NetherlandsNetherlands Antilles

Article 1(c) and (d) of the Convention. Further to its previous comments, the Committee notes with satisfaction that sections 413 and 414 of the Criminal Code, under which crew members of ships were punishable with imprisonment (involving compulsory labour) for refusing to serve, have been repealed by Ordinance No. 152 of 7 November 1986.

\* \* \*

In addition, requests regarding certain points are being addressed directly to the following States: Denmark (Faeroe Islands), Netherlands (Aruba, Netherlands Antilles), New Zealand (Niue Island).

**Convention No. 106: Weekly Rest (Commerce and Offices), 1957**

A request regarding certain points is being addressed directly to the Netherlands (Aruba).

**Convention No. 111: Discrimination (Employment and Occupation), 1958**

A request regarding certain points is being addressed directly to New Zealand (Tokelau).

**Convention No. 120: Hygiene (Commerce and Offices), 1964**FranceFrench Polynesia

The Committee notes from the Government's reply to its observation of 1988 that regulations for the implementation of Act No. 86-845 of 17 July 1986 respecting the general principles of labour law applicable in French Polynesia have not yet been drafted.

The Committee once again stresses the need to supplement the regulations in force (Order No. 621 IT of 29 May 1956) in order to give full effect to Articles 9, 10, 11, 13 and 15 to 19 of the Convention. It expresses the hope that the above-mentioned draft regulations will be adopted in the very near future and requests the Government to supply a copy with its next report.

[The Government is asked to report in detail for the period ending 30 June 1990.]

\* \* \*

In addition a request regarding certain points is being addressed directly to France (New Caledonia).

**Convention No. 122: Employment Policy, 1964**

Requests regarding certain points are being addressed directly to the following States: Denmark (Greenland), France (New Caledonia), Netherlands (Aruba, Netherlands Antilles), United Kingdom (Isle of Man).

**Convention No. 126: Accommodation of Crews (Fishermen), 1966**

A request regarding certain points is being addressed directly to France (New Caledonia).

**Convention No. 127: Maximum Weight, 1967**

Requests regarding certain points are being addressed directly to France (French Polynesia, New Caledonia).



**Convention No. 129: Labour Inspection (Agriculture), 1969**

In addition, requests regarding certain points are being addressed directly to France (Overseas Departments: Guadeloupe, French Guiana, Martinique, Réunion; Territorial Community of St. Pierre and Miquelon; Overseas Territory: French Polynesia).

**Convention No. 131: Minimum Wage Fixing, 1970**

Requests regarding certain points are being address directly to France (Overseas Departments: Guadeloupe, French Guiana, Martinique, Réunion; Territorial Community of St. Pierre and Miquelon; Overseas Territories: French Polynesia, New Caledonia).

**Convention No. 140: Paid Educational Leave, 1974**

Information supplied by the United Kingdom (Jersey) in answer to a direct request has been noted by the Committee.

**Convention No. 141: Rural Workers' Organisations, 1975**

Requests regarding certain points are being addressed directly to France (French Polynesia, New Caledonia).

**Convention No. 142: Human Resources Development, 1975**

Requests regarding certain points are being addressed directly to France (French Polynesia, New Caledonia).

**Convention No. 144: Tripartite Consultation (International Labour Standards)  
1976**

A request regarding certain points is being addressed directly to France (French Polynesia).

**Convention No. 145: Continuity of Employment (Seafarers), 1976**

Requests regarding certain points are being addressed directly to France (French Polynesia, New Caledonia).

**Convention No. 146: Seafarers' Annual Leave with Pay, 1976**

Requests regarding certain points are being addressed directly to France (Overseas Territories: French Polynesia, New Caledonia).

**Convention No. 147: Merchant Shipping (Minimum Standards), 1976**

Requests regarding certain points are being addressed directly to the United Kingdom (Hong Kong, Isle of Man).

**Convention No. 148: Working Environment (Air Pollution, Noise and Vibration),  
1977**

Requests regarding certain points are being addressed directly to the United Kingdom (Anguilla, Guernsey).

**Appendix. Receipt of Detailed Reports on Ratified Conventions  
(Non-Metropolitan Territories) as at 22 March 1989**

*(Articles 22 and 35 of the Constitution)*

Reports requested : 335      Reports received : 275      Reports not received : 60

Countries and Territories	Reports received		Reports not received		Popula- tion <sup>1</sup> (thou- sands)
	Total	Conventions Nos.	Total	Conventions Nos.	
<i>Australia</i> . . . . .	6		0		
Norfolk Island . . . . .	6	11, 47, 87, 98, 112, 122	0		2.1
<i>Denmark</i> . . . . .	3		10		
Faeroe Islands . . . . .	0		8	7, 9, 11, 53, 87, 92, 98, 126	41.9
Greenland . . . . .	3	11, 87, 122	2	7, 126	49.6
<i>France</i> . . . . .	190		6		
<i>Overseas Departments:</i>					
Guadeloupe . . . . .	29	3, 9, 11, 35, 36, 37, 38, 58, 68, 81, 87, 92, 98, 100, 111, 112, 115, 120, 123, 126, 129, 131, 141, 142, 144, 145, 146, 147, 149	1	95	327.0
French Guiana . . . . .	28	3, 9, 35, 36, 37, 38, 58, 68, 81, 87, 92, 98, 100, 111, 112, 115, 120, 123, 126, 129, 131, 141, 142, 144, 145, 146, 147, 149	1	95	73.0
Martinique . . . . .	29	3, 9, 11, 35, 36, 37, 38, 58, 68, 81, 87, 92, 98, 100, 111, 112, 115, 120, 123, 126, 129, 131, 141, 142, 144, 145, 146, 147, 149	1	95	326.7
Réunion . . . . .	29	3, 9, 11, 35, 36, 37, 38, 58, 68, 81, 87, 92, 98, 100, 111, 112, 115, 120, 123, 126, 129, 131, 141, 142, 144, 145, 146, 147, 149	1	95	515.7
Territorial Community of St. Pierre and Miquelon	31	3, 9, 11, 24, 35, 36, 45, 58, 77, 78, 81, 82, 87, 94, 98, 106, 111, 115, 120, 122, 123, 126, 129, 131, 141, 142, 144, 145, 146, 147, 149	1	95	6.0

Countries and Territories	Reports received		Reports not received		Population <sup>1</sup> (thousands)
	Total	Conventions Nos.	Total	Conventions Nos.	
<i>Overseas Territories:</i>					
French Polynesia . . . .	22	3, 9, 11, 37, 38, 58, 87, 98, 111, 120, 122, 126, 127, 129, 131, 141, 142, 144, 145, 146, 147, 149	0		166.7
New Caledonia . . . . .	22	3, 9, 11, 35, 36, 58, 87, 98, 111, 120, 122, 124, 126, 127, 129, 131, 141, 142, 145, 146, 147, 149	1	144	145.3
<i>Netherlands</i> . . . . .	0		24		
Aruba . . . . .	0		19	9, 11, 25, 87, 114, 121, 122, 126, 129, 131, 135, 137, 140, 141, 142, 144, 145, 146, 147	53.1
Netherlands Antilles . . . .	0		5	9, 11, 58, 87, 122	218.3
<i>New Zealand</i> . . . . .	1		14		
Cook Islands . . . . .	0		7	11, 14, 29, 82, 84, 99, 105	17.7
Niue Island . . . . .	0		7	11, 14, 29, 82, 84, 99, 105	3.8
Tokelau . . . . .	1	111	0		1.5
<i>United Kingdom</i> . . . . .	71		6		
Anguilla . . . . .	7	11, 26, 58, 87, 97, 98, 99	1	23	6.5
Bermuda . . . . .	6	11, 23, 58, 87, 98, 147	0		67.7
British Virgin Islands . . .	7	11, 23, 26, 58, 87, 97, 98	0		12.0
Falkland Islands (Malvinas) . . . . .	5	10, 11, 58, 87, 98	1	23	1.8
Gibraltar . . . . .	4	11, 58, 87, 98	0		26.4
Guernsey . . . . .	7	7, 11, 87, 97, 98, 99, 122	0		53.3
Hong Kong . . . . .	10	3, 11, 26, 58, 87, 92, 97, 98, 122, 144	0		4986.5
Isle of Man . . . . .	7	7, 23, 68, 87, 92, 97, 98	4	11, 99, 102, 122	64.6
Jersey . . . . .	7	7, 11, 87, 97, 98, 99, 140	0		76.0
Montserrat . . . . .	7	11, 17, 26, 58, 87, 97, 98	0		11.6
St. Helena . . . . .	4	11, 58, 87, 98	0		5.1

NON-METROPOLITAN TERRITORIES

Countries and Territories	Reports received		Reports not received		Popula- tion <sup>1</sup> (thou- sands)
	Total	Conventions Nos.	Total	Conventions Nos.	
<i>United States</i> . . . . .	4		0		
American Samoa . . . . .	1	58	0		32.3
Guam . . . . .	1	58	0		105.9
Puerto Rico . . . . .	1	58	0		3196.5
United States Virgin Islands . . . . .	1	58	0		96.5

<sup>1</sup> Source: United Nations: *Demographic Year Book*, 1986.

### **III. Observations concerning the Submission to the Competent Authorities of the Conventions and Recommendations Adopted by the International Labour Conference (Article 19 of the Constitution)**

#### Angola

Further to its previous comments the Committee notes with interest the information supplied by the Government according to which the instruments adopted at the 68th, 69th and 70th Sessions of the Conference, and certain instruments adopted at the 71st Session, have been submitted to the People's Assembly.

The Committee hopes that the Government will soon be able to submit to the People's Assembly the remaining instruments, namely Convention No. 155 and Recommendation No. 164 (67th Session), Convention No. 161 and Recommendation No. 171 (71st Session), and the instruments adopted at the 72nd and 74th Sessions of the Conference, and that it will supply the information and documents required in this connection by the Memorandum adopted by the Governing Body.

#### Antigua and Barbuda

The Committee notes that the Government has not replied to its previous comments. It is bound to recall that the instruments adopted at the 68th Session of the Conference, which were submitted to the Cabinet, should also have been submitted, in accordance with article 19(5)(b) and (6)(b) of the Constitution of the ILO, to the authorities that are empowered to legislate. It therefore trusts that the Government will submit the above instruments, together with those adopted at the 69th, 70th, 71st and 72nd Sessions, to the legislative body. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted.

#### Bolivia

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will report in the near future that Recommendation No. 151, adopted at the 60th Session of the Conference, and the instruments adopted at the 70th, 71st and 72nd Sessions have been submitted to the competent legislative authorities. The Committee also hopes, with regard to the instruments adopted from the 63rd to the 69th Sessions, which have already been

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submitted, that the Government will supply the information and documents requested in the Memorandum adopted by the Governing Body (points II, (b) and (c), and III of the questionnaire). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

### Brazil

Further to its previous comments, the Committee notes with interest, from the information supplied by the Government, that Conventions Nos. 141, 143, 144, 153, 154 and 161 and Recommendations Nos. 117 to 119, 121 to 123, 127, 129, 130, 136 to 138, 140 to 143, 146, 147 and 171, adopted between the 46th and 71st Sessions of the Conference, have been submitted to Congress. It hopes that the Government will supply in this connection the information and documents requested in the Memorandum adopted by the Governing Body (points II(b) and (c) and III of the questionnaire for Conventions and II and III for Recommendations). It also notes that other Conventions and Recommendations are currently under examination by the Office of the President of the Republic with a view to their submission to Congress. It hopes that it will be possible to submit these instruments in the near future.

### Cape Verde

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will soon report that the instruments adopted at the 69th, 71st and 72nd Sessions of the Conference have been submitted to the competent authorities and that, with regard to these instruments, and the instrument adopted at the 70th Session, which has already been submitted, it will supply the information and documents requested in the Memorandum adopted by the Governing Body, particularly with regard to point II of the questionnaire. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have also been submitted.

### Central African Republic

With reference to its previous comments the Committee notes, from the information supplied by the Government, that the instruments adopted at the 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. It would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted and if it would, for all the above instruments and those adopted at the 65th, 69th and 70th Sessions, which have already been submitted, supply the information and documents requested in the Memorandum adopted by the Governing Body (points I, II and III of the questionnaire).

Congo

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will indicate in the near future that the instruments adopted at the 60th, 61st, 62nd, 68th, 69th, 70th, 71st, 72nd and 74th Sessions of the Conference and the remaining instruments adopted at the 54th, 55th, 58th, 63rd and 67th Sessions (Conventions Nos. 137, 148 and 156 and Recommendations Nos. 135 to 142, 145, 156, 163, 164 and 165) have been submitted to the People's National Assembly and that it will supply with regard to all these instruments the information and documents requested in the Memorandum adopted by the Governing Body.

Costa Rica

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate in the near future that Recommendation No. 167, adopted at the 69th Session of the Conference, and the instruments adopted at the 71st and 72nd Sessions have been submitted and that it will supply for these instruments the information and documents requested in the Memorandum adopted by the Governing Body. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted to the competent authorities.

Democratic Yemen

The Committee notes that the Government has not replied to its previous observation. In its comments it expressed the hope that the Government would report whether the instruments adopted at the 72nd Session of the Conference, which have already been submitted to the Council of Ministers, have been submitted to the Supreme People's Council as the authority empowered to legislate; that it would supply information in the near future on the decisions taken regarding the instruments adopted from the 62nd to the 68th Sessions of the Conference; and that it would report whether the instruments adopted at the 69th, 70th and 71st Sessions have been submitted to the competent authorities. The Committee trusts that the Government will supply this information in the near future. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Djibouti

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will soon indicate that the instruments adopted at the 66th, 68th, 69th and 70th Sessions of the Conference have been submitted to the competent authorities and



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that it will supply, in respect of these instruments and also those adopted at the 71st and 72nd Sessions, the information and documents called for in the Memorandum adopted by the Governing Body. Furthermore, the Committee would be glad if the Government would indicate whether the instruments adopted at the 74th Session have been submitted.

### Dominican Republic

The Committee notes, from the information supplied by the Government, that the instruments adopted at the 74th Session of the Conference have been submitted for examination by the authorities that are competent for their implementation, and the result of their examination will be communicated in due time to the ILO. The Committee requests the Government to specify whether these instruments have already been submitted to Congress or whether they are being examined with a view to their subsequent submission to the legislative authority.

With reference to its previous observations, the Committee regrets to note that the Government has not supplied the requested information. It therefore trusts that the Government will indicate shortly that the instruments adopted at the 63rd, 65th, 66th, 67th, 69th, 70th, 71st and 72nd Sessions of the Conference have been submitted to Congress and that, in relation to these instruments and those adopted at the 68th Session, which have already been submitted, it will supply the information and documents requested in the Memorandum adopted by the Governing Body.

### El Salvador

The Committee notes that the Government has not replied to its previous observation. It hopes that it will indicate in the near future that the instruments adopted at the 62nd, 65th, 66th, 67th, 68th, 70th and 72nd Sessions of the Conference, and the remaining instruments adopted at the 63rd, 64th, 69th and 71st Sessions have been submitted to the competent authorities and that it will supply in this connection the documents and information requested in the Memorandum adopted by the Governing Body (points II(a), (b) and (c), and III of the questionnaire). The Committee would also be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

### Fiji

The Committee notes that the Government has not replied to its previous direct requests. It hopes that it will soon indicate that the instruments adopted at the 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would

indicate whether the instruments adopted at the 74th Session have been submitted.

Ghana

With reference to its previous observation, the Committee notes with interest the information supplied by the Government to the effect that the instruments adopted at the 66th, 67th, 68th, 69th, 71st, 72nd and 74th Sessions of the Conference have been submitted to the competent authority. It hopes that the Government will be able to indicate in the near future that Recommendation No. 169 (70th Session) has also been submitted and that it will supply for all the above instruments the information requested under points II(b) and III of the questionnaire at the end of the Memorandum adopted by the Governing Body.

Grenada

Further to its previous observation, the Committee notes the explanations given by a Government representative to the Conference Committee in 1988 concerning the difficulties which have delayed the submission procedure and the subsequent discussion. In the absence of any new information, it hopes that the Government will soon indicate that Recommendation No. 162 (66th Session of the Conference) and the instruments adopted at the 67th, 68th, 69th, 70th, 71st and 72nd Sessions, already transmitted to the Cabinet, have been submitted to Parliament. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted. The Committee hopes that the Government will also supply the information and documents requested in this connection in the Memorandum adopted by the Governing Body, particularly with regard to the Government's proposals or comments on the effect to be given to the instruments in question (point II(b) of the questionnaire). It points out that the obligation to submit does not imply that governments must propose the ratification or the application of the instrument under consideration.

Guinea

The Committee notes that the Government has not replied to its previous observations. It hopes that the Government will indicate in the near future that the instruments adopted at the 68th, 69th, 70th, 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted.

Guinea-Bissau

The Committee notes that the Government has not replied to its previous direct requests. It hopes that it will indicate in the near future that the instruments adopted from the 63rd to the 70th Sessions of the Conference, already submitted to the Council of State, have also been submitted to the National People's Assembly, which is another authority empowered to legislate, together with the instruments adopted at the 71st and 72nd Sessions. Furthermore, the Committee would be grateful of the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

The Committee wishes to point out that the obligation to submit does not imply that governments must propose the ratification of the Convention or the application of the Recommendation under examination. Governments have complete freedom regarding the nature of the proposals that they make regarding Conventions and Recommendations that are submitted to the competent authorities. All the instruments adopted by the Conference must therefore be submitted to the competent authorities, irrespective of the effect that the Government wishes to give to them.

Haiti

With reference to its previous comments, the Committee hopes that the Government will soon be able to indicate that the instruments adopted from the 67th to the 72nd Sessions of the Conference have been submitted to the competent authorities and, with regard to the instruments adopted at the 64th and 65th Sessions, which have already been submitted, whether any proposals were made or decisions taken at that time. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Islamic Republic of Iran

Further to its previous observation, the Committee notes the statement by a Government representative and the subsequent discussion in the Conference Committee in 1988. The Government recalled the difficulties delaying the examination of ILO Conventions and Recommendations and stated that all the instruments not yet submitted to the competent authorities are under examination by a tripartite commission.

The Committee also notes the more recent information supplied by the Government to the effect that certain instruments adopted at the 67th Session of the Conference (Convention No. 156 and Recommendation No. 165), those adopted at the 72nd Session and certain instruments adopted at the 74th Session (Conventions Nos. 163 and 166, Recommendations Nos. 173 and 174) have been submitted to the Council of Ministers. The Committee hopes that these instruments will be submitted to the National Assembly, which is also empowered to

legislate under the terms of article 71 of the Constitution. It hopes that in this way it will be possible to submit the instruments adopted at the 62nd, 63rd, 64th, 65th, 66th, 68th, 69th, 70th and 71st Sessions and the remaining instruments from the 67th Session (Conventions Nos. 154 and 155, Recommendations Nos. 163 and 164) and from the 74th Session (Conventions Nos. 164 and 165, Recommendations Nos. 175 and 176).

#### Jamaica

In reply to the Committee's previous observation, the Government indicated that the instruments adopted at the 70th, 71st and 72nd Sessions of the Conference would be submitted to Parliament at the end of 1988. In the absence of new information in this respect, the Committee hopes that the Government will soon indicate that the above instruments have been submitted to Parliament. Furthermore, it would be grateful if the Government would report whether the instruments adopted at the 74th Session have been submitted.

In its previous comments, the Committee recalled the statement by a Government representative to the Conference Committee in 1984 that Convention No. 132, Recommendation No. 136 and the instruments adopted from the 61st to the 69th Sessions of the Conference had been submitted to Parliament. It expressed the hope that the Government would supply the other information and documents called for in the Memorandum adopted by the Governing Body (points I and II of the questionnaire) (except as concerns Conventions Nos. 149 and 150, which have been ratified, and the corresponding Recommendations, Nos. 157 and 158), and that it would supply information on the proposals made and the decisions taken with respect to the 45 instruments submitted to Parliament by a communication of the Minister of Labour and Employment on 22 November 1976. The Committee hopes that the Government will soon supply the information and documents in question.

#### Democratic Kampuchea

The Committee notes the absence of information concerning the submission to the competent authorities of the instruments adopted by the Conference.

#### Lao People's Democratic Republic

With reference to its previous observation, the Committee requests the Government to indicate whether the submission, in stages, to the competent authorities of the Conventions and Recommendations adopted by the Conference since 1964 has now commenced. It recalls that the Government reported on the measures that had been taken in this respect. The Committee hopes that the Government will indicate in the near future any progress that has been achieved.

Lebanon

The Committee hopes that the remaining instruments adopted from the 31st the 74th Sessions of the Conference will be submitted to the competent authorities as soon as possible.

Lesotho

The Committee notes with regret that the Government has not replied to its previous observations. It trusts that the Government will soon indicate that the instruments adopted at the 66th, 67th, 68th, 69th, 70th and 72nd Sessions of the Conference, and Conventions Nos. 160 and 161 (71st Session), have been submitted to the competent authorities, in accordance with article 19, paragraphs 5(b) and 6(b) of the Constitution of the ILO. It points out in this connection that the authorities to which these instruments must be submitted are those empowered to legislate and that the submission of the instruments does not imply the obligation to ratify Conventions or accept Recommendations.

The Committee also hopes that the Government will supply, with regard to Recommendations Nos. 170 and 171 (71st Session), which have already been submitted, the information and documents requested in the Memorandum adopted by the Governing Body, particularly with reference to the nature of the competent authority (point I of the questionnaire at the end of the Memorandum). Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Madagascar

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will soon supply indications with regard to the proposals it made when submitting the instruments adopted at the 69th Session of the Conference and that it will indicate that the instruments adopted at the 55th, 71st and 72nd Sessions have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Malawi

The Committee regrets to note that the Government has not replied to its previous observations. It trusts that the Government will indicate in the near future that the remaining instruments adopted from the 55th to the 72nd Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Mauritania

The Committee regrets to note that the Government has not replied to its previous observations. It trusts that it will soon indicate that the instruments adopted at the 68th, 69th, 70th, 71st and 72nd Sessions of the Conference, and the instruments adopted at the 74th Session, have been submitted to the competent authorities and that it will supply in this connection the information and documents requested in the Memorandum adopted by the Governing Body.

Mauritius

Further to its previous observation, the Committee notes the information supplied by the Government to the Conference Committee in 1988, to the effect that the documents needed in order to submit to Parliament the vast majority of the instruments pending had been prepared and would be ready for the Parliamentary Session in September 1988. It also notes the subsequent discussion. In the absence of new information in this connection, the Committee hopes that the Government will soon be able to indicate that the instruments adopted at the 60th Session and from the 63rd to the 74th Sessions of the Conference, in addition to Convention No. 140 and Recommendation No. 148 (59th Session) have been submitted to Parliament, and that it will supply in this connection the information and documents requested in the Memorandum adopted by the Governing Body.

Nepal

Further to its previous observation, the Committee notes with interest the information and documents supplied by the Government, according to which Conventions Nos. 155 and 156 and Recommendations Nos. 163 to 165, which were adopted at the 67th Session of the Conference, and Convention No. 162 (72nd Session) and all the instruments adopted from the 68th to the 71st Sessions have been submitted to Parliament through the Development Committee.

The Committee hopes that the Government will soon indicate that the remaining instruments of the 67th and 72nd Sessions (Convention No. 154 and Recommendation No. 172), the instruments adopted from the 51st to the 61st Sessions, Recommendation No. 162 (66th Session) and the instruments adopted at the 74th Session have also been submitted to Parliament and that, for all the above instruments, it will supply the information and documents requested in the Memorandum adopted by the Governing Body, particularly under point II(a) and (b) of the questionnaire.

Nigeria

In its previous observation, the Committee noted the Government's statement in its report to the effect that the proposals and decisions concerning the instruments adopted from the 45th to the 59th Sessions

and from the 65th to the 70th Sessions of the Conference would be supplied to the ILO as soon as possible. In the absence of any new information on this subject, the Committee hopes that the Government will soon provide these indications and that it will also report the proposals and decisions concerning the instruments adopted at the 71st and 72nd Sessions. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Pakistan

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will indicate in the near future that it has been possible to submit to the competent authorities the instruments adopted at the 69th and 70th Sessions of the Conference, which were under examination, as well as the instruments adopted at the 71st and 72nd Sessions. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

Panama

The Committee notes that the Government has not replied to its previous observation. It hopes that the Government will soon indicate that the instruments adopted at the 70th, 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted.

Papua New Guinea

Further to its previous observation, the Committee notes the statement by a Government representative to the Conference Committee in 1988 and the subsequent discussion concerning the difficulties which had delayed the submission of the instruments adopted from the 66th to the 72nd Sessions of the Conference, which were likely to be submitted to Parliament at its session in June 1988. In the absence of new information, it trusts that the Government will soon indicate that these instruments, and those adopted at the 74th Session, have been submitted to the competent authorities.

Paraguay

With reference to its previous comments, the Committee notes the information supplied by the Government to the effect that the instruments adopted from the 68th to the 74th Sessions of the Conference have been forwarded to the Minister of Foreign Affairs for

him to submit them to Congress. The Committee hopes that the Government will supply a copy of the letter or document whereby the Minister of Foreign Affairs submitted these instruments to Congress. With reference to its previous observations, the Committee trusts that the Government will also supply the corresponding document for the instruments adopted from the 62nd to the 67th Sessions of the Conference, which were transmitted to the Minister of Foreign Affairs in October 1981.

#### Peru

The Committee notes that the Government has not replied to its previous requests. It hopes that the Government will soon be able, as on previous occasions, to supply a copy of the document whereby the instruments adopted at the 71st Session of the Conference were submitted to Congress. The Committee also hopes that the Government will be able to indicate in the near future that the remaining instruments adopted at the 65th (Convention No. 153 and Recommendation No. 161), 67th (Convention No. 155 and Recommendation No. 164), 68th (Convention No. 157), 69th (Recommendation No. 167), 70th, 72nd and 74th Sessions of the Conference have also been submitted.

#### Philippines

The Committee notes that the Government has not replied to its previous direct requests. It hopes that the Government will supply in the near future the decisions taken concerning Convention No. 152, which was adopted at the 65th Session of the Conference, and Recommendation No. 162 (66th Session). It also trusts that the Government will indicate in the near future that the instruments adopted from the 67th to the 74th Sessions have been submitted to the competent authorities.

#### Saint Lucia

Further to its previous observations, the Committee notes the information supplied by the Government to the Conference Committee in 1988 regarding the difficulties which have greatly delayed the submission procedure. The Committee also notes that the Government hopes that this procedure can be completed in the near future following the supplementary training received by the staff in the labour department during the regional seminar and the visit of the regional adviser on standards.

The Committee therefore hopes that the Government will soon be able to indicate that the instruments adopted at the 66th, 67th, 68th, 69th, 70th, 71st and 72nd Sessions of the Conference have been submitted to the competent authorities. Furthermore, it would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted. It points out in this connection that the authorities to which these instruments must



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be submitted are those empowered to legislate and that the obligation to submit the instruments to them does not imply that governments must propose the ratification or the application of the instruments. Finally, the Committee hopes that the Government will also supply the information and documents requested in the Memorandum adopted by the Governing Body, particularly with regard to the nature of the competent authority and the Government's proposals or comments on the effect to be given to the instruments in question (Points I(a) and II(b) of the questionnaire).

### Sao Tome and Principe

The Committee notes with regret that the Government has not replied to its previous observations. It trusts that it will soon indicate that the instruments adopted at the 68th, 69th, 70th and 71st Sessions of the Conference have been submitted to the competent authorities. It points out, in this connection, that, in accordance with article 19, paragraphs 5(b) and 6, of the Constitution of the ILO, the authorities to which these instruments must be submitted are those empowered to legislate, in this case the People's Assembly. It trusts that the Government will take the necessary measures in the near future and will supply, for the instruments referred to above, the information and documents requested in the Memorandum adopted by the Governing Body, particularly with regard to the nature of the competent authority and the Government's proposals or comments on the effect to be given to the instruments concerned (Points I(a) and II(b) of the questionnaire). The Committee wishes to point out that the obligation to submit does not imply that governments must propose the ratification of the Convention or the application of the Recommendation under consideration. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities. All the instruments adopted by the Conference must accordingly be submitted to the competent authorities, irrespective of the action the Government intends to take on them.

With regard to the instruments adopted at the 72nd Session of the Conference, the Committee previously noted the decisions taken with regard to them, which were communicated by the Government, and requested the Government to indicate whether these instruments were duly submitted to the competent authorities. It hopes that the Government will soon supply this information.

Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

### Seychelles

The Committee regrets to note that, once again this year, the Government has not replied to its previous observation. It trusts that the Government will shortly indicate that the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd and

74th Sessions of the Conference have been submitted to the competent authorities, in accordance with article 19, paragraphs 5(b) and 6(b), of the Constitution of the ILO. It points out in this connection that the authorities to which these instruments must be submitted are those empowered to legislate, in this case the People's Assembly. The Committee hopes that the Government will also supply the information and documents requested in this connection in the Memorandum adopted by the Governing Body, particularly with regard to the Government's proposals and comments on the effect to be given to the instruments concerned (point II(b) of the questionnaire). It also points out that the obligation to submit does not imply that governments must propose the ratification of the Conventions or the application of the Recommendations under consideration. Governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities.

#### Sierra Leone

With reference to its previous observations, the Committee notes the information supplied by the Government to the Conference Committee in 1988. This information confirmed the indications given in 1987 when the Government stated that the necessary documents for the submission of instruments that were still pending had been prepared. The Committee also notes the staffing difficulties which delayed the submission of the instruments concerned and the assurance that it will soon be possible to complete the submission procedure. In the absence of new information, it trusts that the Government will indicate in the near future that Convention No. 146 and Recommendation No. 154, which were adopted at the 62nd Session of the Conference, and the instruments adopted at the 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd and 74th Sessions have been submitted to Parliament.

#### Syrian Arab Republic

The Committee notes from the information supplied by the Government that the instruments adopted at the 72nd Session of the Conference have been transmitted to the Presidency of the Council of Ministers. It hopes that these instruments, together with Conventions Nos. 160 and 161 and Recommendations Nos. 160, 161, 162 and 167 to 171 (65th, 66th, 69th, 70th and 71st Sessions), which have already been forwarded to the Council of Ministers for their submission to the People's Assembly, will also be submitted to the People's Assembly, which is also empowered to legislate, by virtue of Section 71 of the Syrian Constitution. Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session of the Conference have been submitted.

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### United Republic of Tanzania

Further to its previous comments, the Committee notes with interest the information and documents supplied by the Government regarding the decisions taken concerning the instruments adopted from the 47th to the 53rd Sessions of the Conference and the submission to the competent authorities of those adopted from the 66th to the 71st Sessions. It notes, with reference to this latter group of instruments, that the date of submission is not indicated and that, for the instruments adopted at the 66th, 67th and 68th Sessions, the competent authority indicated is the Ministry of Labour and Manpower Development and not the National Assembly.

The Committee hopes that the Government will soon be able to indicate for all these instruments and for the instruments adopted from the 54th to the 65th Sessions, which have already been submitted to the Cabinet, and for those adopted at the 72nd Session, the date on which they were submitted to the National Assembly.

Furthermore, the Committee would be grateful if the Government would indicate whether the instruments adopted at the 74th Session have been submitted.

### Thailand

Further to its previous observation, the Committee notes the decisions taken regarding the instruments adopted from the 61st to the 66th Sessions of the Conference, which have already been submitted to the competent authorities. The Government indicates that the instruments adopted at the 67th and 68th Sessions are to be considered by the special commission for the examination of Conventions before a decision can be taken. Furthermore, the Committee notes that the submission of the instruments adopted at the 72nd and 74th Sessions has been delayed by their translation. It hopes that it will be possible for it to take place in the near future.

### Trinidad and Tobago

Further to its previous observation, the Committee notes with interest the information and documents supplied by the Government concerning the submission to the competent authorities of the instruments adopted at the 68th, 69th and 70th Sessions of the Conference. It hopes that the Government will also supply a copy of the document whereby the instruments adopted at the 65th Session of the Conference were submitted to Parliament. It also hopes that it will soon be able to indicate that the remaining instruments (66th and 67th and 71st to 74th Sessions) have been submitted to the competent authorities.

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In addition, requests regarding certain points are being addressed directly to the following States: Afghanistan, Algeria,

Argentina, Austria, Bahamas, Bangladesh, Belgium, Belize, Benin, Botswana, Burkina Faso, Burma, Cameroon, Canada, Chad, Chile, China, Colombia, Comoros, Côte d'Ivoire, Cyprus, Czechoslovakia, Dominica, Ecuador, Equatorial Guinea, Ethiopia, France, Gabon, German Democratic Republic, Federal Republic of Germany, Greece, Guatemala, Guyana, Honduras, Hungary, India, Indonesia, Iraq, Ireland, Israel, Italy, Jordan, Kenya, Kuwait, Liberia, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Mali, Malta, Mexico, Mongolia, Morocco, Mozambique, Netherlands, New Zealand, Nicaragua, Poland, Portugal, Qatar, Romania, Rwanda, San Marino, Senegal, Solomon Islands, Somalia, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe.

# **Appendix I. Information Supplied by Governments with Regard to the Obligation to Submit Conventions and Recommendations to the Competent Authorities**

*(31st to 74th Sessions of the International Labour Conference, 1948-87)<sup>1</sup>*

*Note.* The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. Ratified Conventions are considered as having been submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Afghanistan . . . . .	31 to 70	71, 72 and 74
Algeria . . . . .	47 to 72	74
Angola . . . . .	61 to 66 and 67 (C 154, 156; R 163, 165). 68 to 70 and 71 (C 160; R 170)	67 (C 155; R 164). 71 (C 161; R 171) 72 and 74
Antigua and Barbuda . .	68	69, 70, 71, 72 and 74
Argentina . . . . .	31 to 72	74
Australia . . . . .	31 to 72	74
Austria . . . . .	31 to 72	74
Bahamas . . . . .	61 to 74	—
Bahrain . . . . .	63 to 74	—
Bangladesh . . . . .	58 to 69	70, 71, 72 and 74
Barbados . . . . .	51 to 74	—
Belgium . . . . .	31 to 72	74
Belize . . . . .	68	69, 70, 71, 72 and 74
Benin . . . . .	45 to 72	74
Bolivia . . . . .	31 to 59, 60 (C 141, 142, 143; R 149, 150), 61 to 69	60 (R 151), 70, 71, 72 and 74
Botswana . . . . .	64 to 72	74
Brazil . . . . .	31 to 50, 51 (C 127; R 128, 129, 130, 131), 53 (R 133, 134), 54 to 58, 59 (C 140; R 147, 148), 60 to 62, 63 (C 148; R 156, 157), 64 (R 158, 159), 65, 66, 67 (C 154; R 163, 164, 165), 68 (R 166), 69 to 72	51 (C 128), 53 (C 129, 130), 59 (C 139), 63 (C 149), 64 (C 150, 151), 67 (C 155, 156) 68 (C 157, 158) and 74

<sup>1</sup> The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972).

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Bulgaria . . . . .	31 to 74	—
Burkina Faso . . . . .	45 to 72	74
Burma . . . . .	31 to 72	74
Burundi . . . . .	47 to 74	—
Byelorussian SSR . . . . .	37 to 74	—
Cameroon . . . . .	44 to 68 and 72	69, 70, 71 and 74
Canada . . . . .	31 to 72	74
Cape Verde . . . . .	65 to 68 and 70	69, 71, 72 and 74
Central African Republic	45 to 72	74
Chad . . . . .	45 to 72	74
Chile . . . . .	31 to 72	74
China . . . . .	69 to 72	74
Colombia . . . . .	31 to 70 and 71 (C 160)	71 (C 161; R 170, 171), 72 and 74
Comoros . . . . .	65 to 71	72 and 74
Congo . . . . .	45 to 53, 54 (C 131, 132), 55 (C 133, 134), 56, 58 (C 138; R 146), 59, 63 (C 149; R 157), 64 to 66 and 67 (C 154, 155)	54 (R 135, 136), 55 (R 137, 138, 139, 140, 141, 142), 58 (C 137; R 145), 60, 61, 62, 63 (C 148; R 156), 67 (C 156; R 163, 164, 165), 68, 69, 70, 71, 72 and 74
Costa Rica . . . . .	31 to 68, 69 (C 159; R 168) and 70	69 (R 167), 71, 72 and 74
Côte d'Ivoire . . . . .	45 to 72	74
Cuba . . . . .	31 to 74	—
Cyprus . . . . .	45 to 71	72 and 74
Czechoslovakia . . . . .	31 to 72	74
Democratic Yemen . . . . .	53 to 68	69, 70, 71, 72 and 74
Denmark . . . . .	31 to 74	—
Djibouti . . . . .	64, 65, 67, 71 and 72	66, 68, 69, 70 and 74
Dominica . . . . .	71	68, 69, 70, 72 and 74
Dominican Republic . . . . .	31 to 62, 64 and 68	63, 65, 66, 67, 69, 70, 71, 72 and 74
Ecuador . . . . .	31 to 70	71, 72 and 74
Egypt . . . . .	31 to 74	—

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
El Salvador . . . . .	31 to 61, 63 (C 149), 64 (C 150), 69 (C 159; R 168), and 71 (C 160; R 170)	62, 63 (C 148; R 156, 157), 64 (C 151; R 158, 159), 65 66, 67, 68, 69 (R 167), 70 and 71 (C 161; R 171), 72 and 74
Equatorial Guinea . . . .	67 to 71	72 and 74
Ethiopia . . . . .	31 to 72	74
Fiji . . . . .	59 to 70	71, 72 and 74
Finland . . . . .	31 to 74	-
France . . . . .	31 to 72	74
Gabon . . . . .	45 to 71	72 and 74
German Democratic Republic . . . . .	59 to 72	74
Germany, Federal Republic of . . . . .	34 to 64, 65 (C 152, 153; R 160), 66 to 70	65 (R 161), 71, 72 and 74
Ghana . . . . .	40 to 69 and 71 to 74	70
Greece . . . . .	31 to 74	-
Grenada . . . . .	-	66, 67, 68, 69, 70, 71, 72 and 74
Guatemala . . . . .	31 to 70, 71 (C 160, 161), and 72 (C 162)	71 (R 170, 171), 72 (R 172) and 74
Guinea . . . . .	43 to 67	68, 69, 70, 71, 72 and 74
Guinea-Bissau . . . . .	63 to 70	71, 72 and 74
Guyana . . . . .	50 to 70	71, 72 and 74
Haiti . . . . .	31 to 66	67, 68, 69, 70, 71, 72 and 74
Honduras . . . . .	39 to 66, 68, 69, 71 and 72	67, 70 and 74
Hungary . . . . .	31 to 72	74
Iceland . . . . .	31 to 74	-
India . . . . .	31 to 70	71, 72 and 74
Indonesia . . . . .	33 to 72	74
Iran, Islamic Republic of	31 to 61	62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74
Iraq . . . . .	31 to 71	72 and 74
Ireland . . . . .	31 to 71	72 and 74

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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Israel . . . . .	32 to 71	72 and 74
Italy . . . . .	31 to 74	—
Jamaica . . . . .	47 to 69	70, 71, 72 and 74
Japan . . . . .	35 to 74	—
Jordan . . . . .	39 to 71 and 74	72
Democratic Kampuchea	53, 54 and 56	55, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74
Kenya . . . . .	48 to 68	69, 70, 71, 72 and 74
Kuwait . . . . .	45 to 72	74
Lao People's Democratic Republic . . . . .	—	48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74
Lebanon . . . . .	31 (C 88, 89, 90; R 83), 32 (C 95, 98; R 85), 34 (C 100; R 90), 35 (C 102, 103), 40 (C 105, 106; R 103), 42 (C 111; R 111), 44 (C 115), 45 (C 116), 46 (C 117, 118), 47 (C 119), 48 (C 120, 121, 122; R 120, 122), 49 (C 123, 124), 50 (C 125, 126) and 51 to 66	31 (C 87), 32 (C 91, 92, 93, 94, 96, 97; R 84, 86, 87), 33, 34 (C 99; R 89, 91, 92), 35 (C 101; R 93, 94, 95), 36, 37, 38, 39, 40 (C 107; R 104), 41, 42 (C 110; R 110), 43, 44, (R 113, 114), 45 (R 115), 46 (R 116, 117), 47 (R 118, 119), 48 (R 121) 49 (R 123, 124, 125), 50 (R 126, 127), 67, 68, 69, 70, 71, 72 and 74
Lesotho . . . . .	71 (R 170, 171)	66, 67, 68, 69, 70, 71 (C 160, 161), 72 and 74
Liberia . . . . .	31 to 72	74
Libyan Arab Jamahiriya	35 to 72	74
Luxembourg . . . . .	31 to 71 and 74	72
Madagascar . . . . .	45 to 54, 56 to 70	55, 71, 72 and 74
Malawi . . . . .	49 to 54, 56, 61, 63 (C 149; R 157), 68 (C 158; R 166) and 69 (C 159; R 168)	55, 58, 59, 60, 62, 63 (C 148; R 156), 64, 65, 66, 67, 68 (C 157), 69 (R 167), 70, 71, 72 and 74
Malaysia . . . . .	41 to 72	74
Mali . . . . .	44 to 72	74
Malta . . . . .	49 to 72	74
Mauritania . . . . .	45 to 67	68, 69, 70, 71, 72 and 74
Mauritius . . . . .	53 to 58, 59 (C 139; R 147), 61 and 62	59 (C 140; R 148), 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74



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State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Mexico . . . . .	31 to 69, 71, 72 and 74	70
Mongolia . . . . .	53 to 71	72 and 74
Morocco . . . . .	39 to 72	74
Mozambique . . . . .	61 to 74	—
Nepal . . . . .	54 (C 131), 62 to 65, 67 (C 155, 156; R 163, 164, 165), 68 to 71 and 72 (C 162)	51, 52, 53, 54 (C 132; R 135, 136), 55, 56, 58, 59, 60, 61, 66, 67 (C 154), 72 (R 172) and 74
Netherlands . . . . .	31 to 66, 67 (C 154, 156; R 163, 165), 68 and 69 (C 159; R 168) and 74	67 (C 155; R 164), 69 (R 167), 70, 71 and 72
New Zealand . . . . .	31 to 72	74
Nicaragua . . . . .	40 to 72	74
Niger . . . . .	45 to 74	—
Nigeria . . . . .	45 to 72	74
Norway . . . . .	31 to 74	—
Pakistan . . . . .	31 to 68	69, 70, 71, 72 and 74
Panama . . . . .	31 to 69	70, 71, 72 and 74
Papua New Guinea . . . . .	61 to 65	66, 67, 68, 69, 70, 71, 72 and 74
Paraguay . . . . .	40 to 67	68, 69, 70, 71, 72 and 74
Peru . . . . .	31 to 64, 65 (C 152; R 160), 66, 67 (C 154, 156; R 163, 165), 68 (C 158; R 166), 69 (C 159; R 168) and 71	65 (C 153; R 161), 67 (C 155; R 164), 68 (C 157), 69 (R 167), 70, 72 and 74
Philippines . . . . .	31 to 66	67, 68, 69, 70, 71, 72 and 74
Poland . . . . .	31 to 74	—
Portugal . . . . .	31 to 72	74
Qatar . . . . .	58 to 72	74
Romania . . . . .	39 to 74	—
Rwanda . . . . .	47 to 74	—
Saint Lucia . . . . .	—	66, 67, 68, 69, 70, 71, 72 and 74
San Marino . . . . .	69 (C 159; R 168) and 70	68, 69 (R 167), 71, 72 and 74
Sao Tome and Principe . . . . .	—	68, 69, 70, 71, 72 and 74
Saudi Arabia . . . . .	61 to 74	—

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
Senegal . . . . .	44 to 69, 71 and 72	70 and 74
Seychelles . . . . .	—	63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74
Sierra Leone . . . . .	45 to 62 (C 145, 147; R 153, 155)	62 (C 146; R 154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 74
Singapore . . . . .	50 to 72	74
Solomon Islands . . . . .	—	70, 71, 72 and 74
Somalia . . . . .	45 to 72	74
Spain . . . . .	39 to 62, 63 (C 148; R 156, 157), 64 to 68 and 69 (R 167)	63 (C 149), 69 (C 159; R 168), 70, 71, 72 and 74
Sri Lanka . . . . .	31 to 72	74
Sudan . . . . .	39 to 72	74
Suriname . . . . .	61 to 64	65, 66, 67, 68, 69, 70, 71, 72 and 74
Swaziland . . . . .	60 to 67	68, 69, 70, 71, 72 and 74
Sweden . . . . .	31 to 72	74
Switzerland . . . . .	31 to 74	—
Syrian Arab Republic . .	31 to 72	74
Tanzania, United Republic of . . . . .	46 to 65, 69 to 71	66, 67, 68, 72 and 74
Thailand . . . . .	31 to 71	72 and 74
Togo . . . . .	44 to 74	—
Trinidad and Tobago . .	47 to 65, 68 to 70	66, 67, 71, 72 and 74
Tunisia . . . . .	39 to 61, 62 (C 145, 146, 147; R 154, 155), 63 to 68, 69 (C 159; R 167), 70, 71 and 74	62 (R 153), 69 (R 168) and 72
Turkey . . . . .	31 to 72 and 74 (C 163, 164, 165, 166; R 173, 174)	74 (R 175, 176)
Uganda . . . . .	47 to 72	74
Ukrainian SSR . . . . .	37 to 74	—
USSR . . . . .	37 to 74	—
United Arab Emirates . .	58 to 74	—
United Kingdom . . . . .	31 to 72	74

# SUBMISSION TO COMPETENT AUTHORITIES

State	Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments	Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied)
United States . . . . .	31 to 72	74
Uruguay . . . . .	31 to 71 and 72 (C 162)	72 (R 172) and 74
Venezuela . . . . .	31 to 70, 71 (C 160; R 170) and 72	71 (C 161; R 171) and 74
Yemen . . . . .	49 to 72	74
Yugoslavia . . . . .	31 to 74	—
Zaire . . . . .	45 to 69	70, 71, 72 and 74
Zambia . . . . .	49 to 72	74
Zimbabwe . . . . .	66 to 69	70, 71, 72 and 74

## Appendix II. Over-all position of Member States at 22 March 1989

Sessions at which decisions were adopted	Number of States in which, according to information supplied by Government.			Number of States which were Members of the Organisation at the time of the session
	All the texts have been submitted	Some of these texts have been submitted	None of these texts have been submitted (including cases in which no information has been supplied by the Government)	
31 (June 1948) . . . . .	58	2	—	60
32 (June 1949) . . . . .	59	2	—	61
33 (June 1950) . . . . .	61	— <sup>1</sup>	2	63
34 (June 1951) . . . . .	62	2	—	64
35 (June 1952) . . . . .	64	2	—	66
36 (June 1953) . . . . .	64	—	2	66
37 (June 1954) . . . . .	67	— <sup>1</sup>	2	69
38 (June 1955) . . . . .	67	1	2	69
39 (June 1956) . . . . .	74	—	2	76
40 (June 1957) . . . . .	75	2	—	77
41 (April/May 1958) . . . .	77	1	1	79
42 (June 1958) . . . . .	78	1	—	79
43 (June 1959) . . . . .	78	1	1	80
44 (June 1960) . . . . .	81	1	1	83
45 (June 1961) . . . . .	99	2	—	101
46 (June 1962) . . . . .	101	1	—	102
47 (June 1963) . . . . .	107	1	—	108
48 (June/July 1964) . . . .	108	1	1	110
49 (June 1965) . . . . .	112	1	1	114
50 (June 1966) . . . . .	111	3	1	115
51 (June 1967) . . . . .	116	1	—	117
52 (June 1968) . . . . .	114	— <sup>1</sup>	4	118
53 (June 1969) . . . . .	118	1	2	121
54 (June 1970) . . . . .	116	3	2	121
55 (October 1970) . . . . .	115	2	4	121
56 (June 1971) . . . . .	119	—	2	121
58 (June 1973) . . . . .	117	2	4	123
59 (June 1974) . . . . .	119	2	4	125
60 (June 1975) . . . . .	119	1	6	126
61 (June 1976) . . . . .	122	—	9	131
62 (October 1976) . . . . .	121	1	10	132
63 (June 1977) . . . . .	110	4	21	135
64 (June 1978) . . . . .	124	3	9	136
65 (June 1979) . . . . .	121	3	15	139
66 (June 1980) . . . . .	114	— <sup>1</sup>	30	144
67 (June 1981) . . . . .	114	6	25	145
68 (June 1982) . . . . .	113	5	32	150
69 (June 1983) . . . . .	108	7	35	150
70 (June 1984) . . . . .	100	— <sup>1</sup>	50	150
71 (June 1985) . . . . .	50	5	95	150
72 (June 1986) . . . . .	79	3	68	150
74 (Sept.-Oct. 1987) . . .	33	1	116	150

<sup>1</sup> At this session the Conference adopted one Recommendation only.







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