

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

(articles 19, 22 and 35 of the Constitution)

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

Report III (Part 1A)

General Report
and observations concerning particular countries

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

- (a) The **Reader's note** provides indications on the Committee of Experts and the Committee on the Application of Standards of the International Labour Conference (their mandate, functioning and the institutional context in which they operate) (**Part 1A, pages 1–4**).
- (b) **Part I: the General Report** describes the manner in which the Committee of Experts undertakes its work and the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards, and it draws the attention to issues of general interest arising out of the Committee's work (**Part 1A, pages 5–40**).
- (c) **Part II: Observations concerning particular countries** cover the sending of reports, the application of ratified Conventions (see section I), and the obligation to submit instruments to the competent authorities (see section II) (**Part 1A, pages 41–802**).
- (d) **Part III: General Survey**, in which the Committee of Experts examines the state of the legislation and practice regarding a specific area covered by a given number of Conventions and Recommendations. This examination covers all member States regardless of whether or not they have ratified the given Conventions. The General Survey is published as a separate volume (Report III (Part 1B)) and this year it concerns employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization (**Part 1B**).

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

The report of the Committee of Experts is also available at: www.ilo.org/ilolex/gbe/ceacr2010.htm.

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List of Conventions by Subject

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

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

1 Freedom of association, collective bargaining, and industrial relations

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

2 Forced labour

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

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

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

4 Equality of opportunity and treatment

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

5 Tripartite consultation

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

6 Labour administration and inspection

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

7 Employment policy and promotion

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

8 Vocational guidance and training

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

9 Employment security

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

10 Wages

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

11 Working time

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

12 Occupational safety and health

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

13 Social security

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

14 Maternity protection

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

15 Social policy

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

16 Migrant workers

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

17 Seafarers

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

18 Fishers

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

19 Dockworkers

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

20 Indigenous and tribal peoples

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

21 Specific categories of workers

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

99 Not classified

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

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| C151..... | 108 | C087..... | 121 |
| C154..... | 108 | C094..... | 610 |
| C169..... | 761 | C098..... | 122 |
| Submission to the competent authorities..... | 793 | C100..... | 413 |
| Comoros | | C111..... | 414 |
| C026..... | 608 | C117..... | 724 |
| C052..... | 634 | C119..... | 664 |
| C098..... | 109 | C121..... | 704 |
| C099..... | 608 | C144..... | 473 |
| C100..... | 410 | C150..... | 501 |
| C111..... | 410 | C158..... | 598 |
| C122..... | 553 | Submission to the competent authorities | 794 |
| Submission to the competent authorities..... | 793 | Denmark | |
| Congo | | C087..... | 123 |
| C029..... | 232 | C098..... | 123 |
| C081..... | 497 | C129..... | 501 |
| C087..... | 109 | Djibouti | |
| C095..... | 608 | C026..... | 611 |
| C144..... | 472 | C056..... | 731 |
| C150..... | 497 | C071..... | 731 |
| C152..... | 747 | C087..... | 124 |
| C182..... | 294 | C094..... | 611 |
| Submission to the competent authorities..... | 793 | C095..... | 611 |
| Costa Rica | | C098..... | 125 |
| C001..... | 634 | C100..... | 414 |
| C014..... | 635 | C115..... | 665 |
| C081..... | 498 | C120..... | 665 |
| C087..... | 109 | Submission to the competent authorities | 794 |
| C094..... | 609 | Dominica | |
| C095..... | 609 | C029..... | 233 |
| C098..... | 111 | C081..... | 502 |
| C106..... | 635 | C087..... | 126 |
| C111..... | 410 | C138..... | 298 |
| C129..... | 500 | General observations | 44 |
| C135..... | 115 | Submission to the competent authorities | 794 |
| C137..... | 749 | Dominican Republic | |
| C169..... | 765 | C087..... | 126 |
| Côte d'Ivoire | | C098..... | 127 |
| C111..... | 411 | C171..... | 635 |
| C129..... | 500 | Ecuador | |
| | | C087..... | 129 |

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| C098 | 130 | C105 | 235 |
| C105 | 234 | C144 | 474 |
| C111 | 415 | Submission to the competent authorities | 795 |
| C131 | 612 | Gambia | |
| C148 | 666 | C098 | 143 |
| C169 | 766 | Submission to the competent authorities | 795 |
| Egypt | | Georgia | |
| C009 | 731 | C052 | 639 |
| C055 | 732 | C087 | 143 |
| C087 | 132 | C098 | 145 |
| C094 | 612 | C100 | 417 |
| C098 | 133 | C111 | 417 |
| C118 | 704 | Submission to the competent authorities | 795 |
| C138 | 299 | Germany | |
| El Salvador | | C003 | 720 |
| C087 | 134 | C081 | 505 |
| C151 | 134 | C087 | 147 |
| Submission to the competent authorities | 794 | C098 | 147 |
| Equatorial Guinea | | C150 | 507 |
| C001 | 635 | Ghana | |
| C030 | 636 | C081 | 508 |
| C087 | 135 | C098 | 148 |
| C098 | 135 | C100 | 418 |
| General observations | 44 | C105 | 235 |
| Submission to the competent authorities | 794 | C119 | 667 |
| Eritrea | | Submission to the competent authorities | 795 |
| C098 | 136 | Gibraltar (United Kingdom) | |
| General observations | 44 | C100 | 462 |
| Estonia | | General observations | 47 |
| C009 | 732 | Greece | |
| C087 | 137 | C029 | 235 |
| Ethiopia | | C081 | 509 |
| C014 | 636 | C092 | 733 |
| C087 | 137 | C098 | 149 |
| C098 | 138 | C105 | 236 |
| C106 | 636 | C133 | 733 |
| C111 | 416 | C147 | 734 |
| C138 | 300 | C180 | 734 |
| C181 | 553 | Grenada | |
| Submission to the competent authorities | 794 | C100 | 418 |
| Falkland Islands (Malvinas) (United Kingdom) | | Guatemala | |
| General observations | 47 | C001 | 640 |
| Fiji | | C029 | 237 |
| C087 | 139 | C081 | 509 |
| C098 | 142 | C087 | 149 |
| C144 | 474 | C098 | 156 |
| Submission to the competent authorities | 794 | C100 | 419 |
| Finland | | C103 | 721 |
| C081 | 503 | C105 | 239 |
| C149 | 786 | C111 | 419 |
| C150 | 504 | C129 | 511 |
| France | | C144 | 474 |
| C014 | 637 | C149 | 787 |
| C106 | 637 | C169 | 767 |
| C134 | 733 | Guinea | |
| C137 | 750 | C026 | 613 |
| C149 | 786 | C081 | 514 |
| C152 | 750 | C087 | 157 |
| General observations | 45 | C094 | 613 |
| Gabon | | C098 | 158 |
| C081 | 504 | C099 | 614 |
| C087 | 142 | C111 | 420 |

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| C115..... | 667 | C098..... | 166 |
| C118..... | 706 | C144..... | 476 |
| C119..... | 668 | Iraq | |
| C121..... | 706 | C001..... | 641 |
| C122..... | 554 | C008..... | 736 |
| C134..... | 735 | C030..... | 642 |
| C136..... | 668 | C094..... | 614 |
| C142..... | 590 | C098..... | 168 |
| C144..... | 475 | C100..... | 428 |
| C148..... | 669 | C107..... | 773 |
| C149..... | 788 | C132..... | 642 |
| C152..... | 750 | C147..... | 737 |
| General observations..... | 45 | Ireland | |
| Submission to the competent authorities..... | 795 | C111..... | 429 |
| Guinea-Bissau | | C122..... | 555 |
| C018..... | 707 | C144..... | 476 |
| C019..... | 707 | Submission to the competent authorities..... | 796 |
| C069..... | 736 | Islamic Republic of Iran | |
| C098..... | 158 | C095..... | 614 |
| General observations..... | 45 | C111..... | 426 |
| Submission to the competent authorities..... | 795 | Isle of Man (United Kingdom) | |
| Guyana | | C151..... | 210 |
| C029..... | 240 | Italy | |
| C042..... | 708 | C081..... | 515 |
| C087..... | 159 | C129..... | 517 |
| C098..... | 159 | C143..... | 725 |
| C100..... | 420 | C147..... | 738 |
| C111..... | 421 | Jamaica | |
| C129..... | 514 | C087..... | 169 |
| C144..... | 475 | C094..... | 614 |
| General observations..... | 45 | C098..... | 170 |
| Haiti | | C100..... | 430 |
| C029..... | 240 | Japan | |
| C087..... | 160 | C027..... | 751 |
| C098..... | 160 | C087..... | 170 |
| Submission to the competent authorities..... | 796 | C098..... | 171 |
| Honduras | | C142..... | 590 |
| C087..... | 161 | C147..... | 739 |
| C098..... | 162 | C156..... | 430 |
| C100..... | 422 | C159..... | 556 |
| C108..... | 736 | Jordan | |
| Hong Kong Special Administrative Region (China) | | C098..... | 172 |
| C081..... | 496 | C106..... | 643 |
| C087..... | 101 | C135..... | 173 |
| C098..... | 101 | Kazakhstan | |
| C144..... | 471 | C100..... | 430 |
| Hungary | | C111..... | 430 |
| C024..... | 708 | C148..... | 669 |
| C029..... | 242 | Submission to the competent authorities..... | 796 |
| C081..... | 515 | Kenya | |
| Iceland | | C029..... | 246 |
| C098..... | 163 | C081..... | 517 |
| C122..... | 554 | C105..... | 246 |
| C144..... | 476 | C111..... | 432 |
| India | | C132..... | 643 |
| C001..... | 640 | C138..... | 302 |
| C029..... | 244 | Submission to the competent authorities..... | 796 |
| C100..... | 422 | Kuwait | |
| C107..... | 771 | C001..... | 644 |
| C111..... | 424 | C030..... | 644 |
| Indonesia | | C106..... | 644 |
| C087..... | 164 | C111..... | 432 |

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|--|-----|--|-----|
| C136..... | 669 | C144..... | 477 |
| C138..... | 304 | Malawi | |
| C144..... | 477 | C081..... | 520 |
| Kyrgyzstan | | C098..... | 173 |
| C014..... | 644 | C129..... | 521 |
| C122..... | 556 | C138..... | 310 |
| C148..... | 670 | Malaysia | |
| C149..... | 788 | C100..... | 440 |
| General observations..... | 45 | C138..... | 311 |
| Submission to the competent authorities..... | 796 | C182..... | 313 |
| Lao People's Democratic Republic | | Mali | |
| C013..... | 670 | C081..... | 522 |
| Submission to the competent authorities..... | 797 | C151..... | 174 |
| Latvia | | C182..... | 317 |
| C119..... | 670 | Malta | |
| Lebanon | | C087..... | 174 |
| C100..... | 434 | C098..... | 175 |
| C111..... | 434 | Submission to the competent authorities..... | 797 |
| C138..... | 305 | Mauritania | |
| C182..... | 308 | C029..... | 248 |
| Lesotho | | C138..... | 320 |
| C111..... | 435 | C182..... | 320 |
| C144..... | 477 | Mauritius | |
| C158..... | 598 | C014..... | 646 |
| Liberia | | C026..... | 615 |
| C029..... | 246 | C081..... | 524 |
| C055..... | 739 | C105..... | 250 |
| C098..... | 173 | C138..... | 321 |
| C105..... | 247 | Mexico | |
| C112..... | 745 | C029..... | 250 |
| C113..... | 745 | C100..... | 441 |
| C114..... | 745 | C155..... | 672 |
| C133..... | 740 | C169..... | 773 |
| General observations..... | 46 | Mongolia | |
| Submission to the competent authorities..... | 797 | C122..... | 559 |
| Libyan Arab Jamahiriya | | C138..... | 322 |
| C001..... | 645 | C155..... | 674 |
| C052..... | 645 | Submission to the competent authorities..... | 797 |
| C081..... | 519 | Montenegro | |
| C102..... | 709 | C081..... | 524 |
| C103..... | 721 | C161..... | 674 |
| C105..... | 247 | Montserrat (United Kingdom) | |
| C111..... | 436 | C008..... | 743 |
| C118..... | 709 | General observations..... | 48 |
| C130..... | 710 | Morocco | |
| C131..... | 615 | C094..... | 616 |
| Submission to the competent authorities..... | 797 | C122..... | 560 |
| Lithuania | | C138..... | 325 |
| C100..... | 437 | C182..... | 327 |
| C111..... | 437 | Mozambique | |
| C122..... | 556 | C100..... | 442 |
| C127..... | 671 | C122..... | 561 |
| C142..... | 591 | C182..... | 328 |
| Luxembourg | | Submission to the competent authorities..... | 797 |
| C081..... | 520 | Myanmar | |
| Madagascar | | C002..... | 563 |
| C100..... | 439 | C026..... | 616 |
| C119..... | 671 | C029..... | 252 |
| C120..... | 671 | C087..... | 175 |
| C122..... | 558 | Namibia | |
| C127..... | 671 | C098..... | 179 |
| C138..... | 309 | C111..... | 442 |

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|--|-----|--|--|---|---|-----|
| Nepal | | | | | Submission to the competent authorities | 798 |
| Submission to the competent authorities..... | 797 | | | Panama | | |
| Netherlands | | | | C003 | 722 | |
| C062 | 675 | | | C017 | 710 | |
| C122 | 563 | | | C030 | 648 | |
| C142 | 592 | | | C087 | 189 | |
| C152 | 751 | | | C094 | 617 | |
| C155 | 675 | | | C095 | 617 | |
| C162 | 677 | | | C098 | 192 | |
| C175 | 646 | | | C100 | 447 | |
| C177 | 788 | | | C107 | 778 | |
| New Zealand | | | | C111 | 448 | |
| C014 | 647 | | | Papua New Guinea | | |
| C047 | 648 | | | C105 | 262 | |
| C081 | 525 | | | C158 | 599 | |
| C088 | 565 | | | Submission to the competent authorities | 798 | |
| C100 | 443 | | | Paraguay | | |
| C111 | 443 | | | C029 | 263 | |
| C122 | 566 | | | C081 | 527 | |
| C155 | 677 | | | C087 | 193 | |
| C182 | 334 | | | C095 | 618 | |
| Nicaragua | | | | C098 | 194 | |
| C087 | 179 | | | C120 | 682 | |
| C098 | 180 | | | C122 | 569 | |
| C105 | 257 | | | C169 | 779 | |
| C115 | 679 | | | Submission to the competent authorities | 798 | |
| C119 | 680 | | | Peru | | |
| C122 | 566 | | | C067 | 649 | |
| C138 | 336 | | | C102 | 711 | |
| C144 | 478 | | | C111 | 449 | |
| C182 | 338 | | | C122 | 570 | |
| Niger | | | | C152 | 752 | |
| Submission to the competent authorities..... | 798 | | | C169 | 781 | |
| Nigeria | | | | C182 | 345 | |
| C087 | 180 | | | Submission to the competent authorities | 798 | |
| C088 | 567 | | | Philippines | | |
| C098 | 183 | | | C087 | 195 | |
| C105 | 257 | | | C098 | 196 | |
| C123 | 340 | | | C122 | 572 | |
| C144 | 478 | | | C138 | 347 | |
| Norway | | | | C144 | 480 | |
| C030 | 648 | | | C182 | 348 | |
| C094 | 617 | | | Poland | | |
| C129 | 526 | | | C081 | 529 | |
| C144 | 479 | | | C095 | 618 | |
| C169 | 775 | | | C122 | 573 | |
| C170 | 681 | | | C129 | 530 | |
| Oman | | | | C159 | 574 | |
| C182 | 341 | | | C170 | 682 | |
| Pakistan | | | | Portugal | | |
| C011 | 183 | | | C115 | 683 | |
| C029 | 258 | | | C122 | 574 | |
| C081 | 526 | | | Republic of Moldova | | |
| C087 | 184 | | | C105 | 251 | |
| C096 | 568 | | | C111 | 441 | |
| C098 | 187 | | | Romania | | |
| C100 | 444 | | | C081 | 531 | |
| C105 | 260 | | | C095 | 619 | |
| C107 | 778 | | | C100 | 450 | |
| C111 | 445 | | | C111 | 450 | |
| C144 | 479 | | | C138 | 351 | |
| C182 | 342 | | | C183 | 723 | |

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| Russian Federation | | | |
| C081 | 532 | C095 | 620 |
| C100 | 450 | C098 | 198 |
| C111 | 450 | C101 | 650 |
| C122 | 575 | C111 | 454 |
| C138 | 352 | C119 | 685 |
| C182 | 353 | C125 | 746 |
| Submission to the competent authorities | 798 | C144 | 480 |
| Rwanda | | General observations | 46 |
| C017 | 715 | Submission to the competent authorities | 800 |
| C062 | 683 | Singapore | |
| C087 | 196 | C029 | 267 |
| C094 | 619 | C094 | 620 |
| C098 | 197 | Slovakia | |
| C100 | 452 | C100 | 455 |
| C111 | 452 | C111 | 455 |
| Submission to the competent authorities | 799 | C122 | 578 |
| Saint Kitts and Nevis | | C144 | 481 |
| Submission to the competent authorities | 799 | Slovenia | |
| Saint Lucia | | C148 | 686 |
| C087 | 197 | C161 | 686 |
| C100 | 453 | Solomon Islands | |
| Submission to the competent authorities | 799 | Submission to the competent authorities | 800 |
| Saint Vincent and the Grenadines | | Somalia | |
| C081 | 533 | General observations | 46 |
| C105 | 264 | Submission to the competent authorities | 800 |
| Submission to the competent authorities | 799 | South Africa | |
| San Marino | | C100 | 456 |
| C088 | 576 | Spain | |
| C148 | 684 | C088 | 579 |
| Sao Tome and Principe | | C138 | 360 |
| C081 | 533 | Submission to the competent authorities | 800 |
| C087 | 198 | Sri Lanka | |
| C088 | 576 | C096 | 579 |
| C098 | 198 | C182 | 360 |
| C144 | 480 | St Helena (United Kingdom) | |
| General observations | 46 | General observations | 48 |
| Submission to the competent authorities | 799 | Sudan | |
| Sarawak (Malaysia) | | C026 | 621 |
| C014 | 645 | C029 | 267 |
| Saudi Arabia | | C095 | 621 |
| C029 | 264 | C105 | 270 |
| C182 | 355 | C111 | 457 |
| Senegal | | C122 | 580 |
| C013 | 684 | C182 | 362 |
| C096 | 577 | Submission to the competent authorities | 800 |
| C105 | 265 | Suriname | |
| C122 | 577 | C094 | 621 |
| C138 | 357 | Swaziland | |
| C182 | 359 | C029 | 270 |
| Submission to the competent authorities | 799 | C087 | 199 |
| Serbia | | C096 | 580 |
| C111 | 454 | C111 | 458 |
| C155 | 684 | Sweden | |
| Seychelles | | C111 | 458 |
| C008 | 740 | C122 | 581 |
| General observations | 46 | C129 | 534 |
| Submission to the competent authorities | 800 | C167 | 687 |
| Sierra Leone | | C180 | 741 |
| C017 | 715 | Switzerland | |
| C029 | 266 | C081 | 534 |
| C059 | 359 | C142 | 592 |
| | | C182 | 365 |

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| Syrian Arab Republic | | | |
| C029..... | 271 | C144..... | 482 |
| C081..... | 535 | C158..... | 600 |
| C105..... | 271 | C182..... | 374 |
| C115..... | 687 | Submission to the competent authorities..... | 801 |
| C129..... | 535 | Ukraine | |
| C139..... | 688 | C081..... | 541 |
| Submission to the competent authorities..... | 800 | C095..... | 622 |
| Tajikistan | | C119..... | 689 |
| C138..... | 366 | C122..... | 586 |
| Submission to the competent authorities..... | 800 | C129..... | 541 |
| Tanganyika (United Republic of Tanzania) | | C138..... | 377 |
| C081..... | 536 | C142..... | 595 |
| General observations..... | 47 | C182..... | 379 |
| Thailand | | Submission to the competent authorities..... | 801 |
| C019..... | 715 | United Arab Emirates | |
| C029..... | 273 | C138..... | 381 |
| C105..... | 274 | C182..... | 381 |
| C122..... | 582 | United Kingdom | |
| C182..... | 368 | C029..... | 279 |
| The former Yugoslav Republic of Macedonia | | C081..... | 541 |
| C132..... | 650 | C087..... | 208 |
| Submission to the competent authorities..... | 801 | C115..... | 690 |
| Togo | | C122..... | 587 |
| C029..... | 275 | United Republic of Tanzania | |
| C087..... | 204 | C029..... | 272 |
| C098..... | 204 | C087..... | 200 |
| C144..... | 481 | C098..... | 203 |
| Submission to the competent authorities..... | 801 | C105..... | 272 |
| Trinidad and Tobago | | C111..... | 459 |
| C125..... | 746 | C142..... | 593 |
| Tunisia | | C144..... | 481 |
| C062..... | 688 | C182..... | 366 |
| C111..... | 459 | United States | |
| C118..... | 717 | C105..... | 280 |
| Turkey | | C182..... | 385 |
| C029..... | 275 | Uruguay | |
| C081..... | 537 | C081..... | 542 |
| C087..... | 204 | C100..... | 463 |
| C096..... | 583 | C111..... | 464 |
| C100..... | 460 | C122..... | 588 |
| C105..... | 276 | C129..... | 544 |
| C111..... | 461 | C139..... | 690 |
| C119..... | 688 | C148..... | 691 |
| C122..... | 584 | C151..... | 210 |
| C138..... | 371 | C155..... | 692 |
| C142..... | 594 | C167..... | 693 |
| C144..... | 482 | Uzbekistan | |
| C155..... | 689 | C105..... | 280 |
| C158..... | 599 | C182..... | 388 |
| C161..... | 689 | Submission to the competent authorities..... | 802 |
| C182..... | 372 | Vanuatu | |
| Turkmenistan | | General observations..... | 48 |
| General observations..... | 47 | Viet Nam | |
| Submission to the competent authorities..... | 801 | C100..... | 465 |
| Uganda | | C111..... | 466 |
| C026..... | 622 | C155..... | 695 |
| C029..... | 278 | Yemen | |
| C081..... | 538 | C081..... | 544 |
| C098..... | 208 | C094..... | 625 |
| C105..... | 278 | C111..... | 468 |
| C122..... | 585 | C131..... | 625 |

Zambia

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| C095 | 625 |
| C138 | 389 |
| C182 | 390 |
| Submission to the competent authorities | 802 |

Zanzibar (United Republic of Tanzania)

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| General observations | 47 |
|----------------------------|----|

Zimbabwe

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| C026 | 626 |
| C099 | 626 |
| C138 | 392 |
| C155 | 695 |
| C170 | 695 |

Reader's note

Overview of the ILO supervisory mechanisms

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

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

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

Role of employers' and workers' organizations

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

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

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

² Reports are requested every two years for the so-called fundamental Conventions and priority Conventions, and every five years for other Conventions. Reports have been due for groups of Conventions according to subject matter. As regards the recent decision taken by the Governing Body concerning the reporting cycle, see para. 25 of the General Report.

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

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response, the Conference in 1926 adopted a resolution³ establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

Committee of Experts on the Application of Conventions and Recommendations

Composition

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

Mandate

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

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

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

The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either *observations* or *direct requests*. Observations contain comments on fundamental questions raised by the application of a particular Convention by a member State. These observations are reproduced in the annual report

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

⁴ There are currently 18 experts appointed.

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

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

⁷ In its 1987 report, the Committee stated that in its evaluation of national law and practice in relation to the requirements of international labour Conventions: "... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations, which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States".

of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests usually relate to questions of a more technical nature or of lesser importance, or contain requests for information. They are not published in the report of the Committee of Experts, but are communicated directly to the government concerned.⁸ In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. The General Survey is based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey covers employment.

Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes. The first volume (Report III 1A)⁹ is divided into two parts:

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

The second volume contains the **General Survey** (Report III (Part 1B)).¹⁰

Furthermore, an *Information document on ratifications and standards-related activities* (Report III (Part 2)) accompanies the report of the Committee of Experts.¹¹

Committee on the Application of Standards of the International Labour Conference

Composition

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

Mandate

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

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

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

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

⁸ Observations and direct requests are accessible through the ILOLEX database, which is available on CD-ROM and accessible via the web site of the International Labour Standards Department (www.ilo.org/normes) or directly through the following address <http://www.ilo.org/ilolex/english/index.htm>.

⁹ This citation reflects the agenda of the International Labour Conference, which contains as a permanent item, item III relating to information and reports on the application of Conventions and Recommendations.

¹⁰ *ibid.*

¹¹ This document provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, full information on the ratification of Conventions, together with “country profiles” containing key information on standards for each country.

The Conference Committee on the Application of Standards discusses the General Report and the General Survey of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion, including a discussion on the General Survey. The Conference Committee subsequently examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee embarks upon its main task, which is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. The Conference Committee invites the Government representatives concerned to attend one of its sessions to discuss the observations in question. After listening to the Government representatives, the members of the Conference Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts conclusions on the case in question. Furthermore, in accordance with a resolution adopted by the Conference in 2000,¹² the Conference Committee holds, at each of its sessions, a special sitting on the application by Myanmar of the Forced Labour Convention, 1930 (No. 29).

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

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

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

¹² International Labour Conference, 88th Session, 2000; *Provisional Record* Nos 6-1 to 5.



Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 80th Session in Geneva from 26 November to 11 December 2009. The Committee has the honour to present its report to the Governing Body.

Composition of the Committee

2. The composition of the Committee is as follows: Mr Mario ACKERMAN (Argentina), Mr Anwar Ahmad Rashed AL FUZAIE (Kuwait), Mr Denys BARROW, SC (Belize), Ms Janice R. BELLACE (United States), Mr Lelio BENTES CORRÊA (Brazil), Mr Halton CHEADLE (South Africa), Ms Laura COX, QC (United Kingdom), Ms Blanca Ruth ESPONDA ESPINOSA (Mexico), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Pierre LYON-CAEN (France), Mr Vitit MUNTARBHORN (Thailand), Ms Angelika NUSSBERGER, MA (Germany), Ms Ruma PAL (India), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Mr Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain), Mr Yozo YOKOTA (Japan). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee noted that Ms Esponda Espinosa was unable to participate in its work this year and that she had submitted her resignation before the beginning of the present session.

4. The Committee noted that Ms Bellace and Mr Rodriguez Piñero y Bravo Ferrer would not seek the renewal of their respective mandates, which were due to expire at the end of the year. The Committee would like to express its deep appreciation of the outstanding manner in which Ms Bellace, Ms Esponda Espinosa and Mr Rodriguez Piñero y Bravo Ferrer discharged their duties during their 15 years of service on the Committee. The Committee also wishes to commend Ms Bellace warmly for the excellent and inspired way in which she carried out the important and exacting task of leading the Committee during the two years she served as its Chairperson.

5. During its session, the Committee welcomed Mr Vitit Muntarbhorn, nominated by the Governing Body at its 304th Session (March 2009), as well as Mr Rachid Filali Meknassi and Mr Paul-Gérard Pougoué, nominated by the Governing Body at its 305th Session (June 2009).

6. Ms Bellace continued her mandate as Chairperson of the Committee, and the Committee re-elected Mr Al-Fuzaie as Reporter. As the mandate of Ms Bellace had come to an end, the Committee elected Mr Yokota as Chairperson of its next session.

Working methods

7. The Committee has in recent years undertaken a thorough examination of its working methods. In order to guide this reflection on working methods efficiently, a subcommittee was set up in 2001. The mandate of the subcommittee includes examining the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee.¹ The subcommittee met on three occasions between 2002 to 2004.² During its

¹ The subcommittee comprises a core group, but its meetings are open to any other member of the Committee wishing to participate.

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

sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting.³ The subcommittee met again in 2007 and in 2008.⁴

8. This year, the subcommittee on working methods met under the guidance of Mr Yokota, who was re-elected as chairperson of the subcommittee, to examine issues relating to its methods of work, particularly in light of the discussions of the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), and the Governing Body at its 306th Session (November 2009). Following consideration of the recommendations made by the subcommittee, the Committee agreed on the following issues.

- (1) The question of the criteria for the identification of cases of “**good practice**” with a view to clarifying their distinguishing features in comparison with cases of **progress**. The outcome of the Committee’s discussions is reflected in paragraphs 57–63 and 64–65 respectively.
- (2) A review of the current procedure concerning the treatment of comments received from employers’ and workers’ organizations on the application of Conventions in a non-reporting year in view of the decision of the Governing Body at its 306th Session (November 2009) to extend the cycle for the submission of reports from two to three years for the fundamental and governance Conventions (also known as priority Conventions). The outcome of the Committee’s discussion is reflected in paragraphs 77–80.
- (3) With regard to the ongoing review of the report forms under article 22 of the Constitution carried out at the request of the Governing Body, as well as the preparation of the new questionnaire under article 19 of the Constitution to be submitted to the Governing Body at its 307th Session (March 2010), the Committee decided to continue with the arrangements adopted up to now and designated the members who have the initial responsibility for the Conventions concerned to assist the Office in its work.
- (4) The Committee also agreed on further improvements concerning the presentation and accessibility of its report, as well as its efficient functioning.

Relations with the Conference Committee on the Application of Standards

9. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee’s relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee on the Application of Standards into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in particular with regard to specific matters concerning the way in which States fulfil their standards-related obligations. In this context, the Committee again welcomed the participation of its Chairperson, Ms Bellace, as an observer in the general discussion of the Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference. It noted the request by the Conference Committee for the Director-General to renew this invitation for the 99th Session (June 2010) of the Conference. The Committee of Experts accepted this invitation.

10. The Chairperson of the Committee of Experts once again invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009) (Mr Edward Potter and Mr Luc Cortebeeck, respectively) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

11. An interactive and thorough exchange of views took place on matters of mutual interest. While underlining the inherent differences in the work of both Committees, the discussion highlighted the importance of maintaining and reinforcing their complementarity in the interests of the effective application of international labour standards. In particular, as both Committees are engaged in reviewing their methods of work, the discussion offered an opportunity to focus on those aspects, which have implications for the work of the other Committee. Hence, the discussion centred on the manner in which the report of the Committee of Experts can provide the best possible basis for the work of the Conference Committee, with particular reference to the selection of individual cases relating to the application of ratified Conventions. Emphasis was placed in this connection on the identification by the Committee of Experts of cases in which governments are required to provide full particulars to the Conference (so-called “double footnotes”), as well as cases of progress and good practices.⁵ In a spirit of enhancing mutual understanding between both Committees, an exchange of views took place on other issues, including the general observations on the application of ratified Conventions formulated by the Committee of Experts.

12. The special sitting also pursued the discussion which began last year on the implications of the ILO Declaration on Social Justice for a Fair Globalization, 2008 (Social Justice Declaration) for the work of both Committees with regard

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

⁴ See General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9.

⁵ See respectively paragraphs 57–63 and 64–65 of the General Report.

to General Surveys. The exchange of views underlined the need to ensure that General Surveys, as well as their discussion by the Conference Committee, have a real impact on the related, albeit broader discussions at the International Labour Conference, while at the same time preserving the value of General Surveys as authoritative documents concerning the legal aspects of the application of international labour standards.

Meetings during the current session

13. This year, in a plenary sitting, the Committee discussed the issue of the interpretation of International Labour Conventions, in particular in light of article 37, paragraph 2, of the Constitution, as the basis for submitting its views to the Governing Body. The Committee hopes that its discussions and the views it submits will be helpful for the work currently carried out by the Office on this important matter and hopes that the Governing Body will take this into consideration. The Committee was also informed of the work undertaken by the Office concerning the issue of the measurement of decent work (also referred to as decent work country profiles).

14. The Committee had the pleasure of welcoming this year representatives of the European Committee of Social Rights (ECSR). The ECSR monitors the application of the European Social Charter. The Vice-President of the ECSR, Professor Swiatkowski, addressed the Committee at its opening session and highlighted the importance of the close collaboration between the two supervisory bodies. Professor Swiatkowski, together with Mr O’Cinneide, the other Vice-President of the ECSR, and Mr Leppik, member of the ECSR, also participated in a working session on the preparation of the Committee’s General Survey on social security to be undertaken next year.

II. Compliance with obligations

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

15. The Committee recalls that, at the instigation of the Committee on the Application of Standards at the 93rd Session (June 2005) of the International Labour Conference, the two committees, with the assistance of the Office, strengthened the follow-up given to cases of serious failure by member States to fulfil reporting and other standards-related obligations with a view, in so far as possible, to identifying more accurately the difficulties underlying these failures and enabling appropriate solutions to be identified. As both committees have recalled on numerous occasions, such failures hinder the functioning of the supervisory system, which is based primarily on the information provided by governments in their reports. Cases of failure to fulfil reporting obligations therefore have to be given the same level of attention as those relating to the application of ratified Conventions.

16. The Committee notes the discussions held in the Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference, with particular reference to the general discussion and the discussions and conclusions of the special sitting on cases of serious failure by member States to fulfil their reporting and other standards-related obligations. The Conference Committee recalled once again that the decrease in the total number of reports received, as well as the high incidence of reports received after the 1 September deadline, threatened the functioning and credibility of the supervisory system. At the same time, the Conference Committee noted the substantial progress that had been made in addressing serious failures relating to reporting as a result of the strengthened follow-up. Technical assistance activities in this framework should be further intensified and the difficulties behind reporting problems should be identified more accurately in order to address them effectively.

17. The Committee was informed that, as part of the follow-up on the discussions of the Conference Committee, the Office had sent special letters to the 44 member States mentioned in the relevant paragraphs of the report of the Conference Committee concerning their failure to fulfil their respective obligations (there were 55 such member States in 2008, 45 in 2007, 49 in 2006 and 53 in 2005). Although 29 of these 44 member States had already been mentioned for the same failures in the 2008 report of the Conference Committee (and even, in some cases, in previous reports), some of them have made significant progress in resolving most of the failures for which they were mentioned. The external offices were invited to contact on a priority basis the 29 member States experiencing persistent difficulties: 21 of them have received technical assistance from the Office, or will do so very shortly.

18. With regard to the reasons for the difficulties experienced by member States in fulfilling their reporting obligations, the information available this year (discussion of the Conference Committee, government replies to the Office's letters and information from external offices) confirms yet again that failures to report are mostly of an institutional nature and more specifically the insufficiency of infrastructure attributable to a lack of human and financial resources. It has also been increasingly emphasized that governments experience difficulties in the submission of reports due to obstacles relating to the internal coordination between the relevant ministries and institutions concerning the collection of information for the preparation of reports. Other countries have reported that the difficulties that they face in the submission of reports are due to language problems. In a smaller number of cases, serious difficulties have persisted due to national circumstances. Considering these difficulties, and with a view to providing adequate assistance, the Office has strengthened its efforts, while building on previous experience to promote dialogue and provide assistance, taking into

account national needs and priorities. Technical assistance activities have included national and regional workshops on reporting obligations, technical advisory missions and participation in a distance training course on best practices in reporting on international labour standards, organized for the first time in 2009, as well as other training programmes. To the extent possible, steps have been taken to include officials from the various ministries involved in the preparation of reports, as well as representatives of employers' and workers' organizations, which can make an important contribution to the preparation of reports.

19. The Committee notes that certain of the 44 member States referred to above have, frequently with the assistance of the Office, fulfilled their reporting and other standards-related obligations, since the end of the session of the Conference.⁶ For example, in the region of the Caribbean, following technical assistance, the overall reporting ratio increased from 50 per cent last year to 75 per cent this year. Furthermore, the Committee has been informed that, in view of the efforts made by the two Committees to raise awareness of the importance of the sending of reports, supplemented by the Office's follow-up, almost all the member States concerned have taken initiatives to overcome their difficulties and that it is rare to find that no action has been taken on the matter.⁷

20. The Committee notes that an assessment of the follow-up in cases of serious failure to comply with reporting obligations was presented to the Governing Body at its 306th Session (November 2009).⁸ This assessment highlighted that the follow-up has contributed to the identification of specific problems encountered by member States in fulfilling their reporting obligations. Furthermore, the work of the Committee of Experts and the Conference Committee has contributed effectively to determining the priorities of the technical assistance provided by the Office. The Committee notes that, according to the findings of the assessment, the strengthened and systematic provision of technical assistance has had a significant impact on the submission of reports.

21. The Committee, like the Conference Committee and the Governing Body, therefore confirms that it is essential for the Office to pursue and step up its action to follow up cases of serious failures by member States to fulfil reporting obligations. Special efforts should be made to improve the integration of reporting issues in broader technical cooperation programmes.

22. The Committee reminds governments that they are required to comply with all the reporting and other standards-related obligations that they accept upon becoming Members of the Organization. Compliance with these obligations is essential for dialogue between the supervisory bodies and member States on the effective implementation of ratified Conventions. Governments that request technical assistance may benefit from it, yet such assistance can only be useful and adapted to national circumstances if governments are prepared to inform the Office of their specific problems and have the will to adopt lasting solutions. Finally, the Committee welcomes the fruitful collaboration that it maintains with the Conference Committee on this matter of mutual interest, which is essential to the proper discharge of their respective tasks.

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

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

24. Reports are requested every two years for the fundamental Conventions and Conventions regarded as most significant from the viewpoint of governance (the governance Conventions),⁹ and every five years for other Conventions. In accordance with the procedure adopted by the Governing Body in November 2001 and March 2002,¹⁰ particularly with a view to facilitating the collection of information on related subjects at the national level, requests for reports on Conventions covering the same subject are grouped together and addressed simultaneously to each country.¹¹ In the case

⁶ **Armenia** (submission of first reports on Conventions Nos 14, 150 and 173 due since 2007), **Dominica** (submission of first report on Convention No. 169 due since 2004), **Saint Kitts and Nevis** (submission of first reports on Conventions Nos 87 and 98 due since 2002 and on Convention No. 138 due since 2007), **Saint Lucia** (submission of first report on Convention No. 182 due since 2002), **Tajikistan** (submission of first report on Convention No. 182 due since 2007), **The former Yugoslav Republic of Macedonia** (submission of first report on Convention No. 182 due since 2004 and on Convention No. 144 due since 2007) and **Togo** (submission of some reports due). The following countries have since replied to all or the majority of the Committee's comments: **Bolivia, Gambia, Lao People's Democratic Republic, Paraguay, Russian Federation, Saint Kitts and Nevis, Saint Lucia, United Republic of Tanzania and United Kingdom** (Bermuda).

⁷ The Committee's observations concerning compliance with reporting obligations by certain member States and information concerning the submission of the instruments adopted by the Conference to the competent authorities are contained in Part II of the report.

⁸ GB.306/LILS/4(Rev.), paras 36–42.

⁹ These Conventions are also known as "priority Conventions".

¹⁰ Documents GB.282/LILS/5, GB.282/8/2, GB.283/LILS/6 and GB.283/10/2.

¹¹ Information concerning requests for reports by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

of the fundamental and the governance Conventions, as well as for certain other groups of Conventions containing a large number of instruments, reports are requested, with a view to balancing their submission, in accordance with the English alphabetical order, the first year by member States beginning with the letters A to J, and the second year by those names beginning with the letters K to Z, or the converse¹² (for a list of Conventions grouped by subject, see page v).

25. The Committee notes that the Governing Body at its 306th Session (November 2009) discussed the evaluation of the grouping of Conventions by subject for reporting purposes.¹³ The evaluation found that the grouping by subject had reduced the administrative burden and improved the collection of information at the national level in terms of reporting and had allowed for a comprehensive view of the application of Conventions by subject area. The Committee notes that at the same session the Governing Body decided to adopt a broader grouping of Conventions for reporting purposes with a three-year cycle for the fundamental and governance conventions and a five-year cycle for the other Conventions. This grouping will be established on the basis of the four strategic objectives of the ILO, which have been laid down by the Social Justice Declaration: employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work. The Committee notes that arrangements are currently being made to give effect to this decision by the Governing Body and the new reporting cycle is not expected to start operating before 2011. Until that time, the reporting cycle will continue to operate under the arrangements currently in force.

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

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

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

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

28. Appendix I of this report lists the reports received and not received, classified by country/territory and by Convention. Appendix II shows, for each year in which the Conference has met since 1932, the number and percentage of reports received by the prescribed date, by the date of the meeting of the Committee of Experts and by the date of the session of the International Labour Conference.

Reports requested and received

29. This year a total of **3,121** reports (under articles 22 and 35 of the Constitution) were requested from governments on the application of Conventions ratified by member States compared to 2,868 reports last year. At the end of the present session of the Committee, **2,053** reports had been received by the Office. This figure corresponds to **65.78** per cent of the reports requested. Last year, the Office received a total of 1,985 reports, representing 69.21 per cent.

30. In accordance with article 22 of the Constitution, **2,733** reports were requested from governments. Of these, **1,853** had been received by the Office. This figure corresponds to **68** per cent of the reports requested (compared to 70.24 per cent last year). The Committee wishes to express its gratitude to the 91 member States, which have submitted all the reports due this year.

31. In accordance with article 35 of the Constitution, **388** reports were requested on Conventions declared applicable with or without modifications to non-metropolitan territories. Of these, **200** reports, or **52** per cent, had been received by the end of the Committee's session (compared to 61.82 per cent last year).

32. The Committee notes that this year the number of reports requested was higher than last year and that this increase is also reflected in the number of reports received. Moreover member States were asked to reply in an exceptionally short time to a new format of report under article 19 of the Constitution encompassing several employment instruments covered by the General Survey.¹⁴ Notwithstanding these particular circumstances, a significantly higher number of reports under article 19 of the Constitution have been received than last year.¹⁵ The Committee encourages governments and the Office to continue their respective efforts to ensure the submission of reports. The Committee will continue to follow this issue closely and will draw the attention of the Conference Committee to it, where necessary.

¹² Information concerning the regular reporting schedule by country and by Convention is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/schedules/index.cfm>.

¹³ GB.306/LILS/4(Rev.), paras 14–27.

¹⁴ See paragraph 98 of the General Report.

¹⁵ See paragraph 99 of the General Report.

Compliance with reporting obligations

33. Most of the governments from which reports were due on the application of ratified Conventions have supplied most or all of the reports requested (see Appendix I). However, no reports due have been received for the past two or more years from the following 14 countries: **Burundi, Cape Verde, Czech Republic, Eritrea, Guinea, Guinea-Bissau, Guyana, Sao Tome and Principe, Sierra Leone, Somalia, United Republic of Tanzania (Tanganyika), United Republic of Tanzania (Zanzibar), Turkmenistan, United Kingdom (British Virgin Islands), United Kingdom (Falkland Islands (Malvinas)) and Vanuatu.** In addition, the following 37 countries have not submitted the total or the majority of the reports due this year: **Afghanistan, Armenia, Bulgaria, Burkina Faso, Cambodia, Congo, Croatia, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Ethiopia, France, Islamic Republic of Iran, Ireland, Kiribati, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malta, Nigeria, Norway, Pakistan, Papua New Guinea, San Marino, Senegal, Seychelles, Slovakia, Solomon Islands, Thailand, Togo, Turkey, Uganda, United Kingdom (Gibraltar), United Kingdom (Montserrat), United Kingdom (St Helena), Uzbekistan, Zambia and Zimbabwe.**

34. The Committee urges the governments of these countries to make every effort to supply the reports requested on ratified Conventions. As it emphasized in paragraph 18, the Committee is aware that where no reports have been sent for some time, it is likely that administrative or other problems can make it difficult for the government concerned to fulfil its constitutional obligations. In this respect, the Committee is bound to recall the importance of the assistance provided by the Office, in particular through the specialists on international labour standards in the external offices, in helping the governments concerned to overcome these difficulties.

Late reports

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

36. The Committee is grateful to the 88 countries which have submitted all the reports due on time.¹⁶ However, the Committee observes that by 1 September 2009, the proportion of reports received was 24.9 per cent, compared with 32.4 per cent at its previous session. The Committee expresses serious concern at the significant decrease in the number of reports received on time. It reiterates that the supervisory system can function adequately 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. The Committee urges governments to make a special effort to ensure the submission of reports in time next year. For this purpose, it also asks the Office to continue to provide technical assistance to help member States send reports by 1 September.

37. Furthermore, the Committee notes that a number of countries sent some or all of the reports due by 1 September 2008 on ratified Conventions during the period between the end of the Committee's last session (November–December 2008) and the beginning of the 98th Session of the International Labour Conference (June 2009), or even during the Conference.¹⁷ The Committee emphasizes that this practice also disturbs the regular operation of the supervisory system and makes it more burdensome. It wishes to provide below the list of countries which followed this practice in 2008–09, as requested by the Conference Committee on the Application of Standards: **Angola** (Convention No. 107); **Armenia** (Conventions Nos 26, 132); **Barbados** (Conventions Nos 12, 17, 19, 42, 97, 100, 101, 102, 105, 118, 122, 128, 138, 144, 172, 182); **Belize** (Conventions Nos 97, 98, 101, 150, 151, 182, 183); **Botswana** (Conventions Nos 14, 29, 98, 105, 111, 138, 144, 182); **Brazil** (Convention No. 142); **Cameroon** (Convention No. 158); **Chad** (Conventions Nos 14, 29, 41, 81, 105, 132, 138); **Côte d'Ivoire** (Conventions Nos 3, 14, 29, 41, 52, 81, 105, 110, 129, 138, 182); **Denmark** (Conventions Nos 149, 182); **Denmark (Faeroe Islands)** (Conventions Nos 5, 6, 11, 14, 18, 19, 27, 29, 52, 87, 98, 105, 106, 126); **Denmark (Greenland)** (Conventions Nos 14, 29, 105, 106); **Dominica** (Conventions Nos 12, 14, 19, 81, 105, 135, 144, 150, 182); **France** (Conventions Nos 14, 29, 105, 106, 140); **Gabon** (Conventions Nos 29, 81, 105, 158); **Gambia** (Conventions Nos 105, 138, 182); **Hungary** (Conventions Nos 3, 14, 29, 81, 105, 129, 132, 138, 140, 142, 182, 183); **Iceland** (Conventions Nos 138, 182); **Italy** (Convention No. 117); **Kenya** (Conventions Nos 111, 142); **Lao People's Democratic Republic** (Conventions Nos 138, 182); **Liberia** (Conventions Nos 22, 23, 53, 55, 58, 81, 92, 105, 111, 112, 144, 147, 150, 182); **Malawi** (Conventions Nos 26, 81, 89, 98, 99, 107, 129, 149); **Malaysia**

¹⁶ Angola, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belize, Benin, Bosnia and Herzegovina, Cameroon, Canada, Chad, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cyprus, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Fiji, Finland, Gabon, Gambia, Georgia, Germany, Greece, Guatemala, Haiti, Honduras, India, Indonesia, Israel, Japan, Jordan, Kazakhstan, Republic of Korea, Latvia, Lebanon, Lithuania, Madagascar, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Oman, Peru, Poland, Portugal, Qatar, Romania, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Bolivarian Republic of Venezuela, Viet Nam and Yemen.

¹⁷ For the reports received and not received by the end of the Conference, see Report of the Committee on the Application of Standards, Part Two, II, Appendix I (*Provisional Record* No. 16, 98th Session, ILC, 2009). See also information on article 22 reports requested and received on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

(Convention No. 144); **Malta** (Conventions Nos 1, 14, 87, 98, 100, 106, 111, 117, 132, 149); **Mongolia** (Convention No. 103); **Nicaragua** (Conventions Nos 3, 4, 87, 98, 100, 110, 111, 117, 122, 140, 142, 144); **Norway** (Conventions Nos 14, 30, 47, 94, 100, 111, 132, 142, 144, 149, 169); **Pakistan** (Conventions Nos 87, 98, 107); **Panama** (Conventions Nos 3, 17, 30, 52, 87, 89, 98, 100, 107, 110, 111, 117, 122); **Papua New Guinea** (Conventions Nos 87, 103, 111, 158); **Philippines** (Conventions Nos 87, 98); **United Arab Emirates** (Convention No. 111); **United Kingdom** (Anguilla) (Conventions Nos 8, 11, 12, 14, 17, 19, 22, 23, 26, 29, 42, 58, 59, 82, 85, 87, 94, 97, 98, 99, 101, 105, 108, 140); **United Kingdom** (Isle of Man) (Conventions Nos 87, 98, 101, 122); **Rwanda** (Conventions Nos 12, 14, 17, 87, 89, 94, 98, 100, 111, 132); **Slovenia** (Conventions Nos 140, 142); **Sudan** (Conventions Nos 19, 105, 117, 182); **Sweden** (Convention No. 149); **Ukraine** (Convention No. 111).

Supply of first reports

38. The Committee notes with concern that only 52 of the 103 first reports due on the application of ratified Conventions were received by the time the Committee's session ended, compared to last year when 94 of the 164 first reports due had been received. However, a number of countries have failed to supply first reports, some of which are more than a year overdue. Thus, certain first reports on ratified Conventions have not been received for a certain number of years from the following ten member States:

- since 2004 – **Antigua and Barbuda** (Conventions Nos 161, 182);
- since 2007 – **Armenia** (Convention No. 160); since 2008 (Conventions Nos 87, 97, 138, 143, 182);
- since 2006 – **Dominica** (Convention No. 147);
- since 1998 – **Equatorial Guinea** (Conventions Nos 68, 92);
- since 1994 – **Kyrgyzstan** (Convention No. 111); since 2006 (Conventions Nos 17, 184);
- since 1992 – **Liberia** (Convention No. 133);
- since 2007 – **Sao Tome and Principe** (Conventions Nos 135, 138, 151, 154, 155, 182, 184);
- since 2007 – **Seychelles** (Conventions Nos 73, 144, 147, 152, 161, 180);
- since 1999 – **Turkmenistan** (Conventions Nos 29, 87, 98, 100, 105, 111);
- since 2008 – **Vanuatu** (Conventions Nos 29, 87, 98, 100, 105, 111, 182).

39. The Committee, like the Conference Committee, wishes to emphasize the importance of first reports. They provide the basis on which the Committee makes its initial assessment of the observance of ratified Conventions by member States. The Committee urges the governments concerned to make a special effort to supply these reports.

Replies to the comments of the supervisory bodies

40. Governments are requested to reply in their reports to the observations and direct requests made by the Committee, and the majority of governments have provided the replies requested. In accordance with the established practice, the Office has written to all the governments which failed to provide such replies requesting them to supply the necessary information. The Committee notes with serious concern that of the 38 governments to which such letters were sent, only one has provided the information requested.

41. There are still many cases of failure to reply to its comments in which, either:

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

42. In total, there were 695 cases in which no reply was received (concerning 48 countries).¹⁸ There were 519 such cases (concerning 46 countries) last year. Under these conditions, the Committee is bound to repeat the observations or direct requests already made on the Conventions in question.

¹⁸ **Afghanistan** (Conventions Nos 100, 105, 111); **Armenia** (Conventions Nos 81, 98, 100, 111, 122, 135, 144, 151, 154); **Bulgaria** (Conventions Nos 22, 23, 53, 55, 56, 68, 69, 73, 87, 98, 100, 108, 111, 146, 147, 163, 164, 166, 178, 179, 180); **Burkina Faso** (Conventions Nos 87, 98, 100, 111, 144, 150); **Burundi** (Conventions Nos 14, 29, 52, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144, 182); **Cambodia** (Conventions Nos 87, 98, 100, 105); **Cape Verde** (Conventions Nos 17, 19, 29, 81, 87, 98, 100, 111, 118, 182); **Congo** (Conventions Nos 29, 81, 87, 89, 95, 98, 100, 105, 111, 138, 144, 149, 150, 152, 182); **Croatia** (Conventions Nos 8, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 111, 122, 147, 179); **Czech Republic** (Conventions Nos 1, 14, 29, 87, 98, 100, 105, 111, 122, 132, 135, 140, 144, 150, 160, 171, 182); **Democratic Republic of the Congo** (Conventions Nos 29, 62, 87, 94, 98, 100, 105, 111, 117, 119, 121, 135, 144, 150, 158); **Djibouti** (Conventions Nos 1, 9, 16, 23, 26, 38, 55, 56, 63, 71, 73, 87, 94, 95, 96, 98, 100, 101, 106, 111, 115, 120, 122, 144); **Dominica** (Conventions Nos 16, 19, 29, 81, 95, 100, 105, 111, 138); **Equatorial Guinea** (Conventions Nos 1, 29, 30, 87, 98, 103, 105, 111, 138, 182); **Eritrea** (Conventions Nos 29, 87, 98, 100, 105, 111, 138); **Ethiopia** (Conventions Nos 87, 98, 100, 111, 156, 158); **France** (Conventions Nos 16, 22, 23, 27, 53, 69, 73, 74, 88, 96, 122, 134, 137, 145, 149, 163, 164, 166, 178, 179, 180); **Guinea** (Conventions Nos 3, 16, 26, 29, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 121, 122, 132, 133, 134, 136, 138, 140, 142, 143, 144, 148, 149, 150, 152, 156, 159, 182); **Guinea-Bissau** (Conventions Nos 7, 12, 14, 17, 18, 19, 29, 69, 73, 74, 81, 89, 91, 92, 98, 100, 105, 106, 108, 111); **Guyana** (Conventions Nos 19, 29, 42, 81, 87, 97, 98, 100, 111, 129, 137, 138, 140, 142, 144, 149, 150, 166, 172, 175, 182); **Islamic Republic of Iran** (Conventions Nos 14, 19, 29, 95, 100, 106, 111, 122, 182); **Ireland** (Conventions Nos 14, 23, 29, 100, 111, 122, 132, 138, 144, 147, 160, 172, 177, 178, 179, 180, 182); **Kiribati** (Conventions Nos 29,

43. The failure of the governments concerned to fulfil their obligations considerably hinders the work of the supervisory bodies. The Committee notes that the Conference Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference expressed regret at the significant number of cases of failure to reply to the comments. Within the framework of the follow-up on cases of serious failure to fulfil reporting obligations, the Office has specifically drawn the attention of the governments concerned to the necessity to submit the information requested.¹⁹ Like the Conference Committee, the Committee cannot overemphasize the importance of ensuring the communication of the replies to its comments. It therefore urges the governments concerned to send the information required, with the assistance of the Office, if appropriate.

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

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

Observations and direct requests

45. In many cases, the Committee has found that no comment is called for regarding the manner in which a ratified Convention has been implemented.²⁰ 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 "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned.²¹

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

Special notes

47. As in the past, the Committee has indicated by special notes at the end of the observations (traditionally known as footnotes) the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2010.

48. In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the criteria are applicable to cases in which an earlier report is requested, often referred to as a "single footnote", as well as to cases in which the government is requested to provide

105); **Kyrgyzstan** (Conventions Nos 29, 77, 78, 79, 81, 87, 95, 100, 105, 115, 120, 122, 124, 138, 148, 149, 154, 159); **Lesotho** (Conventions Nos 45, 138, 155, 167, 182); **Liberia** (Conventions Nos 29, 53, 55, 58, 92, 113, 114, 133, 147); **Libyan Arab Jamahiriya** (Conventions Nos 29, 88, 96, 102, 118, 121, 128, 130, 182); **Luxembourg** (Conventions Nos 13, 81, 96, 155, 159); **Nigeria** (Conventions Nos 8, 19, 29, 32, 45, 81, 87, 88, 94, 97, 98, 100, 105, 123, 138, 144, 155, 182); **Norway** (Conventions Nos 13, 81, 115, 120, 129, 139, 148, 154, 159, 162, 167, 170, 176, 182); **Pakistan** (Conventions Nos 11, 29, 45, 81, 87, 96, 105, 144, 159, 182); **Papua New Guinea** (Conventions Nos 29, 45, 98, 100, 105, 122, 138, 182); **San Marino** (Conventions Nos 88, 103, 143, 144, 182); **Sao Tome and Principe** (Conventions Nos 29, 81, 87, 88, 98, 100, 105, 106, 111, 144, 159); **Senegal** (Conventions Nos 13, 81, 96, 117, 120, 122, 138, 182); **Seychelles** (Conventions Nos 8, 22, 105, 138, 148, 151, 155, 182); **Sierra Leone** (Conventions Nos 17, 26, 29, 45, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 111, 119, 125, 126, 144); **Slovakia** (Conventions Nos 88, 115, 120, 136, 139, 155, 161, 167, 176, 182, 184); **Solomon Islands** (Conventions Nos 14, 26, 29, 45, 81, 94, 95); **United Republic of Tanzania: Tanganyika** (Conventions Nos 45, 81, 88, 101); **Thailand** (Conventions Nos 29, 88, 100, 105, 122, 138, 182); **The former Yugoslav Republic of Macedonia** (Conventions Nos 29, 105, 111, 155); **Togo** (Conventions Nos 13, 26, 29, 100, 105, 111, 138, 143, 144, 182); **Turkey** (Conventions Nos 29, 45, 81, 87, 88, 105, 115, 119, 127, 135, 138, 151, 155, 158, 159, 161, 182); **Uganda** (Conventions Nos 11, 26, 29, 94, 95, 98, 105, 122, 123, 124, 138, 143, 144, 154, 158, 159, 162); **United Kingdom: British Virgin Islands** (Conventions Nos 26, 59, 82, 94, 97); **United Kingdom: Falkland Islands (Malvinas)** (Conventions Nos 45, 59, 82); **United Kingdom: Gibraltar** (Conventions Nos 45, 59, 81, 82, 100); **United Kingdom: St Helena** (Conventions Nos 17, 108); **Uzbekistan** (Conventions Nos 29, 105, 135, 154); **Zambia** (Conventions Nos 29, 136, 148); **Zimbabwe** (Conventions Nos 29, 81, 99, 105, 129, 138, 155, 159, 161, 162, 170, 174, 176, 182).

¹⁹ See footnote 6 above, for the list of countries that have submitted the information since the last session of the Conference.

²⁰ 308 reports.

²¹ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Geneva, Rev., 2006. These comments appear in the CD-ROM version of the ILOLEX database. The database is also available via the ILO web site (www.ilo.org/normes).

detailed information to the Conference, often referred to as a “double footnote”. The difference between these two categories is one of degree. Third, a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to double footnotes in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

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

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

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

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

| List of the cases in which the Committee has requested early reports after an interval of either one or two years: | |
|---|-----------------|
| State | Conventions Nos |
| Algeria | 32 |
| Argentina | 169 |
| Australia | 158 |
| Azerbaijan | 140 |
| Bolivia | 95, 102 |
| Brazil | 169 |
| Cameroon | 158 |
| Canada | 1 |
| Comoros | 99 |
| Costa Rica | 1, 94 |
| Czech Republic | 150 |
| Dominican Republic | 171 |
| Ecuador | 144, 148 |
| Ethiopia | 181 |
| France | 106 |
| Guatemala | 103, 169 |
| Guinea | 122 |
| India | 1, 107 |
| Ireland | 122, 144 |
| Italy | 143 |
| Kenya | 132 |

| List of the cases in which the Committee has requested early reports after an interval of either one or two years: | |
|--|-------------------------|
| State | Conventions Nos |
| Kyrgyzstan | 119, 122 |
| Liberia | 112, 150 |
| Mexico | 169 |
| Mongolia | 155 |
| Myanmar | 2, 26 |
| Netherlands | 152, 159, 162, 181 |
| New Zealand | 14 |
| Nicaragua | 88 |
| Nigeria | 144 |
| Norway | 81 |
| Pakistan | 144, 159 |
| Panama | 3, 30 |
| Paraguay | 95, 169 |
| Peru | 102, 169 |
| Rwanda | 94 |
| Saint Lucia | 158 |
| Senegal | 122 |
| Singapore | 94 |
| South Africa | 155 |
| Thailand | 19, 122 |
| Togo | 144 |
| Trinidad and Tobago | 125 |
| Tunisia | 88 |
| Turkey | 88, 119, 159 |
| Uganda | 122, 144, 158 |
| Ukraine | 81, 119, 120, 129, 140 |
| Uruguay | 148, 155, 161, 162, 167 |
| Bolivarian Republic of Venezuela | 139 |

52. The Committee has also requested governments to supply full particulars to the Conference at its next session in June 2010 in the following cases:

| List of the cases in which the Committee has requested to supply full particulars to the Conference at its next session in June 2010: | |
|---|-----------------|
| State | Conventions Nos |
| Cambodia | 87, 98 |
| Central African Republic | 138 |
| Czech Republic | 111 |
| Morocco | 182 |
| Russian Federation | 111 |
| Ukraine | 95 |
| Uzbekistan | 182 |

53. In addition, in certain cases, the Committee has requested governments to furnish detailed reports when simplified reports would otherwise be due:²²

| List of the cases in which the Committee has requested to furnish detailed reports when simplified reports would otherwise be due: | |
|--|-----------------------------|
| State | Convention Nos |
| Albania | 155, 174 |
| Argentina | 87 |
| Armenia | 174 |
| Australia | 155 |
| Belize | 155 |
| Bolivia | 156 |
| Bosnia and Herzegovina | 32, 119, 136, 139, 148, 162 |
| Chile | 35 |
| Colombia | 169 |
| Comoros | 12 |
| Costa Rica | 120 |
| Dominican Republic | 170 |
| Egypt | 68 |
| Ghana | 119 |
| Italy | 152 |
| Kyrgyzstan | 115, 120 |
| Netherlands | 174 |
| Nicaragua | 136 |
| Peru | 152 |
| Slovakia | 148 |
| Spain | 152 |
| Syrian Arab Republic | 170 |
| Tajikistan | 115, 120, 148 |
| Bolivarian Republic of Venezuela | 155 |

Practical application

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

55. The Committee notes that 409 reports received this year contain information on the practical application of Conventions. Of these, 63 reports contain information on national jurisprudence. The Committee also notes that 346 of the reports contain information on statistics and labour inspection.

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

²² Detailed reports are to be drawn up in accordance with the report form approved by the Governing Body for each Convention. They are requested the year following the entry into force of a Convention or where they are explicitly requested by the Committee of Experts or the Conference Committee. Subsequently simplified reports are requested periodically (see the decisions of the Governing Body in this respect: GB.282/LILS/5 (November 2001) and GB.283/LILS/6 (March 2002)).

Cases of progress

57. Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee refers in its comments to cases in which it expresses its **satisfaction** or **interest** at the progress achieved in the application of the respective Conventions. Over the years, the Committee has developed a general approach, described below, concerning the identification of cases of progress.

58. At the outset, and in light of the discussion held this year to clarify the distinction between cases of progress and cases of good practice, the Committee wishes to clarify the following.

- (1) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country:
- (2) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (3) The Committee must emphasize that an expression of progress is **limited to a specific issue** arising out of the application of the Convention and the nature of the measure taken by the government concerned.
- (4) The expression of interest or satisfaction is **not a reflection of the overall compliance with the Convention by the country in question**. Therefore, in the same comment, the Committee may express satisfaction or interest on a particular issue, while expressing regret on important issues which in its view have not been addressed in a satisfactory manner.
- (5) If the satisfaction or interest relates to the adoption of legislation or draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.

59. Since first identifying cases of **satisfaction** in its report in 1964,²³ the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions**. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

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

60. Details concerning these cases of progress are to be found in Part II of this report and cover 71 instances in which measures of this kind have been taken in 49 countries. The full list is as follows:

| List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries: | |
|---|------------------|
| State | Conventions Nos |
| Afghanistan | 139 |
| Australia | 98, 158 |
| Barbados | 102, 128 |
| Bolivia | 87, 98, 100, 169 |
| Botswana | 111 |
| Brazil | 115, 152 |
| Central African Republic | 182 |
| China – Hong Kong Special Administrative Region | 81 |
| Colombia | 87, 98, 154 |
| Côte d'Ivoire | 182 |
| Denmark | 87, 129 |
| El Salvador | 87, 151 |

²³ See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

| List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries: | |
|--|------------------|
| State | Conventions Nos |
| Finland | 150 |
| Gabon | 105 |
| Gambia | 98 |
| Germany | 3 |
| Greece | 29, 81, 147, 180 |
| Japan | 147 |
| Kenya | 111 |
| Kuwait | 106 |
| Lesotho | 111 |
| Liberia | 105 |
| Madagascar | 138 |
| Malaysia – Sarawak | 14 |
| Malta | 132 |
| Mauritius | 26, 105, 138 |
| Mexico | 155 |
| Mongolia | 138 |
| Mozambique | 182 |
| Netherlands | 152 |
| Nicaragua | 98, 105, 182 |
| Norway | 169 |
| Panama | 98 |
| Portugal | 115 |
| Romania | 100, 183 |
| Rwanda | 17 |
| Saint Vincent and the Grenadines | 105 |
| Slovakia | 100 |
| Slovenia | 148 |
| Spain | 138 |
| Sweden | 129, 167 |
| Switzerland | 81 |
| Syrian Arab Republic | 139 |
| United Republic of Tanzania | 105, 182 |
| Uganda | 182 |
| United Arab Emirates | 182 |

| List of the cases in which the Committee has been able to express its satisfaction at certain measures taken by the governments of the following countries: | |
|--|-----------------|
| State | Conventions Nos |
| United Kingdom | 81 |
| United Kingdom – Isle of Man | 151 |
| Uruguay | 151, 155 |
| Viet Nam | 155 |

61. Thus the total number of cases in which the Committee has been led to **express its satisfaction** at the progress achieved following its comments has risen to 2,740 since the Committee began listing them in its report.

62. Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979.²⁴ In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners**. In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

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

63. Details concerning the cases in question are to be found either in Part II of this report or in the requests addressed directly to the governments concerned, and include 276 instances in which measures of this kind have been adopted in 114 countries. The full list is as follows:

| List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries: | |
|---|-----------------|
| State | Conventions Nos |
| Albania | 97 |
| Algeria | 29 |
| Angola | 81, 98 |
| Antigua and Barbuda | 81, 122, 150 |
| Argentina | 169, 184 |
| Australia | 81, 87, 98, 135 |
| Austria | 111 |
| Azerbaijan | 29 |
| Bahrain | 81 |
| Barbados | 26, 95, 102 |

²⁴ See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

| List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries: | |
|---|------------------------------|
| State | Conventions Nos |
| Belarus | 81, 87, 98 |
| Belgium | 81, 87 |
| Belize | 22, 97, 182 |
| Bolivia | 102, 111, 169 |
| Bosnia and Herzegovina | 87, 111, 135 |
| Botswana | 111 |
| Brazil | 138, 152, 155, 160, 170, 182 |
| Bulgaria | 1, 30 |
| Cambodia | 150 |
| Canada | 87 |
| Central African Republic | 87, 111, 138, 150, 182 |
| Chad | 111 |
| Chile | 29 |
| China | 155 |
| China – Hong Kong Special Administrative Region | 81 |
| China – Macau Special Administrative Region | 29, 81 |
| Colombia | 17, 87, 98 |
| Costa Rica | 81, 144 |
| Côte d'Ivoire | 3, 81, 182 |
| Croatia | 129 |
| Cuba | 108, 150 |
| Djibouti | 29 |
| Dominican Republic | 98, 170 |
| Ecuador | 100, 111, 169 |
| Egypt | 94 |
| Estonia | 147 |
| Finland | 81, 129, 147 |
| France | 29 |
| Georgia | 87, 98 |
| Germany | 81, 129, 150 |
| Ghana | 81 |
| Greece | 98, 147 |
| Guatemala | 58, 81, 129 |
| Haiti | 100, 111 |
| Hungary | 81, 129, 142 |
| Iceland | 144 |

| List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries: | |
|---|-----------------------------|
| State | Conventions Nos |
| Iraq | 16, 81, 98, 150, 167 |
| Israel | 81 |
| Italy | 9, 23 |
| Jamaica | 111 |
| Japan | 9, 16 |
| Jordan | 98, 135 |
| Kazakhstan | 111 |
| Kenya | 81 |
| Korea, Republic of | 182 |
| Kuwait | 138, 182 |
| Lebanon | 52, 111 |
| Lesotho | 81, 139, 144, 148, 167 |
| Liberia | 81 |
| Lithuania | 111, 182 |
| Luxembourg | 100, 111 |
| Madagascar | 100, 137, 138, 182 |
| Malawi | 139 |
| Mali | 81, 138, 182 |
| Malta | 100 |
| Mauritius | 81, 138, 175 |
| Mexico | 29, 159, 169, 170 |
| Moldova, Republic of | 81, 111, 129, 155, 182, 184 |
| Mongolia | 103, 155, 182 |
| Montenegro | 81, 111, 161 |
| Morocco | 138 |
| Mozambique | 29 |
| Namibia | 111, 138, 182 |
| Nepal | 182 |
| Netherlands | 155 |
| New Zealand | 81, 100, 111, 155, 182 |
| Nicaragua | 29, 119, 138, 139, 182 |
| Norway | 94, 169 |
| Pakistan | 87, 98, 111 |
| Panama | 107, 127 |
| Paraguay | 81, 87, 120, 169 |
| Peru | 152, 182 |

| List of the cases in which the Committee has been able to note with interest various measures taken by the governments of the following countries: | |
|---|--|
| State | Conventions Nos |
| Philippines | 87, 98, 143 |
| Poland | 62, 81, 129, 170, 182 |
| Portugal | 120, 182 |
| Romania | 81, 111, 127, 129, 182 |
| Saint Vincent and the Grenadines | 81, 111 |
| San Marino | 148, 160 |
| Saudi Arabia | 29 |
| Serbia | 111, 182 |
| Seychelles | 81 |
| Singapore | 182 |
| Slovakia | 52, 144 |
| Slovenia | 111, 119, 139, 162 |
| South Africa | 138, 182 |
| Spain | 17, 62, 115, 119 |
| Sri Lanka | 96, 138, 182 |
| Sudan | 182 |
| Suriname | 182 |
| Swaziland | 29, 87, 138, 182 |
| Sweden | 100, 119, 129, 182 |
| Switzerland | 29, 138, 182 |
| Syrian Arab Republic | 101, 115 |
| United Republic of Tanzania | 111, 144, 182 |
| Togo | 26, 100, 105, 111 |
| Tunisia | 62 |
| Uganda | 81, 138, 182 |
| Ukraine | 115, 182 |
| United Arab Emirates | 182 |
| United Kingdom | 81, 100, 111, 138, 148 |
| United Kingdom – Anguilla | 29 |
| United States | 176 |
| Uruguay | 81, 100, 111, 129, 138, 139, 162, 167, 182 |
| Bolivarian Republic of Venezuela | 155, 169 |
| Viet Nam | 155 |
| Yemen | 81, 105, 111, 138, 182 |
| Zambia | 144 |

Cases of good practices

64. In accordance with the decision taken at its 78th Session (November–December 2007), the Committee highlights cases of **good practice** to express its appreciation of the special efforts in applying a Convention, and so that they might where appropriate serve as a model for other countries to assist in the implementation of ratified Conventions and the furtherance of social progress. At its 79th Session (November–December 2008), the Committee agreed on the general criteria that it would apply to identify cases of good practice. The Committee further agreed that it would continue to follow a two-stage process for the identification of cases of good practice: first, the expert initially responsible for a particular group of Conventions recommends to the Committee that measure or measures should be identified as a case of good practice; second, in light of all the recommendations made, the Committee will, after discussion, take a final collegial decision once it has reviewed the application of all the Conventions (it will be recalled that this two-stage process is also used for the so-called “double footnotes”: see paragraph 50 above). This year, in its examination of the criteria used, the Committee focused, in particular, on clarifying the distinction between cases of good practice and cases of progress. In this respect, the Committee wishes to underline at the outset that cases of good practice are necessarily also cases of progress, although the reverse is not always true.

65. The Committee wishes to point out that the identification of a case of good practice **does not in any way imply additional obligations for member States under the Conventions that they have ratified**. Moreover, mere compliance with the requirements of a Convention is not sufficient for the identification of a case of good practice, as compliance is a basic requirement deriving from ratification of the Convention. Cases of good practice are therefore of an informative rather than of a prescriptive nature. Their identification forms part of the ongoing dialogue with the government concerned on the application of a ratified Convention and can relate to any measure taken in national legislation, policy or practice. A certain caution must clearly be exercised in the identification of cases of good practice so as to minimize the possibility that such practices may with hindsight come to be viewed as unsatisfactory. Bearing in mind these aspects, the Committee wishes to confirm the following three criteria, which were already identified at its 79th Session (November–December 2008), on the understanding that they are indicative, but not exhaustive.

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

Cases in which the need for technical assistance has been highlighted

66. The combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation and assistance has always been one of the key dimensions of the ILO supervisory system. Further, since 2005, at the initiative of the Conference Committee, heightened attention has been given to the complementarity between examination by the ILO supervisory bodies and the Office’s technical assistance. As pointed out in paragraphs 15–22, this has led to enhanced follow-up of cases of serious failure by member States to fulfil reporting and other standards-related obligations. In addition, the Conference Committee has made more systematic references to technical assistance in its conclusions regarding individual cases concerning the application of ratified Conventions. The aim of this strengthened combination between the work of the supervisory bodies and the Office’s technical assistance is to provide an effective framework to member States for full compliance with their standards-related obligations, including the implementation of the Conventions which they have ratified.

67. In this context, the Committee decided at its 79th Session (November–December 2008) to highlight the cases for which, in the Committee’s view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions. Details of these cases can be found in Part II of the report of the Committee of Experts. The Committee also takes note of a general request for technical assistance by the Government of Argentina in particular to provide support to the examination of the legislative questions raised by the supervisory bodies. The full list of identified cases this year is as follows:

| List of the cases for which technical assistance would be particularly useful in helping member States: | |
|---|-----------------|
| State | Conventions Nos |
| Albania | 174, 176 |
| Angola | 81, 107 |
| Antigua and Barbuda | 17 |

| List of the cases for which technical assistance would be particularly useful in helping member States: | |
|--|------------------------------|
| State | Conventions Nos |
| Argentina | 87 |
| Armenia | 174 |
| Azerbaijan | 98 |
| Bangladesh | 87, 107 |
| Belarus | 98 |
| Belize | 133, 134 |
| Bolivia | 1, 30, 87, 102 |
| Brazil | 155 |
| Bulgaria | 98 |
| Cape Verde | 98 |
| China | 111 |
| Colombia | 169 |
| Comoros | 98, 111 |
| Congo | 152 |
| Costa Rica | 1, 87, 98, 106 |
| Côte d'Ivoire | 100 |
| Democratic Republic of the Congo | 117, 144, 158 |
| Ecuador | 87, 98, 148 |
| Equatorial Guinea | 98 |
| Ethiopia | 182 |
| Gabon | 81, 87 |
| Guatemala | 87, 100, 169 |
| Honduras | 87 |
| India | 107 |
| Indonesia | 87, 98, 144 |
| Jamaica | 94 |
| Kenya | 132 |
| Kuwait | 1, 111 |
| Kyrgyzstan | 119 |
| Lebanon | 100, 111, 136, 138, 174, 182 |
| Lesotho | 138, 182 |
| Malawi | 107 |
| Malaysia | 138, 182 |
| Mali | 13 |
| Montenegro | 81 |
| Morocco | 94 |
| Pakistan | 87 |

| List of the cases for which technical assistance would be particularly useful in helping member States: | |
|---|---------------------------|
| State | Conventions Nos |
| Panama | 87, 94, 98, 107 |
| Paraguay | 26, 87, 98, 115, 119, 120 |
| Peru | 102, 169 |
| Rwanda | 94, 100 |
| Singapore | 94 |
| Sudan | 95, 182 |
| Tajikistan | 115, 120, 148 |
| United Republic of Tanzania | 100, 111 |
| Togo | 26 |
| Turkey | 87 |
| Uganda | 162 |
| Ukraine | 122 |
| United Arab Emirates | 138 |
| Uruguay | 81 |
| Uzbekistan | 182 |
| Bolivarian Republic of Venezuela | 87 |
| Yemen | 81 |
| Zimbabwe | 174 |

The specific case concerning the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182): Time-bound Programmes

68. The Committee notes that the Time-bound Programmes (TBPs) are a set of tightly integrated and coordinated policies and programmes to prevent and eliminate a country's worst forms of child labour within a defined period of time. It is a comprehensive approach that operates at different levels: family or individual, community, provincial, national, global. TBPs are country-owned programmes, in which the International Programme for the Elimination of Child Labour (IPEC) and other development partners fulfil a support role. They emphasize the need to protect the rights of children and address the root causes of child labour, linking action against child labour to the national development effort, with particular emphasis on economic and social policies to combat poverty and to promote universal basic education and social mobilization. The following contains the list of countries that benefit or have benefited from a TBP (period covered 2008 and 2009) supported by IPEC.

| List of countries benefiting from a TBP supported by IPEC | |
|---|---|
| Region | Country |
| Africa | Ghana, Kenya, Madagascar, Mali, South Africa, Togo, Uganda, United Republic of Tanzania, Zambia |
| Latin America and the Caribbean | Brazil, Brazil (State of Bahia), Dominican Republic, El Salvador, Ecuador |
| Arab States | Lebanon, Yemen |
| Asia and the Pacific | Bangladesh, Cambodia, Indonesia, Mongolia, Thailand, Pakistan, Philippines, Viet Nam |
| Europe and Central Asia | Turkey |

Questions concerning the application of certain Conventions

69. This year, the report contains two general observations on the application of ratified Conventions. The first appears as an introduction to the individual examination of reports due on the application of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and deals with the registration of enterprises and the annual reports on the work of the labour inspection services. A second general observation, which appears as an introduction to the individual examination of reports due on the application of the wages-related Conventions, deals with the application of these Conventions in the context of the global economic crisis.

70. At its previous session, the Committee had made a general observation on the application of ILO social security standards in the context of the global financial crisis in which it invited member States to provide detailed information on the impact of the crisis on national social security systems and the measures taken or planned with a view to maintaining their financial viability and reinforcing social protection for the most vulnerable groups of the population. The Committee is grateful to the 41 governments which responded, highlighting the global nature of the crisis and the variety of the situations affecting national social security systems. Many reports contained detailed explanations of the legal, financial and organizational measures taken to strengthen the provision of social security to the most affected categories of the population. The Committee will analyse these replies within the framework of its General Survey on social security in 2010.

Comments made by employers' and workers' organizations

71. At each session, the Committee draws the attention of governments to the important role of employers' and workers' organizations in the application of Conventions and Recommendations. Moreover, it highlights the fact that numerous Conventions require consultation with employers' and workers' organizations, or their collaboration in a variety of measures. The Committee notes that almost all governments have indicated in the reports supplied under articles 19 and 22 of the Constitution the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, they have communicated copies of the reports supplied to the Office. The Committee recalls however that last year for the first time it noted with concern an increase in the number of governments which did not indicate in their reports the representative organizations of employers and workers to which copies of the reports shall be communicated. The Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference echoed this concern, which it considered a significant problem in view of the tripartite nature of the ILO. The Committee is pleased to note that the two countries for which it made observations on this issue last year have now complied with their obligations under article 23, paragraph 2, of the Constitution.

72. Since its last session, the Committee has received 705 comments (compared to 630 last year), 115 (compared to 57 last year) of which were communicated by employers' organizations and 590 (compared to 573 last year) by workers' organizations. The Committee recalls the importance it attaches to this contribution by employers' and workers' organizations to the work of the supervisory bodies. This contribution is essential for the Committee's evaluation of the application of ratified Conventions in law and in practice.

73. The majority of the comments received (527) relate to the application of ratified Conventions (see Appendix III).²⁵ Some (327) of these comments relate to the application of fundamental Conventions, 40 relate to governance Conventions and 160 concern the application of other Conventions. Moreover, (178) comments concern reports provided by governments under article 19 of the Constitution on the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).²⁶

74. The Committee notes that, of the comments received this year, (455) were transmitted directly to the Office which, in accordance with the practice established by the Committee, referred them to the governments concerned for comment. The Committee emphasizes that comments submitted by employers' and workers' organizations should be received by the Office by 1 September at the latest to allow governments to have a reasonable time to respond, thereby enabling the Committee to examine the issues in question at its session in November the same year. Comments received later than 1 September will be examined by the Committee at its session the following year. In (250) cases, the governments transmitted the comments made by employers' and workers' organizations with their reports, sometimes adding their own comments.

75. The Committee also examined a number of other comments by employers' and workers' organizations, consideration of which had been postponed from its previous session because the comments of the organizations or the replies of the governments had arrived just before, during or just after the session. It again had to postpone until its next

²⁵ An indication of the observations made by employers' and workers' organizations on the application of Conventions received during the current year is available on the ILO web site: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm>.

²⁶ See Report III (Part 1B), ILC, 99th Session, Geneva, 2010.

session the examination of a number of comments when they were received too close to or even during the Committee's present session, in particular to allow reasonable time for the governments concerned to make comments.

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

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

77. The Committee recalls that at its 77th Session (November–December 2006), it gave guidance to the Office as to the procedure to be followed in determining the treatment of comments received from employers' and workers' organizations concerning the application of a ratified Convention in a non-reporting year. This year, the Committee examined this procedure in light of the decision of the Governing Body at its 306th Session (November 2009) to extend the cycle for the submission of reports from two to three years for the fundamental and governance Conventions. In this respect, the Committee is fully conscious of the need to apply in a fair and judicious manner the decisions taken by the Governing Body to extend the reporting cycle and to ensure that employers' and workers' organizations comments may effectively draw its attention to areas of concern, even when no report on the Convention in question is due from the government that year.

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

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

80. The Committee emphasizes that the procedure set out above aims at giving effect to decisions taken by the Governing Body which have both extended the reporting cycle and provided for safeguards in that context to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due; in such cases, comments received directly by the Office are communicated to the governments concerned in a timely fashion so as to ensure respect for due process. The Committee will continue to give full and careful consideration to all the elements made available to it in order to ensure the effective, up to date and regular monitoring of the application of ratified Conventions in the context of the new extended reporting cycle for the fundamental and governance Conventions.

81. The comments received are examined in the observations made by the Committee (Part II of this report or in requests addressed directly to the governments).

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

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

- (a) information on the steps taken to submit to the competent authorities the instruments adopted by the Conference at its 96th Session (Convention No. 188 and Recommendation No. 199) on 14 June 2007;
- (b) replies to the observations and direct requests made by the Committee at its 79th Session (November–December 2008).

83. Appendix IV of Part Two of the report contains a summary indicating, where appropriate, the name of the competent authority to which the instruments adopted by the Conference at its 96th Session in 2007 were submitted and the date of submission.

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

96th Session

85. At its 96th Session in May–June 2007, the Conference adopted the Work in Fishing Convention, 2007 (No. 188), and Recommendation, 2007 (No. 199). The 12-month period for submission to the competent authorities of Convention No. 188 and Recommendation No. 199 ended on 14 June 2008, and the 18-month period on 14 December 2008. In all, **65** governments out of the 178 member States concerned have sent new information on the steps taken in this regard: **Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belarus, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Chad, China, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Greece, Honduras, Hungary, Iceland, India, Indonesia, Israel, Italy, Japan, Republic of Korea, Lebanon, Lithuania, Mauritania, Mauritius, Mexico, Morocco, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Norway, Oman, Philippines, Poland, Romania, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Switzerland, Timor-Leste, Turkey, United Arab Emirates, United Kingdom, United States, Zambia and Zimbabwe.**

Cases of progress

86. The Committee notes with interest the information sent in 2009 by the Governments of **Burkina Faso, Cameroon, Chad, Senegal, Spain and Timor-Leste.** It welcomes the efforts made by these governments to make up for the significant delay in submission and thus fulfil their obligation to submit to their parliamentary bodies the instruments adopted by the Conference over a number of years.

Special problems

87. To facilitate the work of the Committee on the Application of Standards, this report only mentions the governments which have not provided information on submission to the competent authorities of instruments adopted by the Conference for at least the seven sessions held from 2001 (i.e. from the 89th Session to the 96th Session in 2007). This time frame was deemed long enough to warrant inviting Government delegations to a special sitting of the Conference Committee so that they could account for the delays in submissions.

88. The explanations provided in June 2009 to the Conference Committee by 14 Government delegations show that these countries intend to make up for the delay in submission to the competent authorities rapidly. Some delegations have referred to peculiarities linked to the transmission of the instruments adopted by the Conference through the various governmental and regional authorities. Others have mentioned a lack of human resources in the administrative departments responsible for standard issues.

89. The Committee notes that these arguments still cannot justify the delay in fulfilling the obligation under article 19 of the ILO Constitution. Several governments have recently demonstrated diligence and have shown that they anticipate obtaining the texts in the national languages to attract greater attention from members of parliament. Furthermore, it should be borne in mind that, in fulfilling this obligation, prior discussions with the social partners are also important.

90. The Committee notes that at the closure of its 80th Session, on 11 December 2009, **49** governments have failed to provide information on the submission to the competent authorities of the instruments adopted by the Conference over the seven sessions which corresponded to the period of reference in 2009 (i.e. from the 89th Session in June 2001 to the 96th Session in May–June 2007). The governments concerned are as follows: **Antigua and Barbuda, Bahrain, Bangladesh, Belize, Bosnia and Herzegovina, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Georgia, Ghana, Guinea, Haiti, Ireland, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Nepal, Papua New Guinea, Paraguay, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Bolivarian Republic of Venezuela and Zambia.**

91. These countries have been identified in the observations published in this report and the instruments which have not been submitted are indicated in the statistical appendices. The Committee therefore considers it useful to draw the attention of these countries to this matter so that they can immediately, as a matter of urgency, take the appropriate measures to bring themselves up to date.

92. The Committee also hopes that the government authorities and the social partners in these countries will be the first to benefit from the measures that the Office will take to assist them in the steps required for the rapid submission to the legislative body of the pending instruments.

Comments of the Committee and replies from governments

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

94. The Committee hopes that the 74 observations and 48 direct requests that it is addressing this year to governments will enable them to better discharge their constitutional obligation of submission, thereby contributing to the promotion of the standards adopted by the Conference.

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

96. The Committee notes with concern that during the last ten years, as shown in Appendix VI to the report, there has been a significant decline in timely submission of instruments to the competent authorities. It hopes to be able to note progress in this matter in its next report. It again reminds governments that they may seek technical assistance from the ILO, particularly through the standards specialists in the field.

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

97. In accordance with the decision taken by the Governing Body,²⁷ governments were requested to supply reports under article 19 of the Constitution as a basis for the General Survey on the following instruments: the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

98. A total of 826 reports were requested and 460 were received (compared to last year when 492 reports were requested and 262 were received).²⁸ This represents 55.69 per cent of the reports requested.

99. The Committee notes with regret that, for the past five years, none of the reports on unratified Conventions and Recommendations requested under article 19 of the Constitution have been received from the following 22 countries: **Cape Verde, Democratic Republic of the Congo, Gambia, Guinea, Guinea-Bissau, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Russian Federation, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Swaziland, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uganda, Uzbekistan and Vanuatu.**

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

101. Part III of this report (issued separately as Report III (Part 1B)) contains the General Survey on employment. In accordance with the practice followed in previous years, the survey has been prepared on the basis of a preliminary examination by a working party comprising five members of the Committee.

²⁷ Document GB.303/12, para. 70.

²⁸ See Report III (Part 1B), ILC, 99th Session, Geneva, 2010.

III. Highlights and major trends

102. In accordance with its decision at its 78th Session (November–December 2007),²⁹ the Committee considers that it is useful to draw attention to the following highlights and major trends in relation to topical issues arising from the reports that it has examined this year.

A. Sixtieth anniversary of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

103. In this, its 60th anniversary year, the Right to Organise and Collective Bargaining Convention has become more relevant than ever to the growing needs of the labour market in a globalized environment. The Convention is of fundamental importance for the realization of decent work and social justice throughout the world. The Committee would recall, in this regard, that respect for fundamental principles and rights at work is not only essential for human dignity, but also critical to recovery and development. In such times of economic crisis as the present, it is vitally important that a culture of social dialogue be established, and in particular that collective bargaining be promoted as a useful mechanism for engaging in dialogue to effectively address the issue of economic recovery. Collective bargaining is an important mechanism by which enterprises, in full and meaningful dialogue with workers' organizations, can ensure their sustainability both in times of growth and in times of crisis. Collective bargaining gives representational voice to the workers in a way that enables innovation in decision-making and can maximize the impact of crisis responses to the needs of the real economy, while ensuring meaningful protection of workers' rights.

104. The Committee thus affirms the importance of the development, to the widest degree possible, of collective agreements between employers and their organizations, on the one hand, and, on the other, workers' organizations – whose very *raison d'être* is to bargain collectively on behalf of the workers they represent. The Committee further wishes to emphasize in this regard the importance it attaches to the establishment of effective mechanisms for ensuring adequate protection of workers against acts of anti-union discrimination. Clearly such mechanisms, including effective and rapid procedures and sufficiently dissuasive sanctions, are essential to ensuring organizational rights in practice and thus constitute the bedrock for any meaningful promotion of collective bargaining. The rights to organize and to bargain collectively go hand in hand and, by regulating terms and conditions of work at all levels through social dialogue and the conclusion of collective agreements, collective bargaining makes an invaluable contribution towards social and economic progress, harmonious industrial relations, and social justice, particularly in times of crisis.

B. Relevance and application of ILO wage-related Conventions in the context of the global economic crisis

105. The ongoing global economic crisis – the worst economic crisis since the Great Depression – has impacted severely on the wage income of millions of workers around the world. The economic crisis has led to job losses while also exerting downward pressure on real wages. The global number of unemployed persons is expected to rise by 38 million in 2009 while over 75 million people could be added to the working poor as a result of the reduction of incomes at the household level and the erosion of purchasing power.³⁰ According to a recent ILO survey of wage indicators, real wages have fallen in the first quarter of 2009 in more than half of the 35 countries for which data are available and the situation is

²⁹ Report of the Committee of Experts, General Report, Report III (Part 1A), ILC, 97th Session, 2008, para. 8(2).

³⁰ See *The financial and economic crisis: A decent work response*, ILO, 2009, pp. 12–13.

likely to get worse.³¹ These trends are not only a major social issue but also an economic one. Indeed, a downward wage spiral would affect global demand and aggravate the crisis.³² This is why the *Global Jobs Pact*, adopted by the International Labour Conference in June 2009, warns against a race to the bottom in wages and stresses the importance of enhancing support for vulnerable women and men hit hard by the crisis including youth at risk, low-wage, low-skilled, informal economy and migrant workers (paragraph 9).

Maintaining decent minimum wage levels

106. Minimum wage fixing is a tool for poverty reduction and social protection by ensuring the satisfaction of the basic needs of the low-paid, unskilled workers and their families. Minimum wage systems, however, may function meaningfully only if minimum wage rates are periodically re-examined and readjusted so as to reflect socio-economic realities and maintain the purchasing power of the minimum wage by reference to a basket of basic consumer goods. With minimum wages representing in most countries 25 to 40 per cent of the average wage and in some countries set well below the poverty line, there is a risk of the minimum wage floor for the most vulnerable groups of wage earners being lowered to simply unsustainable levels. The risk is even greater in times of crisis as many governments feel pressured to freeze minimum wages as a means of containing labour costs and avoiding job losses (although in the current crisis, a number of countries have adjusted their minimum wages upwards). The Committee has consistently taken the view that minimum wage systems are effectively emptied of all their practical significance when statutory minimum wages remain unchanged for long periods of time or when revised rates manifestly fail to keep abreast of variations in economic indicators such as the inflation rate.

107. The Committee considers it essential to recall that the periodic adjustment of minimum wages, through a process guaranteeing the full consultation and participation of the social partners on an equal footing, and based on regular and independent surveys of the national economic conditions, is a core element of a minimum wage system as envisaged in the Minimum Wage Fixing Convention, 1970 (No. 131), which sets out the most up to date standards in this area. In this connection, the Committee notes with special interest that, in adopting the *Global Jobs Pact*, ILO member States agreed that “minimum wages should be regularly reviewed and adapted” (paragraph 12) and further reaffirmed that “Governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability”, making express reference to Convention No. 131 as providing guidance in this respect (paragraph 23).

108. In periods of crisis, the enforcement of the minimum wage through the effective control and supervision of labour inspection services becomes of crucial importance. Strengthening the institutional capacity of labour inspection services to monitor the situation of pay conditions in the labour market and to apply truly dissuasive sanctions for those violating the minimum permissible wage levels is a crucial prerequisite for the implementation of any minimum wage policy.

109. The Committee is equally concerned about other abusive pay practices such as the growing recourse to undeclared wages, also known as “envelope wages”, whereby employees are officially paid at the minimum wage rate – while a further sum is paid to them informally in cash – in order to minimize taxation and social contributions. In Turkey, for instance, the percentage of private sector workers earning the minimum wage stood at 52 per cent in 2006 which is thought to be explained by the high incidence of undeclared wages. One survey covering 2,000 garment workers in seven cities in Turkey demonstrated that 88.2 per cent of the workers concerned received envelope wages.³³ Such practices distort data and render impossible a proper analysis of the operation of a minimum wage system with all the negative implications this may have. More fundamentally, these practices erode the fiscal capacity needed to fund social protection and to thus help cope with the social impacts of the global crisis.

Preventing the vicious circle of wage arrears

110. Over the past 15 years, the Committee has extensively commented on the failure of numerous governments to ensure the regular payment of wages and prevent the accumulation of wage arrears in accordance with Article 12(1) of the Protection of Wages Convention, 1949 (No. 95). As the Committee noted in its 2003 General Survey on the protection of wages, “the delayed payment of wages or the accumulation of wage debts clearly contravenes the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless” (paragraph 355). The Committee has been emphasizing the need for strong commitment and rigorous action on the part of governments in addressing the three key parameters of the problem, namely tight supervision, severe sanctions and appropriate compensation to workers for the loss incurred.

³¹ See *Global Wage Report – Update 2009*, p. 3.

³² See Joseph Stiglitz, “The global crisis, social protection and jobs”, *International Labour Review*, Vol. 148, 2009, pp. 1–13.

³³ See Seyhan Erdogdu, “Turkey: Minimum wage in tension between economic and social concerns”, in Daniel Vaughan-Whitehead (ed.), *The Minimum Wage Revisited in the Enlarged EU*, ILO, 2008, p. 451. See also Jaan Masso and Kerly Krillo, “Estonia, Latvia and Lithuania: Minimum wages in a context of migration and labour shortages”, *ibid.*, pp. 142–145.

111. The current economic crisis threatens in many countries – mainly among the “transition economies” of Eastern Europe and Central Asia which had experienced wage arrears on an alarmingly large scale in the late 1990s – the prospects of a complete elimination of outstanding wage debts and the beginning of a new cycle of wage arrears. Increased wage arrears would not only affect national economies but would also affect global demand and delay recovery from the crisis. The increase in wage arrears has already reached worrying levels in certain countries. For instance, in Ukraine, wage arrears nearly doubled from US\$110 to US\$201 million between April and July 2009. It is significant that wage arrears did not only affect bankrupt or inactive enterprises but also economically active enterprises that represented 64 per cent of total wage arrears in 2009, compared to 36 per cent the previous year.³⁴ Similarly, in the Russian Federation, wage arrears have constantly been rising for the last three years and now stand at US\$262 million. Accumulated wage arrears are also reported in other countries, including Armenia (US\$11 million), Kyrgyzstan (US\$9.5 million) and Tajikistan (US\$6.4 million). Unpaid wages are estimated to represent on average 8 per cent of the annual wage bill in the Commonwealth of Independent States (CIS) countries.³⁵ This situation creates great insecurity for workers and their families. Migrant workers may be especially affected by delayed or non-payment of wages due to massive job losses in sectors particularly hit by the crisis, such as construction, manufacturing and hotels and restaurants. In countries where work permits are linked to residency permits, the effective protection of the right of migrant workers to claim unpaid wages becomes all the more important as they may have to leave the country upon loss of employment.

112. In the present context, the Committee wishes to point out that as similar experiences in the recent past have shown, there is need to reaffirm that the payment of wages is not an “option” to be honoured if and when other conditions permit. It is also important to remember that any effort to tackle the problem of wage arrears should not result in some other abusive form of payment such as money surrogates or bonds and vouchers. Systematic collection of up to date statistics on the wage arrears phenomenon from reliable and independent sources is essential to any serious effort aimed at putting an end to the problem of wage arrears. Open and continuous social dialogue is indispensable to the search for negotiated solutions to problems which may only be resolved progressively. Finally, meaningful results in containing the accumulation of wage arrears cannot be expected in the absence of properly functioning labour inspection services and an adequate system of sanctions.

Protecting workers’ wage claims in the face of mounting insolvencies

113. Major economic crises invariably result in a significant rise in corporate bankruptcy or insolvency which often leads to not only massive lay-offs but also to claims for considerable sums of unpaid wages with dim prospects of recovery – through lengthy bankruptcy proceedings. This reinforces the need for proper regulatory frameworks that offer better chances for workers to effectively recover the sums owed to them. The Committee recalls, in this respect, that the ILO has adopted the Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173), which strengthens the system of privileged claims, established by Convention No. 95, but also introduces new forms of protection by means of wage guarantee institutions.

114. As the Committee indicated in its 2003 General Survey on the protection of wages, “at a time of growing uncertainty and gloomy economic forecast for the global economy, as has recently been confirmed and amplified by some of the most serious corporate bankruptcies of all times, the need for enhanced protection of workers’ earnings for work already performed is more pressing than ever and, in this respect, the significance of Convention No. 173 and Recommendation No. 180 can hardly be overemphasized” (paragraph 353). The objective of wage guarantee funds is of course the assurance of payment, yet such schemes call for cautious planning, mature social security institutions and solid social dialogue.

115. Although wage guarantee funds have so far been set up mostly in industrialized countries, such as Australia, the European Union Member States, Japan, the Republic of Korea and Switzerland, there is recently a growing interest in such institutions. For instance, Armenia ratified Convention No. 173 in 2005 accepting the obligations of Part III concerning the protection of workers’ claims by a guarantee institution while the Government of the Russian Federation is in the process of drafting new legislation on the subject. The Government of Ukraine, which ratified Convention No. 173 in 2006 but only with respect to Part II concerning the protection of workers’ claims by means of a privilege, is currently examining the feasibility of establishing a wage guarantee institution. The Committee trusts that the Office will continue to offer its advisory services with a view to assisting ILO member States in modernizing their legislation by moving towards the principles and rules reflected in Convention No. 173, in particular Part III dealing with wage guarantee funds.

³⁴ See *Global Wage Report – Update 2009*, p. 6.

³⁵ See General Confederation of Trade Unions, “Labour payment in the Commonwealth States and trade union solidarity position and activity on workers interests protection”, Moscow, 2008, p. 14.

Stimulating national economies through socially responsible public spending

116. Probably the most common policy response to the crisis has been infrastructure spending.³⁶ As construction is one of the hardest hit sectors and also particularly labour intensive, infrastructure projects generally focus on building and repair of roads, bridges, railway lines and rural infrastructure. However, there has been concern about the extent to which infrastructure projects increase employment and pay adequate wages. By ensuring that decent work is at the centre of crisis responses, the recovery will be faster and more sustainable. This also implies ensuring that migrant workers, noticeably present in the construction sector in a number of countries, equally benefit without discrimination from economic stimulus packages in countries of destination and that no wage inequalities emerge between nationals and migrant workers. Under these circumstances, the Committee considers that the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), is highly relevant and offers a sound answer to the risk of pay inequalities which is exacerbated in times of crisis.

117. The Committee recalls that Convention No. 94 is about good governance and addresses socially responsible public procurement by requiring bidders/contractors to align themselves with wages, hours of work and other conditions of labour 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, as determined by collective agreement, arbitration award or by national laws or regulations. As the Committee concluded in its 2008 General Survey on labour clauses in public contracts, given the impact of globalization and the intense competition, “the objectives of the Convention are even more valid today than they were 60 years ago, and strengthen the ILO’s call for fair globalization” (paragraph 308). The ILO report, *The financial and economic crisis: A decent work response*, lists Convention No. 94 among the relevant ILO instruments in the crisis context that “can help ensure that investments financed by public stimulus packages generate jobs with decent pay and working conditions”.³⁷ Echoing the same view, in the recently adopted *Global Jobs Pact*, ILO member States stressed that “governments as employers and procurers should respect and promote negotiated wage rates” (paragraph 12).

118. The Committee recalls that despite its limitations, Convention No. 94 is the only multilateral Convention setting out a universal labour standard in the area of public contracting and firmly believes that it has an important role to play especially in periods of crisis. Recognizing its intrinsic value in the current context, the Office should pursue efforts at enhancing the visibility of the Convention and familiarizing state and non-state actors with its requirements.

Conclusion

119. In conclusion, the Committee emphasizes that wage protection takes on particular importance in times of crisis and therefore relevant standards should not be undermined but rather put at the centre of crisis responses, as is underlined in the *Global Jobs Pact* (paragraph 14). Indeed, this will support recovery and help put the economy on a sustainable track. Whether it is setting a decent minimum wage floor, ensuring the timely payment of wages, protecting wage claims in the event of the employer’s insolvency either by means of a privilege or through the intervention of a wage guarantee institution or preventing downward pressures on wages in the context of public procurement, ILO wages-related standards and principles serve as a reminder of the special nature of wages as the workers’ principal, if not sole, means of subsistence and hence of the need for targeted and priority action in this field. As the ILO Director-General has put it, “the different elements of the way forward are to be found in the international labour standards adopted, promoted and supervised by the ILO”.³⁸ The Committee hopes that ILO member States will act positively in the current economic downturn by carrying out the necessary reforms in wage legislation and wage policy consistent with the letter and the spirit of the above-highlighted Conventions.

³⁶ See *Protecting people, promoting jobs – A survey of country employment and social protection policy responses to the global economic crisis*, An ILO report to the G20 leaders’ summit, Pittsburgh, 24–25 September 2009, pp. 25–27.

³⁷ See *The financial and economic crisis: A decent work response*, ILO, 2009, p. 53.

³⁸ See *Tackling the global jobs crisis: Recovery through decent work policies*, International Labour Conference, 98th Session 2009, Report I(A), p. 7.

IV. Collaboration with other international organizations and functions relating to other international instruments

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

120. The Committee notes that the United Nations Permanent Forum on Indigenous Issues (UNPFII), at its Eighth Session in May 2009, paid particular attention to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the work of ILO supervisory bodies. The UNPFII recommended “that an appropriate form of coordination should be explored between the Committee of Experts and the Forum regarding the implementation of ILO Convention No. 169” and it “reiterate[d] the need for a mechanism of coordination to also be established between the ILO supervisory mechanisms and indigenous peoples, which may include the establishment of an ad hoc committee consisting of indigenous representatives or experts”.³⁹

121. With regard to the issue of coordination raised by the UNPFII, the Committee recalls that Convention No. 169 is one of the instruments in respect of which special arrangements have been made between the ILO and the United Nations, under which the UNPFII can contribute to the supervision of the application of this Convention. The Committee notes that a member of the UNPFII participated in the work of the Committee on the Application of Standards at its 98th Session (June 2009). The Committee considers that the issue of the access of indigenous and tribal peoples to the ILO supervisory mechanisms merits further study, particularly as Convention No. 169 is the only international treaty specifically dedicated to these peoples. It is, however, mindful that further discussions on this matter would have to take place in the competent bodies of the ILO.

B. United Nations treaties concerning human rights

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

123. The Committee welcomes the fact that the Office has continued to provide information on the application of international labour standards to the United Nations treaty bodies on a regular basis, in accordance with the existing arrangements between the ILO and the United Nations. It also continued to follow the work of these bodies and to take their comments into consideration where appropriate. The Committee considers that coherent international monitoring is an important basis for action to enhance the enjoyment of and compliance with economic, social and cultural rights at the national level. The Committee itself had the opportunity to continue its collaboration with the United Nations Committee on Economic, Social and Cultural Rights in the context of the annual meeting between the two Committees which took place on 26 November 2009, at the invitation of the Friedrich Ebert Stiftung. This year, “social security, social assistance

³⁹ UN document E/2009/43, para. 93.

and protection against poverty” was selected as a topic for discussion and representatives of the European Committee of Social Rights also participated in the meeting.

124. The Committee notes that the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on 10 December 2008, has obtained 30 signatures to date. The Committee considers it essential for its collaboration with the Committee on Economic, Social and Cultural Rights to be strengthened, especially when the Optional Protocol enters into force.

C. European Code of Social Security and its Protocol

125. In accordance with the supervisory procedure established under Article 74, paragraph 4, of the European Code of Social Security, and the arrangements made between the ILO and the Council of Europe, the Committee of Experts examined 20 reports on the application of the Code and, as appropriate, its Protocol. At the sitting in which the Committee examined the reports on the Code and its Protocol, the Council of Europe was represented by Ms Ana Gomez Heredero. The conclusions of the Committee regarding these reports will be sent to the Council of Europe for examination by its Committee of Experts on Social Security. Once approved, the Committee’s comments should lead to the adoption of resolutions by the Committee of Ministers of the Council of Europe on the application of the Code and the Protocol by the countries concerned.

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

* * *

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

Geneva, 11 December 2009.

(Signed) Janice R. Bellace
Chairperson

Anwar Ahmad Rashed Al-Fuzaie
Reporter

Appendix to the General Report

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

Mr Mario ACKERMAN (Argentina),

Director of the Labour Law and Social Security Department and Professor, Labour Law chair, University of Buenos Aires; former adviser to the Parliament of Argentina; former Director of the Labour Police of the National Ministry of Labour and Social Security of the Republic of Argentina..

Mr Anwar Ahmad Rashed AL-FUZAIE (Kuwait),

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

Mr Denys BARROW, SC (Belize),

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

Ms Janice R. BELLACE (United States),

Samuel Blank Professor and Professor of Legal Studies, Business Ethics and Management of the Wharton School, University of Pennsylvania; Trustee and Founding President, Singapore Management University; Senior Editor, *Comparative Labor Law and Policy Journal*; President of the International Industrial Relations Association; member of the Executive Board of the US branch of the International Society of Labor Law and Social Security; Co-Chair of the Public Review Board of the United Automobile, Aerospace and Agricultural Implements Workers' Union; former Secretary of the Section on Labor Law, American Bar Association..

Mr Lelio BENTES CORRÊA (Brazil),

Judge at the Labour Federal High Court (Tribunal Superior do Trabalho) of Brazil, former Labour Public Prosecutor of Brazil, Professor (Labour Team and Coordinator of the Human Rights Centre) at the *Instituto de Ensino Superior de Brasília*.

Mr Halton CHEADLE (South Africa),

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

Ms Laura COX, QC (United Kingdom),

Justice of the High Court, Queen's Bench Division and Judge of the Employment Appeal Tribunal; LL B, LL M of the University of London; previously a barrister specializing in employment law, discrimination and human rights; Head of Cloisters Chambers, Temple (1995–2002); Chairperson of the Bar Council Sex Discrimination Committee (1995–1999) and Equal Opportunities Committee (1999–2002); Benchers of the Inner Temple; member of the Independent Human Rights Organization Justice (former Council member) and one of the founding Lawyers of Liberty (the National Council for Civil Liberties); previously a Vice-President of the Institute of Employment Rights and member of the Panel of Experts advising the Cambridge University Independent Review of Discrimination Legislation; Chairperson of the Board of INTERIGHTS, the International Centre for the Legal Protection of Human Rights (2001–2004) and Chairperson of the Equality and Diversity Advisory Committee of the Judicial Studies Board (since 2003); appointed Honorary Fellow of Queen Mary College, London University (2005); member of Council of the University of London (2003–2006); Honorary President of the Association of Women Barristers and Vice President of the United Kingdom Association of Women Judges.

Ms Blanca Ruth ESPONDA ESPINOSA (Mexico),

Doctor of Law; Professor of International Public Law at the National Autonomous University of Mexico; member of the National Federation of Lawyers and of the Lawyers' Forum of Mexico; recipient of the award for Juridical Merit "the Lawyer of the Year (1993)"; Social Counselor and member of the Governing Body of the National Institute for Women; President of the Planned Parenthood Federation/Western Hemisphere (IPPF/WHR). She has been: President of the Senate of Mexico and of the Foreign Relations Committee; Secretary of the House of Representatives; President of the Population and Development Committee and member of the Labour and Social Security Committee; President of the Congress of the State of Chiapas; President of the Inter-American Parliamentary Group on Population and Development (IPG); Vice-President of the Global Forum of Spiritual and Parliamentary Leaders; Director-General of the National Institute for Labour Studies; Commissioner of the National Immigration Institute and editor of the *Mexican Labour Review*.

Mr Rachid FILALI MEKNASSI (Morocco),

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

Mr Abdul G. KOROMA (Sierra Leone),

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

Mr Pierre LYON-CAEN (France),

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

Mr Vitit MUNTARBHORN (Thailand),

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

Ms Angelika NUSSBERGER, MA (Germany),

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

Academy of Social Sciences (since 2008); former legal adviser in the Directorate General of Social Cohesion of the Council of Europe (2001–2002).

Ms Ruma PAL (India),

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

Mr Paul-Gérard POUYOUÉ (Cameroon),

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

Mr Raymond RANJEVA (Madagascar),

Member of the International Court of Justice (1991–2009); Vice-President (2003–06), President (2005) of the Chamber formed by the International Court of Justice to deal with the case concerning the Frontier Dispute; senior judge of the Court since February 2006; Bachelor's degree in law (1965), University of Madagascar, Antananarivo; Doctorate of Law, University of Paris II; Agrégé of the Faculties of Law and Economics, Public Law and Political Science section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu.

Professor at the University of Madagascar (1981–91) and other institutions; a number of administrative posts held, including First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegations to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties, Vienna (1976–77); First Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the International Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member of the Institute of International Law. Member of numerous international and national professional and academic societies.

Mr Miguel RODRIGUEZ PIÑERO Y BRAVO FERRER (Spain),

Doctor of Law; President of the Second Section of the Council of State (Legal, Labour and Social Matters); Professor of Labour Law; Doctor *honoris causa* of the University of Ferrara (Italy) and the University of Huelva (Spain); President Emeritus of the Constitutional Court; member of the European Academy of Labour Law, the Ibero-American Academy of Labour Law, the Andalusian Academy of Social Sciences and the Environment, and the European Institute of Social Security; Director of the review *Relaciones Laborales*; President of the SIGLO XXI Club; recipient of the gold medallion of the University of Huelva, and of the Labour Gold Medallion; former President of the National Advisory Commission on Collective Agreements and President of the Andalusian Industrial Relations Council; former Dean of the Faculty of Law of the University of Seville; former Director of the University College of La Rábida; President *ad honorem* of the Spanish Association of Labour Law and Social Security.

Mr Yozo YOKOTA (Japan),

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



Part II. Observations concerning particular countries

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

General observations

Antigua and Barbuda

The Committee notes that the great majority of reports due on the application of ratified Conventions have been received. It welcomes the fact that the measures taken by the Government in 2008 to fulfil its constitutional obligation of reporting have had a lasting effect. However, it notes that difficulties persist relating to the sending of the two first detailed reports on Conventions Nos 161 and 182, which have been due since 2004. The Government has twice benefited from technical assistance in relation to the preparation of reports, firstly in the context of a training programme at the beginning of 2009, and then in the form of a workshop in August 2009. The Committee strongly hopes that these difficulties will be resolved rapidly so that the Government can submit the two reports in question, in accordance with its constitutional obligation.

Armenia

The Committee notes that the majority of the reports due on the application of ratified Conventions have not been received. Fifteen reports are now due: the first report on Convention No. 160 (due since 2007); the first reports on Conventions Nos 87, 97, 138, 143 and 182 (due since 2008); and nine other reports (Conventions Nos 81, 98, 100, 111, 122, 135, 144, 151 and 154). It notes that since the efforts made in 2007, with the assistance of the Office, to make up the significant backlog in the sending of reports on the application of ratified Conventions, the Government is once again faced by a backlog in the sending of reports which has been accumulated over the past two years. As the Committee invited it to do in its 2008 observation, the Office has nevertheless continued its technical assistance. Accordingly, as indicated in its letter of 24 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Government benefited from a training programme on the preparation of reports at the beginning of 2009. Furthermore, the Office recently informed the Government of its availability to provide support for the preparation of reports on the occasion of two missions to the country in 2009. The Committee requests the Government to take the necessary measures without delay, including having recourse to the Office's technical assistance, with a view to submitting the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Burundi

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received and that as a result 16 reports are now due (Conventions Nos 1, 14, 29, 52, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144 and 182). The Office drew the Government's attention to this situation in its letter of 15 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the

International Labour Conference (June 2009), in which it indicated its availability to provide any necessary support. The Committee requests the Government to take the necessary measures without delay, including having recourse to the technical assistance of the Office, with a view to submitting the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Cape Verde

The Committee notes with *serious concern* that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received. Eleven reports are now due (Conventions Nos 17, 19, 29, 81, 87, 98, 100, 105, 111, 118 and 182). It takes due note of the explanations provided by the Government representative to the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009) referring to the lack of human and material resources. These difficulties are compounded, according to the Office, by other problems of a linguistic nature. Both the Committee in its observation of 2008, and the Office, in its letter of 15 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards, have emphasized the importance of technical assistance to address the persistent difficulties related to the preparation of reports. Such technical assistance was provided to the Government twice in November 2009, including through in-depth training for the officials of all the administrative services concerned and the representatives of employers' and workers' organizations. Under these circumstances, the Committee firmly hopes that the Government will be in a position to submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Czech Republic

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 22 reports are now due (Conventions Nos 1, 14, 29, 87, 98, 100, 105, 108, 111, 122, 132, 135, 138, 140, 142, 144, 150, 160, 163, 164, 171 and 182). The Office drew the Government's attention to this situation in its letter of 24 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009). Noting the statement by the Government representative to the Committee on the Application of Standards, who emphasized that the backlog in the sending of reports was due to an unforeseen situation which had now been resolved, the Committee trusts that the Government will without further delay submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Dominica

The Committee notes that the great majority of the reports due on the application of ratified Conventions have been received, including five of the first reports due since 2003, 2004 and 2006. Four reports are still due: the first report on the application of Convention No. 147 (due since 2006) and three other reports (Conventions Nos 29, 95 and 138). The Committee notes in this respect that the Government benefited from the Office's technical assistance in the context of a workshop on the preparation of reports held in August 2009. The Committee welcomes the efforts made by the Government in this respect. It firmly hopes that the measures adopted in this connection will enable the Government to submit the reports that remain due, in accordance with its constitutional obligation.

Equatorial Guinea

The Committee notes that the reports due on the application of ratified Conventions have not been received. A total of 14 reports are now due: the first reports on Conventions Nos 68 and 92 (due since 1998) and 12 other reports (Conventions Nos 1, 14, 29, 30, 87, 98, 100, 103, 105, 111, 138 and 182). The Committee notes with regret that, with the exception of a report submitted in 2008, the Government has not submitted any reports since 2006. In its letter of 15 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office once again took the initiative of offering the Government its technical assistance through the subregional standards specialist. The Committee urges the Government to take the necessary measures without delay to submit all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Eritrea

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. Seven reports are now due (Conventions Nos 29, 87, 98, 100, 105, 111 and 138). The Committee requests the Government to take the necessary measures without delay, including having recourse to the technical assistance of the Office, with a view to submitting the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

France

Non-metropolitan territories

The Committee has been informed that the Government communicated a statement to the Director-General indicating that, in the absence of any statement to the contrary, all the Conventions ratified by France are applicable to the non-metropolitan territories within the meaning of article 35 of the Constitution. The declaration further specifies that certain territories will no longer henceforth be considered as non-metropolitan territories as they will form part of the metropolitan territory of France. The Government has been invited to identify which territories should henceforth be considered as non-metropolitan territories within the meaning of the Constitution of the ILO. Once these clarifications have been received, the Committee will proceed at its next session to examine the reports concerning the Conventions declared applicable to the non-metropolitan territories.

Guinea

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 43 reports are now due (Conventions Nos 3, 11, 14, 16, 26, 29, 45, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 121, 122, 132, 133, 134, 135, 136, 138, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159 and 182). In its letter of 13 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office described the specific arrangements for training activities in order to respond to the needs officially reported by the Government. The Committee firmly hopes that, as soon as the national situation so permits, these activities will be carried out so that the Government is able to submit all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Guinea-Bissau

The Committee notes that, for the third consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 24 reports are now due (Conventions Nos 1, 7, 12, 14, 17, 18, 19, 27, 29, 68, 69, 73, 74, 81, 89, 91, 92, 98, 100, 105, 106, 107, 108 and 111). In its letter of 13 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office describes the practical arrangements for technical assistance activities in response to an official request made by the Government. The Government participated in a workshop on the preparation of reports for the Conventions on the abolition of child labour in November 2009, during which it reported difficulties of a linguistic nature. The Committee firmly hopes that the other activities envisaged will be carried out in the near future so that the Government can submit all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Guyana

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 26 reports are now due (Conventions Nos 12, 19, 29, 42, 81, 87, 97, 98, 100, 105, 108, 111, 129, 135, 137, 138, 140, 142, 144, 149, 150, 151, 166, 172, 175 and 182). The Office has drawn the Government's attention to this situation, in particular in its letter of 15 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009). The Committee requests the Government to take the necessary measures without delay, including having recourse to the technical assistance of the Office, with a view to submitting the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Kyrgyzstan

The Committee notes with *serious concern* that the majority of reports due on the application of ratified Conventions have not been received. A total of 22 reports are now due: the first report on Convention No. 111 (due since 1994); the first reports on Conventions Nos 17 and 184 (due since 2006); and 19 other reports (Conventions Nos 29, 78, 79, 81, 87, 95, 105, 115, 119, 120, 122, 124, 134, 138, 144, 148, 149, 154 and 159). It notes that, even though the Government has continued its efforts to submit reports this year, the Government is still confronted by a substantial backlog of reports to be sent. The Committee notes, in addition, that the Office has continued to provide technical assistance. Accordingly, as indicated in the letter of 24 July 2009 sent by the Office pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Government benefited from a training programme on the preparation of reports at the beginning of 2009 and then a training course in May 2009. Moreover, the Office has recently offered additional technical assistance. The Committee urges the Government to take the necessary measures without delay to submit all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Liberia

The Committee notes that 14 reports on the application of ratified Conventions have been received, including the first reports due since 2005. Five reports remain due: the first report on Convention No. 133 (due since 1992) and four other reports (Conventions Nos 29, 108, 113 and 114). The Government is accordingly continuing the efforts made the previous year when it recommenced the submission of reports after an interruption of eight years. The Committee welcomes the Government's commitment, which is taking the form of practical measures, to submitting the reports due with the Office's support. According to the indications provided by the Office in its letter of 13 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), this support will be continued. The Committee firmly hopes that the Government will, in accordance with its constitutional obligation, manage to submit in the near future the remaining reports due.

Sao Tome and Principe

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 18 reports are now due: the first reports on Conventions Nos 135, 138, 151, 154, 155, 182 and 184 (due since 2007) and 11 other reports (Conventions Nos 29, 81, 87, 88, 98, 100, 105, 106, 111, 144 and 159). In its letter of 15 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office noted an official request made by the Government to receive technical assistance for the preparation of reports. The Government thus participated in a workshop on the preparation of reports on the Conventions on the abolition of child labour in November 2009. Nevertheless, training designed specifically for the officials responsible for preparing reports would still be desirable. The Committee firmly hopes that it will be possible to continue providing this technical assistance and that the Government will submit all of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Seychelles

The Committee notes that the reports due on the application of ratified Conventions have not been received. A total of 17 reports are now due: the first reports on Conventions Nos 73, 144, 147, 152, 161 and 180 (due since 2007) and 11 other reports (Conventions Nos 2, 8, 22, 29, 81, 105, 138, 148, 151, 155 and 182). The efforts made to submit a number of reports on the application of ratified Conventions in 2008 have not been followed up this year. In its letter of 24 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office offered technical assistance to the Government in response to an official request made by the latter. The Committee firmly hopes that the Office will be in a position to provide this assistance in the near future so as to enable the Government to submit all the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Sierra Leone

The Committee notes with *serious concern* that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received. A total of 23 reports are now due (Conventions Nos 8, 17, 19, 26, 29, 32, 45, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126 and 144). It notes that, according to the letter of 13 July 2009 sent by the Office pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the technical assistance that was envisaged in 2009 has been put off until 2010. The Committee firmly hopes that the Office will be in a position to provide this assistance in the very near future so as to enable the Government to submit in the near future all of the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Somalia

The Committee notes with *serious concern* that, for the fourth consecutive year, the reports due on the application of ratified Conventions have not been received. Nine reports are now due (Conventions Nos 17, 19, 29, 45, 84, 94, 95, 105 and 111). As soon as the national situation so permits, the Committee hopes that the Office, as it indicated in its letter of 24 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), will be in a position to provide all the necessary assistance so that the Government can submit the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

United Republic of Tanzania

Tanganyika

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. Four reports are now due (Conventions Nos 45, 81, 88 and 101).

Zanzibar

The Committee notes that the only report due on the application of Convention No. 97 has not been received for the third consecutive year. According to the letter of 24 July 2009 sent by the Office pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), an official request has been made to receive technical assistance.

The Committee firmly hopes that the Office will be in a position to provide this assistance in the very near future and to extend it to all the reports that are still due, so as to enable the Government to submit all the reports on the application of ratified Conventions in the near future, in accordance with its constitutional obligation.

Turkmenistan

The Committee notes with *serious concern* that, for the 11th consecutive year, the six reports due on the application of ratified Conventions have not been received. As it did in its 2008 observation, the Committee wishes to express particular concern. On the one hand, the reports in question are all first reports due since 1999 on the application of fundamental Conventions (Nos 29, 87, 98, 100, 105 and 111) and, on the other, since the country became a Member of the Organization, it has not provided any information on the application of the Conventions that it has itself ratified. In its letter of 24 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office once again drew the Government's attention to this situation and proposed the organization of a technical assistance mission to examine all the matters related to international labour standards. On the occasion of a mission in November 2009, the Office received assurances from the Government that it would work towards resolving the difficulties related to the preparation of reports, which are mainly of an institutional nature, and that the Government wished to receive further training in this respect. The Committee firmly hopes that the Government will take the necessary measures without delay for the preparation and submission of the reports due.

United Kingdom

British Virgin Islands

The Committee notes that, for the third consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received. The Committee hopes that the technical assistance provided last year will be continued in the very near future so that the 11 reports that are now due can be submitted soon (Conventions Nos 10, 14, 26, 29, 59, 82, 87, 94, 97, 98 and 105).

Falkland Islands (Malvinas)

The Committee notes that, for the third consecutive year, the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been received. The Committee hopes that appropriate measures will be taken so that the ten reports that are now due will be submitted soon (Conventions Nos 10, 14, 29, 32, 45, 59, 82, 87, 98 and 105).

Gibraltar

The Committee notes that the measures taken in 2008 for the submission of certain of the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been followed up this year, as none of the reports have been received this year. The Committee hopes that appropriate measures will be taken so that the 12 reports that are now due will be submitted soon (Conventions Nos 2, 29, 45, 59, 81, 82, 98, 100, 105, 135, 142 and 151).

Montserrat

The Committee notes that the measures adopted in 2008 for the submission of the great majority of the reports due on the application of the Conventions declared applicable to this non-metropolitan territory have not been followed up this year, as none of the reports have been received. This non-metropolitan territory benefited in 2008 from the technical assistance of the Office, and then from the assistance of a consultant to prepare all the reports. The Committee hopes that the technical assistance provided last year will be continued in the near future so that the four reports that are now due are submitted soon (Conventions Nos 29, 82, 85 and 105).

St Helena

The Committee notes that the measures taken in 2008 for the submission of certain reports due on the application of Conventions declared applicable to this non-metropolitan territory have not been followed up this year, as none of the reports have been received. The Committee hopes that appropriate measures will be taken so that the 18 reports that are now due will be submitted soon (Conventions Nos 8, 10, 11, 12, 14, 16, 17, 19, 29, 58, 59, 63, 82, 85, 105, 108, 150 and 151).

The Committee notes the statement by the Government representative to the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), recalling that the difficulties relating to the submission of reports in certain non-metropolitan territories referred to above were due to a lack of resources. The Committee noted in its 2008 observation that the Government and the Office had joined efforts to provide support to certain non-metropolitan territories. This support made it possible to reduce the number of reports due in certain cases, and even to make up the backlog fully in two cases. Under these circumstances, the Committee once again calls for these efforts to be continued and extended to all the territories that need them and for appropriate measures to be identified to make it possible for the Government to submit regularly all the reports due on the application of the Conventions declared applicable to these territories, in accordance with its constitutional obligation.

Vanuatu

The Committee notes that, for the second consecutive year, the reports due on the application of ratified Conventions have not been received. These reports are all first reports due since 2008 on Conventions Nos 29, 87, 98, 100, 105, 111 and 182. In its letter of 21 July 2009 pursuant to the conclusions adopted by the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009), the Office took the initiative of offering the Government its technical assistance. The Committee requests the Government to take the necessary measures without delay, including through recourse to the Office's assistance, with a view to submitting the reports due on the application of ratified Conventions, in accordance with its constitutional obligation.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Algeria, Belize, Botswana, Bulgaria, Burkina Faso, Cambodia, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Ethiopia, France, Gambia, Georgia, Islamic Republic of Iran, Ireland, Kiribati, Lesotho, Liberia, Libyan Arab Jamahiriya, Luxembourg, Malta, Nigeria, Norway, Pakistan, Papua New Guinea, Rwanda, San Marino, Senegal, Slovakia, Solomon Islands, South Africa, Sudan, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Uzbekistan, Zambia, Zimbabwe.*

Freedom of association, collective bargaining, and industrial relations

Albania

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

The Committee notes the comments of the Confederation of Trade Unions of Albania (CTUA) concerning the Government's last report, and the comments made by the International Trade Union Confederation (ITUC) on matters already examined by the Committee in previous comments. The Committee notes that, according to the CTUA, it is only possible to call a strike after the completion of mediation and conciliation procedures and that, of the approximately 30 cases submitted by the union for mediation, only eight, all in the energy sector, have been examined over the past two years. The Committee recalls that while the requirement of the exhaustion of remedies before a strike is compatible in spirit with the principles of freedom of association, the procedures should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 171). ***The Committee requests the Government to provide its observations in reply to the comments of the CTUA, and to provide further information in its next report on the mediation and conciliation procedures required prior to calling a strike, including the number of appeals lodged and examined.***

Article 3 of the Convention. Right to strike. The Committee recalls that for many years it has been commenting on the need to ensure that public servants who do not exercise authority in the name of the State are able to exercise the right to strike. The Committee recalls that, in a previous report in 2007, the Government indicated that it envisaged amending the Law on the conditions of service of civil employees so as to authorize them to call a strike, subject to a minimum service requirement. The Committee notes that the Government's latest report no longer refers to the amendment of the Law on the conditions of service of civil employees with a view to recognizing their right to strike. ***The Committee is bound to express the firm hope that the Government will take the necessary measures without delay to amend the Law on the conditions of service of civil employees so as to allow public servants who do not exercise authority in the name of the State to exercise the right to strike, and that it will provide a copy of the relevant text when it has been adopted.***

In its previous observation, the Committee requested the Government to indicate the measures taken to amend section 197/7(4) of the Labour Code, under the terms of which a sympathy strike is lawful if it is staged in support of a lawful strike against an employer who is actively supported by the employer of the sympathy strikers. The Committee recalled that workers should be able to stage sympathy strikes provided that the initial strike that they are supporting is itself lawful. The Committee notes the Government's indication in its report that it is considering the amendment of section 197/7(4) in accordance with the principles recalled above. ***The Committee trusts that the Government's next report will contain information on the amendment of section 197/7(4) of the Labour Code to bring it into conformity with the principles of freedom of association.***

Finally, the Committee previously requested the Government to clarify the meaning of the term "extraordinary situation" in which a strike may be suspended, under the terms of section 197/4 of the Labour Code. The Committee notes that, according to the Government, the expression "extraordinary situation" set out in section 197/4 of the Labour Code corresponds to a state of emergency decreed by the National Assembly under the terms of the National Constitution.

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

The Committee takes note of the comments made by the Confederation of Trade Unions of Albania (CTUA) and the International Trade Union Confederation (ITUC) in August 2009.

Article 1 of the Convention. Protection of workers against acts of anti-union discrimination. In its previous comments, the Committee asked the Government to provide statistics of the number of complaints of anti-union discrimination heard in the past five years. The Committee notes the information to the effect that eight cases of anti-union discrimination were brought to the attention of the Ministry of Labour and were settled by conciliation except for one case which was referred to the courts of law. The Committee observes that the CTUA expresses regret that the law does not allow workers to obtain compensation of up to one year's pay rather than reinstatement in their jobs. The CTUA further indicates that anti-union dismissals are now affecting those close to trade unionists (spouses, relatives). ***The Committee reminds the Government that the Convention prescribes adequate protection against acts of anti-union discrimination and invites the Government to join forces with the social partners to examine the matter of remedies for anti-union dismissals, it being understood that systems providing for preventive measures (such as prior authorization), sufficiently dissuasive sanctions or reinstatement, are deemed to be compatible with the Convention. The Committee requests the Government to indicate all progress made in this regard.***

In its previous comments, the Committee asked the Government to indicate the measures taken to establish the arbitration tribunal and the labour court envisaged in the 2003 Labour Code. The Committee notes with regret that according to the Government, although the legal framework exists and efforts have been made by the Ministry of Labour, Social Affairs and Equal Opportunities, these bodies have still not been established. The Committee notes that in their respective communications, the CTUA and the ITUC regret this situation. ***Recalling once again that general legal provisions prohibiting acts of anti-union discrimination are not enough unless they are accompanied by procedures ensuring effective protection against such acts, the Committee urges the Government to take all necessary steps without delay to establish the arbitration tribunal and labour court provided for in the Labour Code so as to provide effective and rapid procedures affording protection against acts of anti-union discrimination.***

Article 4. Promotion of collective bargaining. The Committee noted previously that under section 161 of the Labour Code, collective agreements may be concluded at enterprise or branch level and requested the Government to indicate whether collective bargaining is possible at national level. The Committee notes that in referring to collective bargaining at national level, the Government reiterates that no collective agreements have, as yet, been concluded, other than one memorandum of understanding concluded in 2003–04 with the CTUA, the Independent Trade Union of Miners and the Union of Independent Trade Unions of Albania (BSPSH). ***Noting that the National Labour Council resumed activities in 2006, the Committee asks the Government to submit to the Council the matter of promoting collective bargaining in the public and private sectors, including at national level, and to supply information on developments in collective bargaining in practice, including the negotiation of the collective agreements in force, at all levels, and the number of workers covered by them.***

The Committee reminds the Government that it may seek technical assistance from the Office in dealing with all the points raised.

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1999)

The Committee notes the comments of the Confederation of Trade Unions of Albania (CTUA) dated 31 August 2007 and 26 August 2009 on the application of the Convention. The Committee also notes the Government's observations, dated 3 October 2007 on the earlier comments of the CTUA. ***The Committee requests the Government to provide in its next report comments on the most recent observations by the CTUA.***

Articles 1 and 2 of the Convention. The Committee had noted in its previous comments that, according to the CTUA, Law No. 8549 of 11 November 1999 on the Status of Civil Servants, which guarantees to civil servants as defined in section 2(1), the right to form and join labour unions and take part in decision-making processes relating to their working conditions, is not applicable to employees in the customs, taxation and local governance offices (prefectures). The Committee notes that the Government indicates in its report that section 20 of the Law on the Statute of Civil Servants, all civil servants, including those in the areas of duties, taxes, customs and local authorities have the right to establish and join trade unions. The Committee notes that the CTUA indicates in its report that these guarantees should be supported with legal acts as regards to these workers.

The Committee notes with **concern** the Government's statement that no public workers' trade unions have yet been established.

Article 4. Protection against anti-union discrimination of public workers. The Committee noted in previous comments that by virtue of section 4 of Law No. 7961, dated 7 December 1995, the Code of Labour of the Republic of Albania, protection against anti-union discrimination granted by sections 10 and 146(1)(e) of the Code is applicable to civil servants covered by Law No. 8549. The Committee previously requested the Government to indicate in its report whether all categories of employees in the public sector and all civil servants enjoy such protection from anti-union discrimination. The Committee notes that the Government indicates that public workers covered by the Labour Code are entitled to establish and become members of trade unions as guaranteed by article 50 of the Constitution and sections 177–179 of the Labour Code. Article 10 of the Labour Code, in addition, guarantees protection against discrimination of workers with regard to employment or occupation because of their membership, or lack of membership, in a trade union. The Government also indicates that civil servants, under section 20(d) and (dh) of the Law on the Status of the Civil Servants and section 4 of the Labour Code, are entitled to organize and participate in decision-making processes with regard to working conditions. ***The Committee requests the Government to keep it informed of any progress in this regard.***

Article 5. Protection against acts of interference. In previous comments, the Committee noted that articles 184–186 of the Labour Code prohibit any acts of interference by state bodies and employers in the establishment, functioning or administration of employees' organizations and article 202 sanctions violations of these provisions. The Committee also noted however that the rules on labour union activities of civil servants have not been formulated yet as required under section 20(d) of Law No. 8549 on the Status of Civil Servants. The Committee notes that the Government indicates that no regulations on the functioning of the civil workers' trade unions have been set, but that section 4 of the Labour Code and section 1(3) of the Law on the Status of Civil Servants do apply to civil servants. ***The Committee therefore once again requests the Government to indicate the measures taken or envisaged to formulate the said rules under sections 184–186 of the Labour Code, and to transmit a copy of the rules, when adopted.***

Article 6. Facilities for workers' representatives. The Committee previously noted that section 181(7) of the Labour Code requires employers to create all the necessary conditions and facilities for the elected representatives of the organizations of employees to normally exercise their functions, which are defined in the collective contract. **Noting that the Government indicates that, under section 4 of the Labour Code, trade union representatives are entitled to all necessary facilities provided for in section 181(7), the Committee once again requests the Government to indicate in its next report whether the civil servants covered by the Law on the Status of Civil Servants have entered into collective contracts defining the necessary conditions and facilities to be extended to the elected representatives of their organizations. The Committee also once again requests the Government to indicate whether, in practice, representatives of recognized organizations of civil servants and public employees are afforded the facilities necessary to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work.**

Article 7. Participation in the conditions of employment determinations. The Committee noted in its previous comments that section 20(dh) of the Law on the Status of Civil Servants guarantees to civil servants the right to take part through labour unions or representatives, in decision-making processes relating to working conditions. Article 4(3) of the Law on the Status of Civil Servants provides that the Council of Ministers shall issue instructions on the negotiation of working conditions with labour unions or representatives in the institutions of the central administration subordinated to it. The Committee notes that the Government indicates that regulations as regards to the functioning of the civil servants' trade union activities have not yet been determined, though public employees may establish organizations as provided for in Article 4 of the Labour Code. **The Committee therefore once again requests the Government to indicate in its next report the measures taken or envisaged to issue the requisite instructions under section 4(3) of the Law on the Status of Civil Servants and to transmit a copy of the instructions, when issued.**

Article 8. The Committee had indicated in several of its previous comments that, according to the CTUA, the mediation, conciliation and arbitration procedures provided for in sections 188–196 of the Labour Code for the resolution of collective disputes have never functioned normally and that boards of conciliation are not always set up in order to settle labour disputes. The Committee notes that the Government indicates in its report that according to the Labour Code, sections 189–196, employment disagreements are solved through the means defined in the collective agreement or through mediation, Reconciliation Offices, Arbitration Court or the courts.

Algeria

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

The Committee notes the observations of 26 August 2009 by the International Trade Union Confederation (ITUC), which concern matters already examined by the Committee and report obstruction of unionization in the public sector and violent police repression of protest action by unions. **The Committee requests the Government to send its observations on the ITUC's communication of 2009 and to indicate any judicial decisions handed down in cases involving teacher trade unionists cited by name by the ITUC in its observations of 2007, particularly members of the National Council of Higher Education Teachers (CNES) and the Inter-Union Education Coordination (CISE), who have reportedly been prosecuted for taking strike action.**

Article 2 of the Convention. Right to establish trade unions. The Committee noted previously that section 6 of Act No. 90-14 of 2 June 1990 restricts the right to establish a trade union organization to persons who are Algerian by birth or who have had Algerian nationality for at least ten years. The Committee recalled that the right to organize must be guaranteed to workers and employers without distinction or discrimination whatsoever, with the exception of those categories listed in *Article 9* of the Convention, and that foreign workers too must have the right to establish organizations. In its report, the Government confirms that under Act No. 90-14, only workers who have been Algerian nationals for at least ten years may be founder members of a trade union organization and that once such an organization is established, any worker, without distinction as to nationality, is free to join it. The Committee notes with **regret** that no measures have been taken in response to its previous request to align Act No. 90-14 with the provisions of the Convention. **The Committee once again urges the Government to take the necessary steps to amend section 6 of Act No. 90-14 so as to grant all workers, without distinction as to nationality, the right to establish a trade union organization.**

Articles 2 and 5. Right of workers to establish and join organizations of their own choosing without previous authorization, and to establish and join federations and confederations. In its previous comments, the Committee asked the Government to take specific steps to amend the legislative provisions that prevent workers' organizations, irrespective of the sector to which they belong, from forming federations and confederations of their own choosing (sections 2 and 4 of Act No. 90-14). It noted the Government's statement that it was aware of the need to clarify the working of this provision by introducing a definition of the notions of federation (or union) and confederation. The Committee notes that, in its last report, the Government states that section 4 of Act No. 90-14 will be made clearer as a result of discussions now under way on the draft Labour Code. **The Committee urges the Government to report on any developments regarding the amendment of section 4 of Act No. 90-14 so as to remove all obstacles preventing workers, regardless of the sector to which they belong, from establishing federations and confederations of their own choosing.**

Article 3. Right of organizations to carry on their activities in full freedom and formulate their programmes. In its previous comments, the Committee noted that section 87bis of the Penal Code defines as subversive any act directed against the stability and normal functioning of institutions through any action intended to: (i) obstruct the operation of establishments providing public services; or (ii) impede traffic or the freedom of movement in public places or thoroughfares, subject to sanctions that include even the death penalty where the offence is punishable by life imprisonment (section 47bis(1)). The Committee recalled that the use of very general wording in certain provisions runs the risk of infringing on the right of workers' organizations to organize their activities and formulate their programmes in defence of the interests of their members, particularly through strike action. It requested the Government to take specific steps to ensure that this provision of the Penal Code may on no account be applied to workers who have peacefully exercised the right to strike. The Committee notes the Government's statement that recourse to strike action, besides being guaranteed by the National Constitution, is covered solely by Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes, and that section 87bis of the Penal Code is unrelated to the exercise of trade union rights. The Government adds that there are still strike movements in the country without any workers being charged under section 87bis of the Penal Code. ***The Committee takes note of these clarifications and trusts that the Government will continue to ensure that the provisions of section 87bis of the Penal Code are not invoked against workers who have exercised peacefully their right to strike.***

The Committee commented previously on section 43 of Act No. 90-02 under which strikes are forbidden not only in essential services the interruption of which would endanger the life, personal safety or health of the population, but also when the strike "is liable to give rise to a serious economic crisis". Noting the Government's reply that this expression, set forth in section 43, is similar to the expression used by the Committee, which refers to "strikes which, by reason of their scope and duration, could lead to a national crisis", the Committee asked the Government to take steps to amend the legislation or to adopt a regulatory text that would clarify this point along the lines indicated by the Government. The Committee observes that the Government's last report contains no information on measures taken to this end. ***Consequently, the Committee again asks the Government to adopt a text amending section 43 of Act No. 90-02 or a regulatory text stating expressly that strikes are forbidden in essential services the interruption of which may endanger the life, personal safety or health of the population, or where the strike, by reason of its scope and duration, could lead to a serious national crisis.***

Lastly, the Committee asked the Government to amend section 48 of Act No. 90-02 which empowers the Minister or the competent authority, where the strike persists or if mediation fails, to refer the dispute to the National Arbitration Commission, after consulting the employer and the workers' representatives. The Committee again recalls that recourse to arbitration to end a collective dispute should be possible only at the request of both parties and/or in the event of a strike in essential services in the strict sense of the term, or in the case of a strike the extent and duration of which are likely to give rise to a serious national crisis, or in the case of disputes in the public service involving public servants exercising authority in the name of the State. The Committee notes that the Government's last report contains no information on measures taken, in response to the Committee's request, to amend section 48 of Act No. 90-02. ***The Committee urges the Government to take measures without delay to ensure that the National Arbitration Commission may be seized only of the cases recalled above, in order to fully safeguard the right of workers' organizations to organize their activities and formulate their programmes without interference by the public authority, in accordance with Article 3 of the Convention.***

Angola

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

The Committee takes note of the comments by the International Trade Union Confederation (ITUC) on the application of the Convention.

The Committee recalls that for several years it has been asking the Government:

- to amend sections 20 and 28 of Act No. 20-A/92d on the right to collective bargaining which provide that collective labour disputes in public utility enterprises may be settled through compulsory arbitration by the Ministry of Labour, Public Administration and Social Security after the parties have been heard. The Committee noted that the list of public utility activities (section 1.3) is much broader than the concept of 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). ***While noting that the Government once again indicates that the bills to amend Act No. 20-A/92 on collective bargaining, Act No. 21-C/92 on trade unions and Act No. 23/91 on strikes have been submitted to the competent authorities for approval and that, during this process it will be possible for sections 20 and 28 of Act No. 20-A/92 to be revised, the Committee expresses the firm hope that these bills will shortly be approved by the National Assembly and that they will be fully consistent with the Convention so that compulsory arbitration may be imposed only in cases involving essential services in the strict sense of the term. The Committee reminds the Government that it may seek technical assistance from the Office;***

- to indicate whether the legislation guarantees the right to collective bargaining of public employees who are not engaged in the administration of the State and, if so, to indicate the relevant provisions. In its comments, the ITUC asserts that collective bargaining is prohibited in the public service. The Committee also asked the Government to specify which public services are not organized in the form of an establishment whose employees are excluded from the scope of Act No. 20-A/92 by virtue of section 2 of the Act. The Committee notes with *regret* that the Government's reply contains no information on the matter. ***The Committee recalls that according to Article 4 of the Convention, all public servants other than those engaged in the administration of the State should enjoy the right to collective bargaining, and again asks the Government to send its observations and, where this has not been done, provide its workers with the rights and safeguards laid down in the Convention. It also asks the Government to send information on the collective negotiation of the wages of public servants who are not engaged in the administration of the State.***

Antigua and Barbuda

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

Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes. Compulsory arbitration. In its previous comments, the Committee had requested the Government to take the necessary steps to amend section 19 of the Industrial Court Act 1976, which permits the referral of a dispute to the court by the minister or at the request of one party with the consequent effect of prohibiting strike action. The Committee notes that the Government states in its report that it has no intention to change its position at this time as regards the power of the minister to refer a dispute to binding arbitration resulting in a ban on strike action. In this regard, the Committee recalls that compulsory arbitration resulting in a ban on strike action should be limited to strikes in essential services in the strict sense of the term, to public servants exercising authority in the name of the State or to cases of acute national crisis, or at the request of both parties. ***The Committee requests the Government to take the necessary measures to amend section 19 of the Industrial Court Act 1976 taking into account the abovementioned principles.***

Prohibition of strikes. In its previous comments, the Committee had requested the Government to take the necessary steps to amend section 21 of the Industrial Court Act 1976 which permits injunctions against legal strikes when the national interest is threatened or affected. The Committee notes the Government's indication that a concerted effort will be made to bring the Industrial Court Act 1976 into conformity with the Convention. ***In these circumstances, the Committee hopes that measures will be taken to amend section 21 of the Industrial Court Act 1976 and requests the Government to communicate any developments in this regard.***

Essential services. The Committee had also requested the Government to take the necessary steps to amend the overly broad list of essential services in the Labour Code, in particular with respect to the government printing office and the port authority. In this regard, it notes the comments of the Government that the government printing office could be excluded from the list of essential services. It further notes that the Government considers it imperative to note that, as Antigua and Barbuda is a relatively small country and what works in other industrial countries cannot be expected to work there, an extended strike at the port authority could have damaging consequences for the economy as this is the major trans-shipment point for goods into the country. According to the Government, strikes at the port should not be banned, but should be controlled. The Committee notes that the Government adds that it has amended the list of essential services in the Labour Code. Recalling that the implementation of a minimum service for workers at the port authority would be in conformity with the Convention, the Committee appreciates the Government's comments in this regard. ***The Committee requests the Government to provide, with its next report, details of any legislative amendment to the list of essential services so as to eliminate from the list the government printing office and the port authority, which are not essential services in the strict sense of the word, and to transmit a copy of the current list of essential services.***

Sanctions. In its previous comments, the Committee had requested the Government to take the necessary steps to amend section 20(3), (4) and (7) of the Industrial Court Act 1976 which provide for penalties of imprisonment ranging from three months to two years for participating in strikes or lock-outs declared unlawful under that section. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. The Committee notes the Government's indication that a concerted effort will be made to bring the Industrial Court Act 1976 into conformity with the Convention. ***The Committee hopes that that measures will be taken to amend section 20(3), (4) and (7) of the Industrial Court Act 1976, taking into account the abovementioned principles.***

Argentina

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

The Committee takes note of the Government's reply to the comments of 2006 and 2007 by the Central of Argentine Workers (CTA), those of 2007 by the International Trade Union Confederation (ITUC) and to comments made in 2007 by the Federation of Employees of the Government of the Autonomous City of Buenos Aires. It also takes note of the comments of 31 August 2008 and 31 August 2009 by the CTA and the comments of 26 August 2009 by the ITUC, which refer largely to legislative matters already highlighted by the Committee. It observes that in particular the CTA's comments refer as well to numerous allegations of violations of trade union rights. It notes the Government's statement that it has already commented on some of the CTA's allegations in the context of a number of cases examined by the Committee on Freedom of Association, and that: (1) most of the issues raised concern the protection of trade union representatives against acts of persecution and unfair practices; (2) such practices are outside the competence of the administrative authority, with the ordinary courts having sole jurisdiction in such matters; (3) in registering communications from trade unions, the National Directorate of Trade Union Associations enters only an administrative file number and, since no such numbers are indicated in the comments, it is impossible to identify the incidents referred to; and (4) information has been requested from the regional delegations, and for some of its allegations the CTA should be asked to specify the incidents and the administrative and/or judicial proceedings. The Committee observes that the trade union organization for the most part refers only briefly to the alleged violations and that the list of cases is fairly long. ***The Committee invites the Government to take the necessary steps to set up a working group with the CTA in order to examine the issues raised, other than those dealt with in cases that have been, or are being, heard by the Committee on Freedom of Association.***

Application by the CTA for trade union status

The Committee points out that since 2005 it has been noting in its observations that the CTA's application for trade union status (filed in August 2004) is pending. On several occasions the Committee, like the Conference Committee on the Application of Standards and the Committee on Freedom of Association, has urged the Government to secure a decision on this matter without delay. In its comments of 2009, the CTA affirms that there has so far been no decision on its application for trade union status. The Committee notes that the Government states in its report that: (1) the file is active and formalities are ongoing without any delays; (2) the Government is complying with the procedure laid down in the legislation and the competent authority has consistently followed the proceedings and guarantees observance of the rights laid down in the National Constitution and ILO Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); (3) in proceedings involving first-, second- and third-level organizations that have conflicting subjective rights, the fact of complying with procedure and ensuring that all concerned have their say necessarily implies a period of time commensurate with the case itself; (4) it must also be remembered that Argentina is a country with much trade union activity and many trade unions; and (5) formalities are still moving forward with the receipt and analysis of submissions from the first-level unions that belong to the federations making up the Central of Argentine Workers (CTA), and the receipt of submissions from unions belonging to second-level associations affiliated to the General Confederation of Labour (CGT) in order to verify, in the context of the ongoing comparison of representativeness, the number of dues-paying members in each of the first-level organizations; since 5 February 2009, the file has been under examination by the Ministry of Labour's Directorate General of Legal Affairs. While noting the Government's information regarding the reasons for the delay, the Committee once again ***regrets*** the length of time that has elapsed – more than five years – without any decision from the administrative authority on the CTA's application for trade union status. ***In these circumstances, given the adverse effects of this situation for the CTA, the Committee again urges the Government to ensure that a decision is reached without delay and to provide information on any developments in this regard.***

Ruling by the Supreme Court of Justice of Argentina

The Committee notes the ruling of 11 November 2008 by the Supreme Court of Justice of Argentina in *Association of State Workers v. the Ministry of Labour* regarding Act on Trade Union Associations No. 23551 of 1998 in which the Court found that section 41(a) of Act No. 23551 breaches the right to freedom of association provided for both in article 14bis of the National Constitution and in provisions based on international law, in that it requires "the staff representatives" and the members of "works committees and similar bodies" provided for in section 40 of Act No. 23551 to be members of "the corresponding association with trade union status and to be elected in a ballot called by the latter". The Court found that this restriction undermines the freedom of association not only of the workers taken individually since it forces them, albeit indirectly, to join the association with trade union status despite the existence of another union which is merely registered, but also that of associations which are merely registered by preventing them from carrying on their activities in pursuit of one of the most fundamental aspects and purposes of their existence. The ruling states that the restriction goes well beyond the established bounds within which the award of an exclusive entitlement to the most representative unions might be warranted. The Committee observes that the ruling party endeavours to avoid

discrimination between trade unions. *In these circumstances, it requests the Government to indicate whether section 41(a) of Act No. 23551 has been officially repealed or amended.*

Act on Trade Union Associations and its implementing decree

The Committee points out that it has been referring for many years in its comments to certain provisions of Act on Trade Union Associations No. 23551 and its enabling regulations issued by Decree No. 467/88. The Committee takes note of the Government's response to the CTA's comments on legislative issues, and of the report, in which it refers to statements it has made in the past, namely: (1) the existing legal framework and national practice show that freedom of association is fully in force in the country; (2) that the provisions of the Act draw on the best principles of social justice, since account was taken of the interpretations in the ILO of the scope of the concept of freedom of association, and the technical assistance from the Office in 1984; (3) that there are currently more than 2,900 first-, second- and third-level trade union associations (more than 2,820 are first-level organizations, of which 1,396 have trade union status; there are 101 federations, 83 of which have trade union status and 16 third-level associations of which seven have trade union status), i.e. one trade union organization for every 3,500 wage workers, which demonstrates that freedom of association is not only a right but is also widely and fully exercised. With regard to the specific provisions addressed by the Committee, the Government reiterates its past observations. The Government also states that pursuant to Resolution No. 502 of 1 July 2005 issued by the Ministry of Labour, Employment and Social Security, a group of experts on labour relations was set up to write a report identifying the main problems faced by the system of labour relations in Argentina. On the matter of Act No. 23551, while recognizing the need to amend some of its provisions, the group of experts found generally that the Act contains a set of precepts regarding the protection of freedom of association in connection with acts by employers and the State that are to be regarded as appropriate and sufficient. The group further indicated that any change seeking to follow the guidelines of the Committee of Experts should be approached with caution and common sense to avoid introducing into the system of labour relations new factors that further complicate its functioning. The Government states that the Ministry of Labour, Employment and Social Security has decided to continue to work with the social partners in working out the necessary agreements to ensure that any changes proposed in the trade union system of Argentina are truly effective.

In these circumstances, while noting the Government's observations and welcoming the initiative to create a group of experts, the Committee is bound to reiterate its previous comments on the following provisions:

Trade union status

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

Benefits which derive from trade union status

- Section 38 of the Act, under which check-off of trade union dues is allowed only for associations with trade union status, and not associations that are merely registered. The Committee points out that, as the Supreme Court of Justice emphasized in the abovementioned ruling, the "most representative" status should not imply privileges other than priority of representation in collective bargaining, in consultations with the authorities and in the appointment of delegates to international bodies. Consequently, the Committee considers that this provision adversely affects and discriminates unduly against organizations that are merely registered.
- Sections 48 and 52 of the Act give special protection (trade union immunity) only to representatives of organizations that have trade union status. The Committee considers that sections 48 and 52 provide preferential treatment for representatives of organizations with trade union status in the event of acts of anti-union discrimination, and that this exceeds the privileges that may be granted to the most representative organizations, by virtue of the principle set out in the previous paragraph. *The Committee requests the Government to indicate whether the ruling of 11 November 2008 handed down by the Supreme Court of Justice has any implications for the application of these provisions.*

The Committee points out that it has been making these comments for many years. It recalls that the Conference Committee on the Application of Standards asked the Government in 2007 to join forces with the social partners in order to formulate, with ILO assistance, draft legislation to give full effect to the Convention. It notes with *regret* that no steps have been taken in this regard. ***The Committee urges the Government to adopt the necessary measures without delay to secure the legislative amendments requested, and asks the Government to provide information in its next report in this regard.***

Determination of minimum services

In its previous observation, the Committee noted that the CTA referred to Decree No. 272/2006 regulating section 24 of Act No. 25877 on collective labour disputes and that, specifically, it objected that, by virtue of section 2(b) of the Decree, the Guarantees Commission, which establishes minimum services and which comprises representatives of employers' and workers' organizations as well as independent members, may act only in an advisory capacity since the final decision as to essential minimum services lies with the Ministry of Labour when "the parties have come to no agreement" or "when the agreements are inadequate". The Committee requested the Government to provide information on the cases in which the Guarantees Commission has intervened regarding minimum services and, more specifically, information on the number of instances in which the administrative authority has changed the terms of the Guarantees Commission's opinion regarding minimum services. The Committee furthermore observes that in its comments of 2009 the CTA states that the Guarantees Commission has not been formed and does not intervene in disputes, and that responsibility for defining minimum service lies with the Ministry of Labour. The Committee notes the Government's statement that when the Guarantees Commission intervenes regarding minimum services, it will so inform the Committee. The Government also indicates that there is always access to a judicial body, which means that determination of minimum services can be carried out and the rights of workers can be properly protected in observance of the safeguards laid down in the Constitution. Observing the Government's indication in its report that the Guarantees Commission has not been formed or convened, the Committee emphasizes that it is important that the statutory institutions responsible for the settlement of collective disputes should function effectively. ***The Committee accordingly asks the Government to ensure without delay that the abovementioned Commission is put into operation, and to provide information in this regard in its next report.***

Finally, the Committee takes note of a recent communication from the Government in which it requests the technical assistance of the Office in the treatment of the different issues raised by the supervisory bodies concerning the legislation. The Committee appreciates this initiative and hopes that this technical assistance will take place next year.

[The Government is asked to report in detail in 2010.]

Australia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1973)

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2009, the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, the Australian Chamber of Commerce and Industry (ACCI) in a communication dated 14 October 2009 and the Australian Industry Group (AI) dated 14 October 2009 on the application of the Convention. The Committee also notes the passage of the Fair Work Act, 2009, and the creation of Fair Work Australia (FWA) to oversee the administration of the provisions of this Act. As a general consideration, the Committee notes with *interest* that the Fair Work Act was prepared in full consultation with the social partners and was aimed at resolving a number of issues that the Committee has been raising over recent years in relation to the application of the Convention.

The Committee notes with *interest* that the Government indicates that the development of the new system under the Fair Work Act benefited from a process of genuine and extensive consultation with the social partners and key stakeholders – the most comprehensive consultation process on workplace relations ever undertaken in Australia. According to the Government, this extensive consultation process ensured that all stakeholders had the opportunity for their concerns to be raised and addressed before the Bill was debated in Parliament and adopted in amended form as the Fair Work Act. The Government indicates that Australia's new system represents a significant move away from the fundamental elements of the previous Government's Work Choices regime and that the Fair Work Act has been designed to balance the needs of employees, unions and employers and to foster increased competitiveness and prosperity, at the same time as safeguarding workplace rights and guaranteeing minimum standards. The Government considers that the new legislation strikes the right balance between fairness and flexibility in the workplace to achieve the objectives of both social equity and economic modernization.

Article 3 of the Convention. The right of organizations freely to organize their activities and to formulate their programmes. The Committee recalls that it previously expressed the need to amend numerous provisions of the Workplace Relations Act, 1996 (WR Act) which lifted the protection of industrial action in support of: multiple business agreements (section 423(1)(b)(i)); "pattern bargaining" (section 439); secondary boycotts and general sympathy strikes (section 438); negotiations over "prohibited content" (sections 356 and 436 of the WR Act, in connection with the

Workplace Relations Regulations, 2006); strike pay (section 508 of the WR Act); and provisions which prohibited industrial action in case of danger to the economy (sections 430, 433 and 498 of the WR Act), through the introduction of compulsory arbitration at the initiative of the Minister (sections 500(a) and 504(3) of the WR Act). The Committee also recalls that it previously raised the need to amend provisions of the WR Act which prohibited industrial action in instances when it risked harm to the national economy and empowered the Minister to order compulsory arbitration.

The Committee notes the concerns raised by the ACTU that most of the restrictions remain in place in the Fair Work Act. In particular, sections 408–411 protect industrial action only if it is undertaken in the process of bargaining for an agreement, which would appear to effectively prohibit sympathy strikes and general secondary boycotts. The Act maintains the removal of protection of industrial action in support of multiple enterprise agreements (section 413(2)). The Committee notes that the Government indicates in its report that, under the Fair Work Act, certain categories of multiple employers with a close connection to each other are able to bargain together as single-interest employers for a single enterprise agreement with their employees. In that instance, protected industrial action is available to employers and employees. The Fair Work Act also allows voluntary multi-employer bargaining. However, employers and employees do not have access to protected industrial actions in these circumstances. In addition, the pre-existing secondary boycott arrangements, regulated by the Trade Practices Act, 1974, remain in place. ***The Committee requests the Government to review the abovementioned provisions, in the light of its previous comments, in full consultation with the social partners concerned, with a view to bringing them into full conformity with the Convention.***

Pattern bargaining remains unprotected, unless the parties are “genuinely trying to reach an agreement” (sections 409(4) and 412). Industrial action remains unprotected if it is in support of the inclusion of unlawful terms, including: to extend unfair dismissal benefits to workers not yet employed for the statutory period; to provide strike pay; to pay bargaining fees to a trade union; and to create a union right to entry for compliance purposes that are different or superior to those contained within the Act (section 409(3)). The Committee notes that the Government indicates that, under the Fair Work Act, industrial action in pursuit of an agreement that contains non-permitted matters is still protected, provided the bargaining representatives reasonably believed the claims were permitted. The Government further indicates that, under the Fair Work Act, it remains unlawful for an employer to pay, or an employee to demand or request strike pay, but that when protected industrial action is taken there will no longer be a minimum mandatory deduction of four hours’ pay. In addition, section 423 permits the suspension or termination of protected industrial action if it may cause significant economic harm. Section 424(1)(d) requires the suspension or termination of industrial action if it has threatened, is threatening or would threaten to cause significant damage to the Australian economy or an important part of it, while section 431 permits the Minister to terminate proposed industrial actions in the same circumstances. Industrial actions that are threatening to cause significant harm to a third party must also be suspended or terminated (section 426). The Government indicates that in order for the prohibition or suspension of industrial action to be ordered by the FWA, that agency must be satisfied that the action is threatening to cause significant and imminent economic harm. The Committee observes that these restrictions depend upon a complex review of conditions apparently set forth with the aim of balancing a number of concerns. ***With reference to its previous comments on these matters and recalling that the right to strike is an intrinsic corollary of the right of association protected by Convention No. 87 (see in particular the 1994 General Survey on freedom of association and collective bargaining, paragraphs 159, 160, 168 and 179), the Committee requests the Government to provide detailed information on the application of these provisions by the FWA and to continue to keep them under review with the social partners with the aim of ensuring the full application of the provisions of the Convention.***

The Committee previously noted the need to amend section 30J of the Crimes Act, 1914, which prohibits industrial action threatening trade or commerce with other countries or among states. Section 30K of that Act prohibits boycotts resulting in the obstruction or hindrance of the performance of services by the Australian Government or the transport of goods or persons in international trade. The Committee notes that the ITUC states that there have been no amendments to the Crimes Act. In addition, section 419 of the Fair Work Act, 2009, requires the FWA to suspend or terminate industrial action in non-national enterprises or by non-national employees, if the event will or would be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation. ***The Committee once again requests the Government to review the abovementioned provisions, in the light of its previous comments, in full consultation with the social partners concerned, with a view to bringing them into full conformity with the Convention and, in the meantime, to provide detailed information on any use of these provisions in practice.***

In addition, the Committee notes the concerns raised by the ACTU in relation to the potential obstacles to the effective exercise of industrial action that may be posed by the provisions concerning strike ballots. ***The Committee requests the Government to provide information on the application of those provisions in practice.***

The Committee recalls that it previously raised the need to amend the restrictive conditions set for granting a permit allowing trade union representatives to have entry to the workplace in order to meet with workers. The Committee notes that, under the Fair Work Act, a union official must hold a permit provided by the FWA in order to have the right of entry under the Fair Work Act for a certain workplace. In determining whether to grant an entry permit, the FWA will consider any matter it considers relevant, including whether the applicant has ever been convicted of violating an industrial law or convicted of a crime involving fraud, entry onto premises, or intentional use of violence or destruction of property (section 513). The Committee notes that the Government indicates that the Fair Work Act permits union officials to hold

discussions with employees who are members, or eligible to be members, of a union and to enter workplaces to investigate suspected breaches of the Act or an instrument made under the Act. ***The Committee requests the Government to provide information on the practical application of this provision, including statistics relating thereto.***

Building industry. The Committee recalls from previous comments that: (i) the Building and Construction Industry Improvement (BCII) Act of 2005 renders virtually all forms of industrial action in the building and industrial sector unlawful; (ii) introduces severe financial penalties, injunctions and actions for uncapped damages in case of “unlawful” industrial action; (iii) gives the enforcement agency known as the Australian Building and Construction Commission (ABCC) wide-ranging coercive powers akin to an agency charged with investigating criminal matters; (iv) grants the capacity to the Minister for Workplace Relations to regulate industrial affairs in the building and construction industry by ministerial decree through a device referred to as a building code which is inconsistent with the Convention on several points and is implicitly “enforced” through an “accreditation scheme” for contractors who wish to enter into contracts with the Commonwealth. The Committee previously requested the Government to indicate whether the proposed bill would: (i) amend sections 36, 37 and 38 of the BCII Act, 2005, which refer to “unlawful industrial action” (implying not simply liability in tort vis-à-vis the employer, but a wider responsibility towards third parties and an outright prohibition of industrial action); (ii) amend sections 39, 40 and 48–50 of the BCII Act so as to eliminate any excessive impediments, penalties and sanctions against industrial action in the building and construction industry; (iii) introduce sufficient safeguards into the BCII Act so as to ensure that the functioning of the ABCC and inspectors does not lead to interference in the internal affairs of trade unions – especially provisions on the possibility of lodging an appeal before the courts against the ABCC’s notices prior to the handing over of documents (sections 52, 53, 55, 56 and 59 of the BCII Act); and (iv) amend section 52(6) of the BCII Act which enables the ABCC to impose a penalty of six months’ imprisonment for failure to comply with a notice to produce documents or give information so as to ensure that penalties are proportional to the gravity of any offence.

The Committee notes that the Government indicates that the Office of the ABCC will be retained until 31 January 2010 and that, after that date, subject to the passage of legislation, it will be replaced with a new agency, the Office of the Fair Work Building Industry Inspectorate. In addition, based on an independent report the Government commissioned and consultation with industry stakeholders, the Government developed and introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill, 2009, into Parliament on 17 June 2009. According to the ACTU, that Bill maintains the coercive powers of the ABCC, while allowing trade unions to petition for the coercive powers to be switched off. This Bill: (i) repeals sections 36, 37 and 38 of the BCII Act; (ii) repeals sections 39 and 40 of the BCII Act and repeals and substitutes sections 48–50 with the effect that the provisions of the Fair Work Act apply to the building and construction industry in the same way as they do to all other industries; (iii) introduces numerous safeguards and limits the coercive powers to no longer allow investigation of matters relating to compliance with laws governing the registration of the internal affairs of unions; and (iv) maintains the current limitation on the ABCC’s power to impose any penalty under section 52(6) of the BCII Act, which requires the ABCC to refer the matter to the Office of the Commonwealth Director of Public Prosecutions who determines whether to prosecute. ***The Committee requests the Government to indicate any progress made concerning the adoption of the Transition to Fair Work Bill. The Committee also once again requests the Government to indicate any measures taken to instruct the ABCC to refrain from imposing penalties or commencing legal proceedings under the ABCC while the review is under way.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1973)***

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) in a communication dated 31 August 2009, the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, the Australian Chamber of Commerce and Industry (ACCI) in a communication dated 14 October 2009 and the Australian Industry Group (AI) dated 14 October 2009 on the application of the Convention. The Committee also notes the passage of the Fair Work Act, 2009, and the creation of Fair Work Australia (FWA) to oversee the administration of the provisions of this Act. As a general consideration, the Committee notes with *interest* that the Fair Work Act was prepared in full consultation with the social partners and was aimed at resolving a number of issues that the Committee has been raising over the years in relation to the application of the Convention. The Committee also notes the Government’s statement that it is firmly committed to the ILO and to the implementation of ratified Conventions.

In particular, the Committee notes with *interest* that collective bargaining at the enterprise level is at the heart of the Government’s new workplace relations system. Statutory individual agreements cannot be made under the new system. There are provisions for the phasing out of existing statutory individual agreements – either Australian Workplace Agreements or Individuals Transitional Employment Agreements – which will continue to apply until they are terminated. This is in line with the Government’s prior policy commitments and honours commitments that were lawfully made when they were entered into. In relation to the building and construction industry and the Building and Construction Industry Improvement (BCII) Act, a comprehensive consultation process into the regulation of the industry was conducted by the Hon. Murray Wilcox, QC, and further consultation with stakeholders followed receipt of Mr Wilcox’s report by the Government in March 2009. The Government has accepted Mr Wilcox’s recommendations and has introduced legislation into the Parliament to replace the BCII Act and, in particular, to determine that the general compliance and penalty regimes of the Fair Work Act will apply to the industry.

Article 1 of the Convention. Adequate protection against acts of anti-union discrimination in respect of employment. In previous comments, the Committee raised the need to ensure that workers are adequately protected against anti-union discrimination, especially dismissals for industrial action taken in the context of negotiations of multiple business agreements and “pattern bargaining” (i.e. negotiations seeking common wages or conditions of employment for two or more proposed collective agreements with different employers or even different subsidiaries of the same parent company). The Committee notes with **interest** that section 347 of the Fair Work Act, 2009, defines protected industrial action and includes: (i) the organization or promotion of a lawful activity for, or on behalf of, an industrial association; or (ii) encouragement or participation in a lawful activity organized or promoted by an industrial association. In addition, section 772 of the Act prohibits termination of an employee due to their trade union membership or participation in trade union activities outside working hours or, with the employer’s consent, during working hours. The Committee notes that the Government indicates in its report that, under the general protection provisions of the Fair Work Act, it is unlawful for a person to take adverse action, such as dismissal or refusing to employ or demoting a person, because that person is or is not a union member, or engages or does not engage in lawful industrial activity. In addition, it is prohibited to take adverse action against employees exercising a workplace right or acting as a representative of employees in the workplace. These protections extend to all employees in the national workplace relations system. The Committee understands that they will cover pattern bargaining to the extent that the parties are genuinely trying to reach an agreement. ***The Committee requests the Government to provide information on the manner in which industrial action related to pattern bargaining is protected in practice, including any relevant decisions from the FWA. The Committee further requests the Government to indicate the steps taken or envisaged to ensure protection against anti-union dismissals related to actions taken in respect of multiple business agreements.***

Article 2. Protection against interference. The Committee previously raised the need to amend section 339 of the Workplace Relations Act, 1996, (WR Act) to ensure that the choice of a bargaining agent, even in new businesses, may be made by the workers themselves even if an “employer greenfields agreement” has been registered (enabling the employer to unilaterally determine the terms and conditions of employment in a new business including any new activity by a government authority, or a body in which a government has a controlling interest, or which has been established by law for a public purpose as well as a new project which is of the same nature as the employer’s existing business activities). The Committee notes with **satisfaction** that the Government indicates in its report that the Fair Work Act removes the capacity for “employer greenfields agreements” and provides that a greenfields agreement can only be made between the new employer and one or more employee organizations that are entitled to represent the majority of employees to be covered by the agreement.

Article 4. Promotion of collective bargaining. The Committee had previously requested the Government to provide additional information on the provisions which will govern the transition from the previous system, based on Australian Workplace Agreements (AWAs), to the new system and to specify, in particular, the conditions under which workers covered by AWAs will be free to be represented in collective bargaining, as well as the relationship between AWAs already concluded and the new collective agreements. The Committee notes with **satisfaction** that the Government indicates that collective bargaining for enterprise agreements is at the heart of Australia’s new workplace relations system. Individual statutory agreements are not part of the new system; this is emphasized by the object of the Fair Work Act which states that statutory individual employment agreements of any kind can never be part of a fair workplace relations system. In line with the Government’s prior policy commitments, existing AWAs will continue to apply until they are terminated. ***The Committee requests the Government to provide information on the application of these provisions in practice.***

In several of its previous comments, the Committee raised the need to repeal or amend sections 151(1)(h), 152, 331(1)(a)(ii) and 332(3) of the WR Act so as to ensure that multiple business agreements are not subject to a requirement of prior authorization at the discretion of the employment advocate. The Committee notes that the ACTU refers to the abilities of parties to negotiate multi-employer agreements by consent and that the FWA can facilitate multi-employer collective bargaining for low-paid employees, or employees who have not historically had access to the benefits of collective bargaining. The Committee notes that the Government indicates that the Fair Work Act allows employers who wish to voluntarily bargain together for a multi-enterprise agreement to do so with no public interest test and no requirement of FWA approval. In this instance, employers and employees do not have access to protected industrial action. The FWA will also facilitate multi-employer bargaining for low-paid employees. The Committee notes that section 186 of the Fair Work Act, 2009, requires FWA authorization of any enterprise agreement and that agency may only approve multi-employer agreements if it is satisfied that no person coerced, or threatened to coerce, any of the employers to make the agreement. In addition, sections 409 and 412 of that Act prohibit pattern bargaining unless the parties are genuinely trying to reach an agreement. ***Recalling that the Government should promote and encourage the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers’ organizations, the Committee requests the Government to inform it of the application of these provisions in practice.***

Building industry. The Committee recalls that it previously requested the Government to: (i) revise section 64 of the BCII Act to ensure that the determination of the bargaining level is left to the discretion of the parties and is not imposed by law or the decision of the administrative authority; and (ii) promote collective bargaining, especially by

ensuring that there are no financial penalties or incentives linked to undue restrictions on collective bargaining. The Committee notes with *interest* the Government's indication that it has introduced the Building and Construction Industry Improvement Amendment (Transition to Fair Work) Bill, 2009, which amends the BCII Act, and which would: (i) repeal section 64 of the BCII Act with the effect that the level of bargaining would be determined in accordance with the Fair Work Act; and (ii) retain the capacity currently for the Minister to issue a Building Code though, to date, the Government has not issued a Building Code under section 27 of the BCII Act. ***The Committee requests the Government to indicate in its next report any progress made in this regard.***

The Committee notes with *interest* that the Higher Education Workplace Relations Requirements (HEWRRs) upon which it had commented previously have been abolished by the Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and other matters) Act, 2008.

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1993)

The Committee notes the comments of the Australian Council of Trade Unions (ACTU) dated 31 August 2009, on the application of the Convention.

The Committee previously invited the Government to engage in dialogue with the National Tertiary Education Industry Union (NTEU) concerning its use of premises at various universities so as to find a commonly accepted solution and to ensure in any case, including by revising the Higher Education Workplace Relations Requirements (HEWRRs) if necessary, that no obstacles are raised to the respect of collective agreement clauses which provide for the use of premises by trade unions. The Committee notes with *interest* the Government's indication that the HEWRRs were abolished by the current Australian Government with the passage of the Higher Education Support Amendment Act 2008, which now subjects all education providers to the same workplace relations laws as all other employers.

Azerbaijan

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1992)

The Committee notes the observations of the Government in response to the comments dated 20 November 2007 of the International Trade Union Confederation (ITUC) concerning the application of the Convention.

Article 3 of the Convention. The Committee previously requested the Government to amend section 281 of the Labour Code, which prohibits strikes in the railway and air transport sectors, and section 233 of the Criminal Code, which penalizes strikes in public transport with penalties of up to three years of imprisonment, so as to ensure that workers of public transport, including those employed in air and railway transport, can exercise the right to strike, and to provide information on any measures taken or envisaged in this respect. The Committee notes that the Government indicates that the Ministry of Labour and Social Protection of the Population officially approached the appropriate state authorities, national representative organizations of employers and workers and also the ILO with a view to examining international experiences in the field with subsequent discussion. These experiences show that transport services are among the main areas in which there are limitations on holding strikes. ***The Committee requests the Government to communicate in its next report any amendments taken or contemplated to section 281 of the Labour Code and section 233 of the Criminal Code so as to allow the exercise of the right to strike in railways and air transport sectors, acknowledging that a minimum service created with the participation of the employers and the trade unions concerned could be established.***

The Committee previously requested the Government to amend section 6(1) of the Act on Trade Unions so as to strike a balance between, on the one hand, the legitimate interests of organizations to express their point of view on issues of economic and social policy affecting their members and workers in general and, on the other hand, the separation of political activities in the strict sense of the term from trade union activities. The Committee notes that the Government indicates in its report that the provision "trade unions are prohibited from engaging in political activity, associating with political parties or carrying out joint activities, providing and receiving assistance or donations to/from political parties" was repealed and limitations on the activities of trade unions were removed. ***The Committee requests the Government to transmit with its next report a copy of the repealing instrument.***

The Committee previously requested the Government to take the necessary measures in order to ensure that multinational enterprises operating on its territory respect freedom of association norms and principles. The Committee notes that the Government indicates that additions to article 80 of the Labour Code of the Republic of Azerbaijan adopted by the *Milli Mejlis* (Parliament) on 10 October 2006, significantly strengthened the status of the trade unions at the enterprises. ***The Committee requests the Government to provide a copy, with its next report, of the additions to article 80 of the Labour Code.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

Articles 1 and 4 of the Convention. The Committee had previously noted the comments made by the International Trade Union Confederation (ITUC) in 2007, which alleged in particular that despite the law, an effective system of

collective bargaining between unions and enterprise managements had not yet been established: employers often delayed negotiations, and unions rarely participated in determining wage levels and were often bypassed in the conclusion of bilateral agreements between the Government and multinational enterprises. The ITUC further alleged cases of anti-union discrimination and interference that took place in multinational enterprises.

The Committee, recalling that it was the responsibility of the Government to ensure the application of the Convention, requested the Government to take the necessary measures in order to ensure that multinational enterprises operating on its territory respect freedom of association norms and principles and to inform it of the measures taken in this respect. It further requested the Government to provide its observations on the ITUC's previous allegation of cases of anti-union discrimination and interference that took place in multinational enterprises.

In its previous comments, the Committee had noted that the legislation made a distinction between a "collective agreement", concluded at the enterprise level following bipartite negotiations between workers and employers, and a "collective accord", concluded at industry, territorial or national levels following tripartite negotiations between trade unions of the appropriate level, the National Confederation of Entrepreneurs' (Employers') Organization and the authorities. The Committee recalled that while tripartism was particularly appropriate for the regulation of questions of a larger scope (drafting of legislation, formulating labour policies), the principle of tripartism should not replace the principle of autonomy of workers' organizations and employers (or their organizations) in collective bargaining on conditions of employment. The Committee also recalled that, according to *Article 4* of the Convention, free and voluntary bargaining with a view to the regulation of terms and conditions of employment should be conducted between workers' organizations and an employer or employers' organization and therefore requested the Government to take measures to amend its legislation so as to bring it into conformity with the Convention.

The Committee notes the Government's indication that steps are being taken to set up national and local collaborative committees comprising representatives of unions, employers' associations, relevant executive bodies and public associations representing the interests of those especially in need of social protection, with a view to promoting employment.

The Committee reiterates its previous requests to the Government, as set out above, and reminds the Government that ILO technical assistance remains at its disposal on the abovementioned issues.

Bahamas

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 30 September 2009, concerning issues already raised by the Committee.

The Committee notes that the Government repeats the information sent in its previous report. It must therefore repeat its previous observation which read as follows:

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee recalls that in its previous direct request it noted that the Labour Relations Act does not apply to the prison service (section 3) and requested the Government to guarantee these workers the right to organize. The Committee noted the Government's statement that it was currently reviewing the provisions of the Industrial Relations Act (IRA) with a view to address the right of prison staff to organize. *The Committee expresses the hope that the IRA will be amended in the near future so as to formally and expressly recognize the right to organize to prison staff and asks the Government to provide a copy of the amended text as soon as it has been adopted.*

Right of workers and employers to establish organizations without previous authorization. In its previous direct request, the Committee noted that, according to section 8(1)(e) of the IRA, the registrar shall refuse to register a trade union if he considers, after applying the rules for the registration of trade unions, that the union should not be registered. The rules for registration are provided in Schedule I. According to section 1 of the Schedule, in applying the rules of the registration of trade unions, the registrar shall exercise his discretion. The Committee noted the Government's statement that this provision is intended to ensure that there is no confusion or ambiguity regarding the rights of workers to certain information (finances and related matters) and that trade unions do not adopt names that are similar in nature and thereby confusing to the bargaining unit. As already stated, it is the Committee's view that provisions which confer on the competent authority a genuinely discretionary power to grant or reject a registration request, or to grant or withhold the approval required for the establishment and functioning of an organization, are tantamount to a requirement for previous authorization which is not compatible with *Article 2* of the Convention [see General Survey of 1994 on freedom of association and collective bargaining, paragraph 74]. *The Committee therefore asks the Government once again to take the necessary measures to ensure that no discretionary power is conferred to the registrar to refuse the registration of trade unions or employers' organizations and to provide information on any measures taken or envisaged in this respect.*

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives freely. The Committee noted, in its previous direct request, that section 20(2) of the IRA, according to which the secret ballot for election or removal of trade union officers and for amendment of the constitution of trade unions should be taken under the supervision of the registrar or a designated officer, was contrary to the principles of freedom of association. The Committee noted the Government's statement to the effect that it concurs with the Committee's view regarding this section and that recommendation for its amendment is in the process of being submitted to Cabinet for consideration. The Committee expresses the hope that concrete measures will be taken to amend section 20(2) of the IRA so as to ensure that trade unions could

conduct a ballot without interference from the authorities. ***It requests the Government to indicate in its next report the measures taken or envisaged in this regard.***

Article 3. Right of workers' and employers' organizations to draw up their constitutions and rules and to elect their representatives freely. The Committee notes that the constitution of every trade union should provide that executive committees and officers of trade unions should be elected at intervals not exceeding three years (section 9(4)(1) of Schedule I). ***The Committee requests the Government to indicate whether this section implies that trade union officers cannot be re-elected for a consecutive term.***

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

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

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

The Committee notes that section 75 restricts the objective of a strike. It appears to the Committee that protest and sympathy strikes are illegal under the terms of section 75. In the view of the Committee, organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living. Furthermore, the Committee considers that a general prohibition on sympathy strikes could lead to abuse and that workers should be able to take such action, provided the initial strike they are supporting is itself lawful (see General Survey, op. cit., paragraphs 165 and 168). ***The Committee requests the Government to ensure the right of workers' organizations to recourse to this type of strike and to indicate any measures taken or envisaged in this respect.***

The Committee notes that, when a strike is organized or continued in violation of the abovementioned provisions, excessive sanctions, including imprisonment for up to two years are provided (sections 74(3), 75(3), 76(2)(b) and 77(2)). The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***Therefore, the Committee requests the Government to amend the Labour Relations Act so as to bring it into conformity with freedom of association principles on this point.***

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

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

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

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

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

The Committee notes the comments on the application of the Convention submitted by the International Trade Union Confederation (ITUC) dated 30 September 2009, which refer to matters previously raised by the Committee.

Prison guards. In its previous comments, the Committee had noted the Government's statement to the effect that measures to allow for the organization of prison guards were currently under consideration and that it was envisaged to review the relevant provision. The Committee expressed the hope that, as the Government stated that amendments to the

Industrial Relations Act (IRA) were under review, the future legislation would recognize prison guards' right to organize and to collective bargaining and asked the Government to inform it of developments in this regard.

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

Other questions. The Committee had also regretted to note that the Government had not replied to the questions raised in its previous comments concerning *Article 2 of the Convention* (acts of interference). The Committee had requested the Government to adopt legislative provisions to protect workers' and employers' organizations against acts of interference by each other or each other's agents, accompanied by effective and sufficiently dissuasive sanctions. In a previous comment, the Committee had noted the Government's indication that provisions strengthening this protection were contained in the Trade Unions and Industrial Relations Bill, 2000, a copy of which would be sent to the ILO after its adoption by the Legislative Assembly. The Committee expressed the hope that the future legislation would guarantee an adequate protection against acts of interference and had requested the Government to keep it informed in this respect.

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

Regretting that the Government's report contains no information concerning the issues raised in its previous comment, the Committee asks the Government to take the measures requested therein and to provide full information in this regard in its next report.

Bangladesh

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

The Committee notes the Government's reply to the comments submitted by the International Trade Union Confederation (ITUC) in 2008. As concerns the ITUC's allegations of violations of the Convention in the garment sector, the Committee notes that the Government indicates that the present Government was committed to ensuring workers' freedom of association rights and intends to take all measures to protect workers' rights, health and safety in the workplace, and that the establishment of the Minimum Wages Board to enhance garment workers' minimum wages was in progress. The Government states that the aggrieved workers have the legal right to submit grievances to their employers, to lodge a complaint with the Government Inspection Department or in the Department of Labour, and to sue in the labour court if necessary. Moreover, in early 2008, a crisis management committee in the garment sector was constituted to face the crisis and solve the relevant issues amicably through negotiations. The Government further indicates, in this respect, that all citizens of Bangladesh have the right to seek the shelter of the law to protect their lives or property, and that it was closely monitoring the issues so that employers may not fire innocent workers at will.

With regard to the 2008 ITUC allegations concerning the arrest and detention of the General Secretary of the Dhaka University Teachers' Association (DUTA) and four other professors, the Committee notes the Government's indication that the cases have been concluded and the teachers released. In respect of the allegation that, despite a tripartite agreement signed on 12 June 2006 to withdraw cases lodged against the workers in 2006 and release the arrested persons in Gazipur, Tongi, Savar and Ashulia Police Stations, Cases Nos 49/06, 50/06 and 51/06 against workers which were under the jurisdiction of the Joydevpur Police Station were yet to be withdrawn, the Committee notes the Government's statement that it was taking initiatives to withdraw all three cases under the Joydevpur Police Station's jurisdiction – which concerned a total of 41 persons – in accordance with the 2006 tripartite agreement.

Previously, the Committee had requested the Government to provide its observations on the ITUC's allegation that the Joint Director for Labour (JDL), who is responsible for registering trade unions, refused to take any action on pending union registration applications in 2007, particularly in the textiles sector. It had also requested the Government to indicate the status of the Bangladesh Garments and Industrial Sramik Federation (BGIWF), which according to the ITUC had faced deregistration. The Government indicates, in this regard, that due to the declaration of an emergency in 2007 some constitutional and labour law provisions relating to trade union formation and registration were suspended – thus rendering trade union registration impossible that year. The Government adds that since January 2009, 73 trade unions have been registered. As concerns the BGIWF, the Government states that the Registrar of Trade Unions had applied to the Court seeking the cancellation of the BGIWF's registration; while the case was presently under examination the BGIWF remains a registered organization under the law and is freely pursuing its activities. ***The Committee requests the Government to indicate in its next report the status of the court case concerning the BGIWF's registration, the reason***

for the cancellation request by the Registrar and to provide a copy of the court's judgement should it have been rendered.

The Committee recalls that in its previous comments, it had requested information on: (i) the measures taken, including instructions given to the law enforcement authorities, so as to avoid the danger of excessive violence in trying to control demonstrations, and ensure that arrests are made only where criminal acts have been committed; (ii) the charges brought in 2004 against 350 women trade unionists, including the General Secretary of the JSL's Women's Committee, Shamsur Nahar Bhuiyan and all judicial decisions taken in this matter; and (iii) the measures taken to ensure the prompt registration of Immaculate (Pvt) Ltd Sramik Union. The Committee notes that the Government indicates that: (1) it is fully aware and committed to freedom of association free from violence, pressure of threat of any kind, and that the necessary provisions are laid down in the laws. Arrests, furthermore, are only made pursuant to the law and when crimes are committed; (2) the law enforcement authorities are to avoid unnecessary violence, and the situation is monitored through monthly meetings of the Crisis Management Committee, comprised of officials of different law enforcement authorities. Moreover, at present there is no worker or trade union leader arrested for participation in demonstrations; (3) the charges brought in 2004 against the 350 women trade unionists had been dropped – they are presently free and enjoying the exercise of their trade union rights; and (4) the Director of Labour, who is responsible for trade union registration, is still awaiting the application for registration of the Immaculate (Pvt) Ltd Sramik Union; the Department of Labour (DOL) would take prompt measures to register the union upon receipt of its application. ***In these circumstances, the Committee expresses the hope that, once the Immaculate (Pvt) Ltd Sramik Union's application is received, the Government will actively pursue measures to ensure the union's prompt registration.***

The Committee notes the comments submitted by the ITUC in a communication dated 26 August 2009. The ITUC alleges additional violations of the Convention in 2008. In particular, the ITUC refers to the following violations in the garment sector: the arrest of and bringing of charges (later dropped) against members and leaders of the Bangladesh Independent Garment Workers Union Federation (BIGWUF), the Shawdhin Bangla Garments Sramik Karmachari Federation (SBGSKF), the Textile Garments Workers Federation (TGWF), the Bangladesh Posak Shilpo Sramik Federation (BPSSF), and the National Garment Workers Federation (NGWF); the imprisonment from September to December of the President of the New Modern Garment Workers and Employees Union (NMGWEU); the beating of female garment workers for having participated in a strike; and arrests, detentions and physical assault by the police against numerous workers from more than a dozen garment factories. The Committee recalls once again that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. ***The Committee notes with concern these allegations and requests the Government to provide full particulars in respect of the ITUC's allegations.***

Right to organize in export processing zones (EPZs). The Committee had previously noted the ITUC's allegation that the Bangladesh Export Processing Zones Authority (BEPZA) continued to raise obstacles to the establishment of workers' associations in EPZs – even though section 13(1) of the Industrial Relations Act 2004 provided that workers had the right to apply to form workers' associations after the deadline of 31 October 2006 – and had requested the Government to provide statistical information on the number of workers' associations established in the EPZs after 1 November 2006. The Government indicates that it has, through a letter sent to all enterprises, encouraged the formation of workers' associations as of 1 November 2006. To date, workers' associations have been established in 188 enterprises, or 75.20 per cent of all the eligible enterprises. In this connection, the Committee notes that in its 2009 comments the ITUC alleges a number of restrictions on freedom of association rights in the EPZ sector. ***The Committee requests the Government to provide its observations in this respect.***

The Committee further recalls that it had previously commented on the EPZ Workers' Associations and Industrial Relations Act 2004, which contains numerous and significant restrictions and delays in relation to the right to organize in EPZs. The Committee notes that according to the Government, the BEPZA is aware of the Committee's comments in this regard, which would be taken into consideration in the present review and amendment process of the EPZ Workers' Associations and Industrial Relations Act 2004. ***In these circumstances, the Committee expresses the hope that the review and amendment process referred to by the Government would soon bring the following provisions of the said Act into conformity with the Convention, in line with its previous comments:***

- section 24, which provides that workers' associations will not be allowed in industrial units established after the commencement of the Act until a period of three months has expired after the commencement of commercial production in the concerned unit;
- section 25(1), which provides that there can be no more than one workers' association per industrial unit;
- sections 14, 15, 17 and 20, which establish excessive and complicated minimum membership and referendum requirements for the establishment of workers' associations (a workers' association may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of the BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible

workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the workers' association);

- section 17(2), which confers excessive powers of approval of the Constitution Drafting Committee to the Executive Chairperson of the BEPZA;
- section 16, which prevents steps for the establishment of a workers' association in the workplace for a period of one year after a first attempt failed to gather sufficient support in a referendum;
- section 35, which permits the deregistration of a workers' association at the request of 30 per cent of the workers even if they are not members of the association and prevents the establishment of another trade union for one year after the previous trade union was deregistered;
- sections 36(1)(c), (e)–(h) and 42(1)(a), which provide for the cancellation of the registration of a workers' association on grounds which do not appear to justify the severity of this sanction (such as contravention of any of the provisions of the association's constitution);
- sections 54(3) and (4), which establish a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); provides for severe restrictions of strike action, once recognized (possibility to prohibit a strike if it continues for more than 15 days or even before this deadline, if the strike is considered as causing serious harm to productivity in the EPZ);
- section 18(2), which prevents workers' associations from obtaining or receiving any fund from any outside source without the prior approval of the Executive Chairperson of the BEPZA;
- section 32(1), which establishes an excessively high minimum number of trade unions to establish a higher level organization (more than 50 per cent of the workers' associations in an EPZ);
- section 32(3), which prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs; and
- sections 5(6) and (7), 28(1), 29, and 32(4), which do not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election is to be determined by the BEPZA).

The Committee further requests the Government to indicate any developments concerning the amendment and review process in its next report.

Other discrepancies between national legislation and the Convention. The Committee recalls that for many years it had been referring to serious discrepancies between the national legislation and the Convention. In its previous comment, the Committee noted the adoption of the Bangladesh Labour Act 2006 (the Labour Act), which replaced the Industrial Relations Ordinance of 1969, and noted with deep regret that the Labour Act did not contain any improvements in relation to the previous legislation and, in certain regards, contained even further restrictions which were contrary to the provisions of the Convention. The Committee takes note of the Government's statement that a tripartite labour law review committee to identify the gaps and discrepancies in the Labour Act and suggest the necessary amendments had been constituted, as well as its indication that the workers excluded from the Labour Act's provisions were not covered by other legislation. ***The Committee requests the Government to inform it of developments with regard to the review process referred to and expresses the firm hope that the Labour Act will soon be amended in line with the discrepancies previously identified, which it repeats as follows:***

- the need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Labour Act) as well as new restrictions of the right to organize of firefighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175 of the Labour Act);
- the need to either amend section 1(4) of the Labour Act or adopt new legislation so as to ensure that the workers in the following sectors, which have been excluded from the scope of application of the Act including its provisions on freedom of association, have the right to organize: offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes; educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family.
- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seafarers currently engaged in merchant shipping (section 2 LXV and 175, 185(2) of the Labour Act);
- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union, an act aimed at "intimidating" any person to become, continue to be or cease to be a trade union member or

officer, or “inducing” any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage and the consequent penalty of imprisonment for such acts (sections 196(2)(a) and (b) and 291 of the Labour Act); the Committee considers that the terms “intimidating” or “inducing” are too general and do not sufficiently safeguard against interference in internal trade union affairs, since, for instance, a common activity of trade unions is to recruit members by offering advantages, including with regard to other trade unions;

- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a) of the Labour Act);
- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration, as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f) of the Labour Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5) of the Labour Act) and that only one trade union of seafarers shall be registered (section 185(3) of the Labour Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300 of the Labour Act);
- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Labour Act) upon penalty of imprisonment (section 299 of the Labour Act);
- the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers’ organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e) and 291, 294–296 of the Labour Act);
- the need to repeal provisions which provide that no person refusing to take part in an illegal strike shall be subject to expulsion or any other disciplinary measure by the trade union, so as to leave this matter to be determined in accordance with trade union rules (section 229 of the Labour Act);
- the need to amend new provisions which define as an unfair labour practice on the part of workers, an act of compelling or attempting to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using “intimidation”, “pressure”, “threat” so as to ensure that there is no interference with the right of trade unions to engage in activities like collective bargaining or strikes, and to repeal the consequent penalty of imprisonment for such acts (sections 196(d) and 291(2) of the Labour Act);
- the need to amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (section 301 of the Labour Act).

The Committee had previously requested the Government to indicate whether rule 10 of the Industrial Relations Rules 1977 (IRR), which previously granted the Registrar of Trade Unions (RTU) overly broad authority to enter trade union offices, inspect documents, etc., without judicial review, had been repealed by the entry into force of the Labour Act 2006. The Committee notes that the Government states, in this regard, that rule 10 of the IRR remains valid, and that – as its purpose was to maintain discipline in trade union administrations – it was not in favour of repealing the said provision. The Government further indicates that the workers’ representatives in the tripartite review process towards the enactment of the Labour Act had raised no objections to the RTU’s authority in these matters. In this respect, the Committee must once again recall that the right of workers’ and employers’ organizations to organize their administration without interference by the public authorities includes in particular, autonomy and financial independence and the protection of the assets and property of these organizations. There is no violation of the Convention if such verification is limited to exceptional cases, for example in order to investigate a complaint, or if there have been allegations of embezzlement. Both the substance and the procedure of such verifications should however always be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity [see General Survey on freedom of association and collective bargaining, 1994, paragraphs 124 and 125]. *The Committee therefore once again requests the Government to take the necessary measures to repeal rule 10 of the IRR or amend the latter so as to ensure that the Registrar of Trade Unions’ (RTU) authority to supervise a trade union’s internal affairs conforms to the principles mentioned above.*

The Committee takes due note of the Government’s statement that it was fully committed to ensuring compliance with the Convention and the promotion of freedom of association in the country. *The Committee invites the Government to avail itself of the technical assistance of the Office in respect of all the matters raised above.*

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

The Committee notes the Government's reply to the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in 2008. It further notes the latest comments submitted by the ITUC in a communication dated 26 August 2009.

Article 1 of the Convention. Protection of workers in export processing zones (EPZs) against anti-union discrimination. Previously the Committee had taken note of the ITUC's comments made in 2007 that there were numerous instances of dismissals, suspensions and harassment of trade unionists in EPZs, in particular in the garment and textile industries, and that the Bangladesh Export Processing Zones Authority (BEPZA) had failed to protect trade unionists, thus significantly undermining the extension of associational rights to workers in EPZs. The Committee had requested the Government to provide its observations on the ITUC's comments and to furnish statistical information on the number of anti-union discrimination complaints submitted to the competent authorities and their outcomes since November 2006, when workers' associations were authorized in the EPZs, as well as the number of collective agreements concluded in EPZ enterprises and their coverage. The Committee notes the Government's statement that from August to December 2006, 16 trade unions in different garment industries were registered.

As concerns protection against acts of anti-union discrimination, the Committee notes that the Government, in its reply to the ITUC's 2008 comments, indicates that the BEPZA has taken steps to protect the interests of workers and issued instructions pertaining to labour administration in the zones. Furthermore, industrial relations departments have been established in each EPZ; the industrial relations departments entertain worker grievances and complaints and engage in supervision and monitoring so as to maintain a harmonious industrial relations environment in the EPZs. While noting this information, the Committee notes that in its 2009 communication the ITUC refers once again to numerous instances of harassment, dismissal and violence against workers in the EPZ sector, particularly in the garment industry. The ITUC further states that although the law provides for the establishment of an EPZ Labour Tribunal and an EPZ Labour Appellate, these two bodies had yet to be established – thus denying workers access to the judicial system for their grievances.

The Committee notes the Government's statement that as required by the EPZ Workers' Association and Industrial Relations Act, two conciliators and panels of arbitrators have been appointed to facilitate dispute resolution among the workers and employers. The Committee also notes the Government's indication that EPZ workers can also seek judicial redress in cases of anti-union discrimination. ***The Committee requests the Government to provide information in respect of these matters, including information on the number of complaints of anti-union discrimination in the EPZ sector submitted to the competent authorities, as well as the outcomes of those complaints.***

The Committee notes the ITUC's indication that at the start of 2008 workers voted to establish trade unions in 69 EPZ enterprises, and that pursuant to a decision of the BEPZA, 124 more EPZ enterprises must hold trade union elections by 2010. The Committee further notes that the Government, in its reply to the ITUC's 2008 comments, states that referendums and elections on workers' associations had been completed in 188 out of a total of 250 eligible EPZ enterprises – or 75.2 per cent of the total number of eligible enterprises. ***Noting these developments, the Committee once again requests the Government to provide information on the extent of collective bargaining in the EPZ sector, including statistics on the number of collective agreements concluded and the number of workers they cover.***

Article 2. Lack of legislative protection against acts of interference. The Committee had previously noted that the Labour Act 2006 did not contain a prohibition of acts of interference designed to promote the establishment of workers' organizations under the domination of employers or their organizations, or to support workers' organizations by financial or other means with the object of placing them under the control of employers or their organizations, and had requested the Government to indicate the measures taken to adopt such a prohibition. The Committee notes that the Government refers to legal provisions which would confer partial protection against acts of interference. These provisions state that no employer (or anyone acting on his or her behalf) shall: induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person; compel any officer of the collective bargaining agent to sign a memorandum of settlement or arrive at a settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods; or interfere with, or in any way influence, ballots. ***The Committee requests the Government to indicate which law contains the abovementioned provisions, as well as to indicate in its next report the measures taken or contemplated so as to adopt a comprehensive prohibition that: (1) covers acts of financial control of trade unions or trade union leaders, as well as acts of interference in internal trade union affairs; and (2) is coupled with effective and sufficiently dissuasive sanctions against all acts of interference in the establishment and functioning of workers' organizations by employers and vice versa.***

Article 4. Legal requirements to collective bargaining. In its previous comment, the Committee had referred to section 179(2) of the Labour Act, which provides that a trade union may only obtain registration if it represents 30 per cent of the workers in an establishment, as well as to section 202(15) of the Labour Act, which provides that if there is more than one trade union in an enterprise, no trade union shall be declared to be the collective bargaining agent unless it

obtains the votes of at least one third of the employees in a secret ballot. The Committee regrets that the Government provides no information respecting this matter. ***Noting once again that the percentage requirements for registration of a trade union and for the recognition of a collective bargaining agent set out in sections 179(2) and 202(15) of the Labour Act 2006 may impair the development of free and voluntary collective bargaining, the Committee once again requests the Government to indicate in its next report any measures taken or contemplated so as to lower these requirements.***

Tripartite wages commissions in the public sector. The Committee recalls that in its previous comments it had requested the Government to take the necessary legislative or other measures to end the practice of determining wage rates and other conditions of employment in the public sector by means of government-appointed tripartite wages commissions (section 3 of Act No. X of 1974). The Committee notes with ***regret*** that, as with the other legislative matters previously raised, the Government fails to provide information in this regard. In these circumstances, the Committee once again recalls that ***Article 4*** relates to free and voluntary negotiations between employers or their organizations and workers' organizations with a view to the regulation of wage rates and other conditions of employment by means of collective agreements, including with regard to public servants not engaged in the administration of the State. ***The Committee once again requests the Government to indicate any measures taken or contemplated to end the practice of determining wage rates and other conditions of employment of public servants not engaged in the administration of the State by means of government-appointed tripartite wages commissions, so as to favour free and voluntary negotiations between workers' organizations and employers or their organizations, who should be able to appoint freely their negotiating representatives.***

Finally, noting the Government's statement that it is fully committed to complying with the ILO's Conventions, the Committee requests the Government to adopt all the measures requested without delay.

Barbados

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

The Committee notes the Government's reply to the comments made in 2008 by the International Trade Union Confederation (ITUC) and the Congress of Trade Unions and Staff Associations of Barbados on the application of the Convention.

Article 3. The right of organizations freely to organize their activities and to formulate their programmes. In its previous comments, the Committee recalled the need to amend section 4 of the Better Security Act, 1920, according to which any person who wilfully breaks a contract of service or hiring, knowing that this could endanger real or personal property, is liable to a fine or up to three months' imprisonment, so as to eliminate the possibility of employers invoking it in a case of future strikes. The Committee notes that, in its report, the Government once again states that there is no record that this section has ever been invoked and that in practice, workers in all sectors take industrial action when they perceive it to be beneficial. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***Once again, the Committee invites the Government to amend section 4 of the Better Security Act, 1920, to bring it into conformity with the Convention.***

In addition, the Committee notes that, in its 2008 comments on the application of the Convention, the Congress of Trade Unions and Staff Associations of Barbados indicated that the Government submitted an amended Trade Union Act Cap. 361 to the trade unions for comment and review. ***The Committee requests the Government to provide with its next report a draft copy of this legislation and to indicate any progress made in this regard.***

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

The Committee takes note of the response of the Government, dated 19 January 2009, to the comments received and previously noted from the International Trade Union Confederation (ITUC), as well as the comments by the ITUC, dated 26 August 2009.

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee recalls that in previous observations, it requested the Government to take all necessary measures to ensure that its legislation provides adequate protection against all acts of anti-union discrimination, in taking up employment and throughout the course of employment, including at the time of termination and covering all measures of anti-union discrimination (dismissals, demotions, transfers and other prejudicial acts) as well as adequate and dissuasive sanctions. The Committee notes that the ITUC refers to the inadequacy of remedies for workers discharged for their union activity, since courts may not reinstate dismissed workers. In addition, the ITUC refers to section 40A of the Trade Union Act which states that an employer who dismisses, adversely affects, or threatens to dismiss or adversely affect a worker due to their trade union membership or

activities can be subject to a fine of US\$1,000 and imprisonment for up to six months. The Committee also notes with interest that the Government's report refers to the drafting of new employment rights legislation which would create an independent tribunal to hear cases alleging unfair dismissals and to issue adequate awards. ***The Committee requests the Government in its next report to include a copy of the draft legislation. The Committee hopes that the Government will enforce section 40A of the Trade Union Act to ensure that employees are protected against acts of anti-union discrimination. Once again, the Committee hopes that the Government will make every effort to take the necessary action to bring its legislation into conformity with the Convention in the very near future.***

Belarus

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

The Committee notes the information provided by the Government on the measures taken to implement the recommendations of the Commission of Inquiry and the discussion that took place in the Conference Committee on the Application of Standards in June 2009. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) and the Congress of Democratic Trade Unions (CDTU) on the application of the Convention in law and in practice in communications dated 26 and 28 August 2009, respectively.

The Committee also takes note of the seminar on the implementation of the Commission of Inquiry's recommendations organized jointly by the ILO and the Government of Belarus in January 2009 and welcomes the plan of action to implement the recommendations of the Commission of Inquiry subsequently adopted by the tripartite National Council on Labour and Social Issues (NCLSI). The Committee further notes with *interest* that, pursuant to the plan of action, the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") evolved into a tripartite body where trade unions could raise their concerns and that the Council's composition now included three representatives of the CDTU.

Article 2 of the Convention. The Committee recalls that it had previously noted with regret the absence of action by the Government to register trade union organizations, the registration of which had been requested by the ILO supervisory bodies (i.e. those primary-level organizations that were the subject of the complaint before the Commission of Inquiry, as well as organizations of the Radio and Electronic Workers' Union (REWU) in Mogilev, Gomel, Smolevichi and Rechitsa and its primary trade union at "Avtopark No. 1"; two regional organizations of the Belarusian Free Trade Union (BFTU) in Mogilev and Baranovichi; and the Belarusian Trade Union of Individual Entrepreneurs "Razam", a partner organization of the CDTU.

The Committee takes note of the Government's indication that at its sitting of 30 April 2009 the Council discussed the issue of trade union registration and reached the following decisions, agreed upon by all members of the Council:

- The Council noted registration of the primary REWU organizations in Smolevichi and Rechitsa.
- The primary trade union of the Belarus Independent Trade Union (BITU) at the "Belshina" enterprise could not be registered due to the absence of confirmation of its legal address. The Council recommended to the administration of the enterprise, the Confederation of Industrialists and Entrepreneurs (Employers) (CIE(E)), the BITU, the CDTU and the local executive body to find a solution to the question of legal address in this case.
- The Council took note of the information provided by a Ministry of Justice representative that no request for registration was submitted by the BFTU regional organization in Baranovichi.
- The Council noted the reasons for denial of registration of the BFTU regional organization in Mogilev and "Razam" union.
- In the Council's opinion, refusals to register the REWU territorial structures in Gomel and Mogilev were justified because their members were not bound by common interests by virtue of the nature of their work, as required by section 1 of the Law on Trade Unions.
- The Council noted that the abovementioned grounds for refusal were not applicable to the REWU primary trade union at "Avtopark No. 1" as all its members were employed at the same enterprise.

The Committee notes with *interest* the registration of the primary REWU organizations in Smolevichi and Rechitsa. It further notes with *interest* that, following the Council's decision, suitable premises for the legal address of the "Belshina" enterprise union were found and that this organization was re-registered in October 2009. The Committee observes that at its sitting of 26 November 2009, the Council once again discussed the issue of registration of the "Razam" union. ***The Committee requests the Government to indicate the outcome of the discussion. It encourages the Government to continue its close cooperation with the social partners in addressing the difficulties with registration in practice. Regretting that no information has been provided by the Government on the number of registered organizations and those denied registration during the reporting year, the Committee requests the Government to provide this information with its next report.***

The Committee notes the Government's indication that a REWU representative present at the sitting argued that the common interest of the members of the Gomel and Mogilev territorial organizations lay in the fact that they were all employed workers. This view was rejected by the Council's members, who concluded that the refusal to register these organizations did not restrict the right of unions to freely determine their own structures and activities.

The Committee notes the CDTU's view that despite the specific cases mentioned above, no real progress had been achieved with regard to trade union registration. Firstly, there had been no clear and unambiguous instructions issued by the Government to employers and registering bodies to register the unions mentioned in the recommendations of the Commission of Inquiry. Only some of the unions succeeded in getting legal address, the largest number of the organizations had to terminate their existence. Secondly, referring to the Council's decision of 30 April 2009, the CDTU confirms that the tripartite body reviewed the refusals to register the REWU territorial structures in Gomel and Mogilev, "Razam" union and the BFTU regional organizations in Baranovich and Mogilev. With regard to the latter two, the CDTU indicates that the Council limited itself by stating the fact that there were no organizations left to be registered; those primary organizations mentioned in the ILO recommendations no longer existed.

The Committee recalls that it had previously noted with regret that the requirement of legal address continued to raise difficulties with the registration of trade unions in practice and requested the Government to take the necessary measures to immediately amend Presidential Decree No. 2 of 1999 so as to ensure that workers and employers may form organizations of their own choosing without previous authorization. In this regard, the Committee notes the CDTU's indication that the legal address requirement continues to hinder the establishment and functioning of trade unions.

The Committee notes that, according to the information provided by the Government, the Council adopted a number of measures intended to resolve problems arising from the implementation of the national legislation in practice and discussed approaches to developing legislation on trade unions on the basis of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Council took note of the explanation provided by a representative of the Ministry of Justice that the 10 per cent requirement was not applicable to union organizational structures, including primary trade unions. Pursuant to the Council's request, the Ministry of Justice informed the local authorities of the need for strict adherence to this approach. The Committee notes the copy of this instruction forwarded by the Government. The Government further indicates that the Council's members were requested to provide their proposals for the further development of legislation on trade unions by 1 July 2009. The Committee notes the Government's indication that the issue of legislation on trade union registration was discussed at the Council's meeting on 26 November 2009. ***The Committee requests the Government to indicate the outcome of the discussion.***

The Committee notes with ***regret*** that, while the Government refers to continued work on developing legislation on trade unions, it has given no precise indication as to the steps taken to amend Decree No. 2, its rules and regulations, in particular, as regards the legal address requirement – a requirement which the Commission of Inquiry had observed gave rise in practice to arbitrary obstacles in the way of workers' right to organize (see Trade union rights in Belarus, para. 591 et seq.). While observing that the Council was able to successfully resolve the legal address problem for the BITU primary trade union at "Belshina" enterprise, the Committee notes that this very case demonstrates that the legal address requirement as applied in the country continues to be an obstacle to the registration of trade unions. Furthermore, while welcoming the Ministry of Justice's instruction requesting the registering bodies to ensure that the 10 per cent minimum membership was only required to form an autonomous union at the enterprise level, the Committee recalls that, since the issuance of the Decree, it has been expressing its concern over the effect of this requirement on the right to organize in large enterprises. It further recalls that on more than one occasion the Government referred to its intention to amend Decree No. 2. ***The Committee therefore once again urges the Government to take the necessary measures to amend without delay Presidential Decree No. 2 as concerns trade union registration in consultation with the social partners so as to ensure that the right to organize is effectively guaranteed. It requests the Government to indicate the progress made in this respect.***

Articles 3, 5 and 6. The Committee recalls that in its previous observation it expressed its concern at the allegations of repeated refusals to authorize the BITU and the REWU to hold pickets and meetings and requested the Government to conduct independent investigations into these allegations and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee notes with ***regret*** that no information has been provided by the Government in this respect. The Committee notes with ***concern*** from the CDTU's communication that 15 requests to hold pickets were allegedly denied. ***Recalling that protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee recalls the conclusions of the Commission of Inquiry in this regard (see Trade union rights in Belarus, paras 625–627) and once again requests the Government to indicate the measures taken to investigate the alleged cases of refusals to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests.***

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

The Committee recalls that for a number of years it has been asking the Government to amend the Law on Mass Activities, sections 388, 390, 392 and 399 of the Labour Code, and Decree No. 24 concerning the use of foreign gratuitous aid. The Committee notes with ***regret*** that aside from the general statement to the effect that an agreement has been

reached by the members of the Council that any legislation on trade unions should be developed on the basis of Conventions Nos 87 and 98 and that the members of the Council had until 1 July 2009 to submit their proposals in this regard, there were no concrete proposals to amend the abovementioned pieces of legislation. *Recalling that the abovementioned legislative provisions are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities and their amendment had been requested by the Commission of Inquiry over five years ago, the Committee reiterates its previous requests and asks the Government to indicate concrete measures taken in this respect.*

The Committee welcomes the continued commitment to social dialogue expressed by the Government and, like the Conference Committee on the Application of Standards at its last discussion in June 2009, encourages the Government to redouble its efforts to ensure full freedom of association in close cooperation with all the social partners and with the assistance of the ILO. It expresses the firm hope that the Government and the social partners will continue the cooperation within the framework of the tripartite Council so as to ensure that full freedom of association is effectively guaranteed in law and in practice.

The Committee requests the Government to respond to the observations made by the ITUC.

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

The Committee notes the information provided by the Government on the measures taken to implement the recommendations of the Commission of Inquiry and the discussion that took place in the Conference Committee on the Application of Standards in June 2009. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) and the Congress of Democratic Trade Unions (CDTU) on the application of the Convention in law and in practice in communications dated 26 and 28 August 2009, respectively.

The Committee also takes note of the seminar on the implementation of the Commission of Inquiry's recommendations organized jointly by the ILO and the Government of Belarus in January 2009 and welcomes the plan of action to implement the recommendations of the Commission of Inquiry subsequently adopted by the tripartite National Council on Labour and Social Issues (NCLSI). The Committee further notes with *interest* that, pursuant to the plan of action, the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") evolved into a tripartite body where trade unions could raise their concerns and that the Council's composition now included three representatives of the CDTU.

Articles 1, 2 and 3 of the Convention. In its previous comments, the Committee regretted that no information was provided by the Government on the measures taken to carry out independent investigations into the alleged instances of anti-union discrimination and interference suffered by members of the primary trade unions affiliated to the Radio and Electronic Workers' Union (REWU) at the "Mogilev ZIV" and "Avtopark No. 1". It also noted with regret the allegations by the ITUC of instances of anti-union discrimination against members of the Belarusian Independent Trade Union (BITU) at the "Polymir" company and the leaders of the Belarusian Free Trade Union (BFTU) at the Brest State Pedagogical University; as well as an alleged denial of access to the workplace ("Belaruskaliy") of the leader of the BITU. In these circumstances, the Committee requested the Government to carry out independent investigations into all alleged instances of interference and anti-union discrimination and reiterated its request to immediately redress all damages suffered from anti-union discrimination by those workers mentioned in the complaint filed under article 26 of the ILO Constitution, as well as those cases that had come to light the examination of the follow-up given by the Government to the recommendations of the Commission of Inquiry.

The Committee takes note of the Government's indication that at its sitting of 14 May 2009 the tripartite Council discussed cases of termination of employment of Messrs Gaichenko, Dukhomenko, Obukhov, Shaitor, Shcherbo and Stukov (listed in the 352nd Report of the Committee on Freedom of Association). According to the Government, these workers were invited to the Council's meeting and the necessary measures were taken to ensure that employers did not obstruct their participation in the meeting and that the workers were given a day off for that purpose. The Government indicates that Mr Gachenko declined the invitation of the Council as he was satisfied with his employment at the "Naftan" enterprise in Novopolotsk. The Committee notes the minutes of the meeting provided by the Government and, in particular, the following conclusions, agreed upon by all members of the Council:

- The Council noted that the abovementioned workers were not experiencing any pressure from their respective employers.
- The Council took note of Mr Shcherbo's desire to work in his previous post and decided to assist him in obtaining a post of an electrical train driver at Minsk Metro.
- The Council noted that Mr Shaitor left the enterprise on 6 April 2009 and at the time of the meeting was unemployed. It was decided to ask the state employment service for assistance in getting him employed in his previous post or any other acceptable position.
- The Council noted that Messrs Dukhomenko and Obukhov no longer wished to work at their previous workplaces unless they were reinstated with full compensation. Noting that under the current legislation it was impossible to reinstate them in their previous posts, Mr Dukhomenko was offered assistance with his entrepreneurial activities,

while Mr Obukhov, who was satisfied with his current employment, was informed of opportunities for further training.

- The Council discussed the situation of Mr Stukov who was currently employed at the Polotsk-Steklovolokno company. In April 2004 he was dismissed for causing material loss to his employers as established by the court. He was subsequently allowed back to his previous post in May 2004. Because of his dismissal, Mr Stukov lost his entitlement to a special length-of-service payment. The Council therefore decided to apply to the company for restoration of his full entitlements relating to the length of service which had been interrupted by his dismissal in April 2004.
- The Council emphasized that it would continue examining the issues relating to the protection of trade union members from discrimination and considered it appropriate to discuss existing legal mechanisms for protecting citizens from anti-union discrimination in the light of national legislation and international labour standards.

The Committee notes with *interest* the Government's indication that, following the Council's decision, an agreement was reached with the Minsk Metro authority regarding the appointment of Mr Shcherbo, that Mr Shaitor has been hired as a driver at the Polotsk Dairy Combine and that full length-of-service entitlement was restored to Mr Stukov.

The Committee further notes the Government's indication that the Office of the Public Prosecutor examined a representation by the BITU leader with regard to the alleged denial of access to the workplace by the management of "Belaruskaliy". The Committee notes with *interest* the Government's statement that, at present, the dispute appears to no longer exist and that the trade union leader has visited the enterprise's premises on a number of occasions without hindrance.

The Committee notes with *concern* the comments made by CDTU on the continuing discriminatory use of fixed-term contracts. In its communication, the CDTU alleges that members of free and independent unions are forced to leave their unions under the threat of dissolution or non-renewal of their contracts. The CDTU provides the following statistics on the impact of threats of non-renewal of fixed-term contracts on independent unions (CDTU's affiliates):

- primary trade union at "Grodno-Azot" enterprise has lost 930 members since 2006;
- primary trade union at "Belshina" enterprise in Bobruisk has lost 50 members since 2006;
- primary trade union at "Polimir" chemical company in Novopolotsk has lost nearly 400 members since 2006; and
- primary trade union at Mozyr oil refinery company has lost at least 50 members since the beginning of 2009.

The CDTU further alleged that trade union membership of primary trade unions at "Zenit" company in Vileika (Minsk region), Brest Pedagogical University, hydraulic power station in Novolukoml and other small union organizations also suffered. According to the CDTU, the scenario of pressure on workers in all these cases was almost the same: the floor managers or managers on ideology would invite trade union members to sign statements indicating that they were leaving independent unions and discontinuing payment of trade union membership dues. Those who refused were threatened with dismissal and non-renewal of their fixed-term contracts. *The Committee expresses the firm hope that the Council will examine the allegations of anti-union discrimination and interference suffered by the CDTU-affiliated trade unions and their members at the abovementioned enterprises, as well as at "Mogilev ZIV", "Avtopark No. 1", with regard to the members affiliated to the REWU, in the near future. It requests the Government to inform it of the outcome of the discussion and of measures taken to redress the damages suffered.*

Furthermore, the Committee once again urges the Government to pursue vigorously, on the one hand, the instructions to be given to enterprises so as to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated.

Article 4. The Committee notes with *interest* that the CDTU is now a party to the General Agreement for 2009–10. It observes, however, the alleged instances of refusal to sign collective agreements with the CDTU-affiliated trade unions at "Grodno-Azot" and "Naftan-Polimir" enterprises, as described in the CDTU communication. The Committee notes that at its sitting of 26 November 2009, the tripartite Council discussed the issue of collective bargaining at enterprises with several trade union organizations, as well as development of the social partnership including conclusion of collective agreements at "Grodno-Azot" and "Naftan" enterprises. *The Committee requests the Government to provide information on the outcome of this discussion.*

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

Belgium

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, concerning the increasingly systematic acts by employers of the judicial authorities to prohibit certain types of collective action by trade unions, and particularly the setting up of strike pickets. In the view of the ITUC, trade unions are not able to fully exercise their right to collective action since the informal agreement in 2002 between the social partners envisages that referral of trade disputes to the court would only occur when conciliation procedures have been exhausted and certain courts still issue injunctions even before the commencement of collective action. *The Committee requests the Government to provide its observations on the ITUC's comments.*

The Committee recalls that its comments have for many years concerned the need to take measures for the adoption of objective, pre-established and detailed legislative criteria determining the rules for the access of the occupational organizations of workers and employers to the National Labour Council, and that in this respect, the Organic Act of 29 May 1952 establishing the National Labour Council still contains no specific criteria on representativeness, but leaves broad discretionary power to the Government. The Committee notes with *interest* the information that a political agreement was found in September 2009 in consultation with the most representative organizations to amend the Organic Act of 29 May 1952 with a view to establishing quantitative and qualitative criteria that the most representative organizations which wish to be represented on the National Labour Council would have to meet. In this respect, the Government indicates that a Bill will be tabled at the beginning of the parliamentary session to amend the Act of 29 May 1952 and that the National Labour Council approved a draft which will be adopted by the Parliament before the end of the year relating to the criteria of representativeness. *The Committee requests the Government to provide a copy of the Act once it is adopted.*

Finally, the Committee notes the detailed information contained in the Government's report relating to the latest developments in case law respecting the protection of freedom of association and invites the Government to continue to provide information of this nature, where appropriate.

Belize

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

The Committee notes the International Trade Union Confederation's (ITUC) communication of 29 August 2008, which refers to employer strategies to prevent the growth of unions, for example, the non-recognition of unions and other anti-union practices, as well as to problems in practice for the exercise of trade union rights in export processing zones (EPZs). *The Committee requests the Government to submit its observations thereon.*

Article 3 of the Convention. Compulsory arbitration. The Committee recalls that it had previously requested the Government to amend the Settlement of Disputes in Essential Services Act 1939 (SDESA), which empowers the authorities to refer a collective dispute to compulsory arbitration, to prohibit a strike or to terminate a strike in services that cannot be considered essential in the strict sense of the term, namely: the banking sector, civil aviation, port authority (pilots), postal services, social security scheme and the petroleum sector. The Committee notes that the Government indicates in its report that the Committee's comments had been submitted to the Labour Advisory Board, which was recently reactivated and one of whose main duties is to review national labour legislation. *In these circumstances, the Committee expresses the hope that the SDESA will soon be amended so as to permit compulsory arbitration or a prohibition on strikes only in services that are essential in the strict sense of the term. It requests the Government to provide a copy of the new legislation once it is adopted.*

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication of 30 September 2009, which refers to matters previously raised by the Committee as well as the dismissals of trade unionists and violations of collective agreements. *The Committee requests the Government to submit its observations thereon.*

Articles 1 and 3 of the Convention. The Committee had previously noted that in its 2008 comments, the ITUC alleged that court procedures in cases of anti-union discrimination were too slow and cumbersome, while the fines imposed were extremely low. The Committee had also noted the ITUC's allegation that in practice violations occurred in the banana plantation sector and in export processing zones, where employers do not recognize unions, and had requested the Government to provide information on these matters. *Noting the Government's indication that the ITUC's 2008 comments would be submitted to a tripartite body established under the provisions of the Trade Unions and Employers'*

Organizations (Registration, Recognition and Status) Act and appointed in August 2008, the Committee requests the Government to inform it of the outcome of the tripartite body's deliberations on the matters raised by the ITUC.

Articles 3 and 4. The Committee had previously recalled that, under the provisions of section 27(2) of the Trade Unions and Employers' Organizations (Registration, Recognition and Status) Act, Chapter 304 (the Act), a trade union could be certified as a bargaining agent if it received 51 per cent of the votes and that problems might arise from such a requirement of an absolute majority since, where this percentage was not attained, the majority union would be denied the possibility of bargaining. The Committee notes the Government's statement that section 27(2) of the Act has still not been amended, and that it will keep the Office informed of progress concerning the revision of the said law. ***The Committee expresses the hope that it will be in a position in the near future to note progress on the amendment of the Trade Unions and Employers' Organisations (Registration, Recognition and Status) Act and requests the Government to provide information on developments in this regard.***

The Committee had previously noted that according to the ITUC, collective bargaining rights were frequently violated by employers, despite the fact that they are guaranteed in law. The Committee had requested the Government to provide its observations in this respect, as well as statistical information on the number of collective agreements concluded during the last two years and the sectors and number of workers covered by such agreements. The Committee notes that according to the Government one agreement was signed in 2006 in the agricultural sector, covering approximately 42 workers, and seven agreements were concluded in 2007 in the agricultural, banking and services sectors, covering approximately 779 workers.

Benin

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, reporting acts of intimidation against the leaders of the principal trade union federations which called a general strike in 2008 to protest against the decline in purchasing power. In general, the Committee considers that the right to organize public meetings is an important aspect of trade union rights. Similarly, protest action planned by trade unions may be a part of lawful trade union activities within the meaning of *Article 3 of the Convention* and is accordingly protected by the principles of freedom of association. ***The Committee requests the Government to reply to the comments concerning acts of discrimination and intimidation by the authorities against trade union leaders, and where necessary to conduct an inquiry.***

Article 2. Right to establish trade unions without previous authorization. The Committee has been requesting the Government for many years to take measures to amend the provisions of the Labour Code which require the filing of trade union by-laws in order to obtain legal personality from the authorities, including the Ministry of the Interior, under penalty of a fine. In its previous observation, the Committee noted the Government's indication that its comments, particularly on the need to amend section 83 of the Labour Code, would be taken into account during the revision of the labour legislation. In its latest report, the Government indicates that proposed amendments will soon be submitted to the National Labour Council and that this action, for which the Government has requested technical assistance from the Office, is covered by the annual workplan of the Ministry. ***The Committee trusts that the revision of the labour legislation, with the assistance of the Office, will be completed in the very near future. It expects that the Government will indicate in its next report the amendments made in order to bring the legislation into full conformity with the Convention.***

Right of workers without distinction whatsoever to establish trade unions. In its previous comments, the Committee requested the Government to revise Ordinance No. 38 PR/MTPTPT of 18 June 1968 issuing the Merchant Navy Code, which gives seafarers neither the right to organize nor the right to strike and provides for prison sentences for breaches of labour discipline. The Committee notes that the Government reiterates its statement that the new Merchant Navy Code, taking into account the Committee's comments, is currently under examination by the National Assembly with a view to its adoption. ***The Committee trusts that the Government will indicate in its next report the adoption of the new Merchant Navy Code and that it will grant seafarers all the guarantees set out in the Convention in respect of freedom of association. The Government is requested to provide a copy of the adopted text.***

Bolivia

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) on 29 August 2008, which referred to legislative matters already raised by the Committee, as well as death threats against the Executive Secretary of the Bolivian Central of Workers (COB) and a dynamite attack against the COB headquarters in La Paz. In this regard, the Committee notes the Government's recognition that the attack against the headquarters of the COB was reprehensible and caused material damage, although there were no fatalities. The

Government adds that the corresponding complaint was made to the criminal investigation forces in the national police, but that progress was not made in the investigation as it was impossible to find those responsible. In this regard, the Committee emphasizes that the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected.

The Committee notes the new comments made by the ITUC on 26 August 2009, which refer to matters that are already under examination. ***The Committee requests the Government to provide its observations in this respect.***

The Committee notes the new Political Constitution of the State enacted on 7 February 2009. The Committee notes with *satisfaction* that articles 14, 49 and 51 of the new Constitution recognize the universal nature of the right to organize and collective bargaining for all workers, including agricultural workers, and the trade union protection of trade union leaders, and that it provides in article 112 that the rights recognized are directly applicable. The Committee notes that, according to the Government, the State now has to adopt new legislation in accordance with the new Constitution and that consequently all the national legislation, including the General Labour Act, will be amended (repealed) and harmonized with the new Constitution, under which international Conventions have precedence in their application. The Committee notes the Government's indication that, with regard to freedom of association, the new Constitution was drawn up using Convention No. 87 as inspiration and accordingly many of the trade union rights set out in the law were transformed into constitutional rights. Now their implementation needs to be regulated through explicit legislation. In this respect, the Ministry of Labour, Employment and Social Insurance is engaged in drawing up a new Labour Act in accordance with the new Constitution, and during this process it will take into consideration and incorporate the Committee's comments.

The Committee recalls that for many years its comments have referred to the following matters:

- The exclusion of agricultural workers from the scope of the General Labour Act of 1942 (section 1 of the General Labour Act of 1942 and Regulatory Decree No. 224 of 23 August 1943, issued under the Act), which implies their exclusion from the guarantees afforded by the Convention. The Committee notes the reference by the Government in its report to various provisions which have gradually granted the guarantees set out in the Convention to agricultural workers and the indication that the Bill on agricultural and rural workers, establishing the conditions and rights of agricultural workers, is before the Senate of the National Congress. ***The Committee hopes that the Bill will be adopted in the near future and will ensure the application of the guarantees set out in the Convention to all agricultural workers, whether they are wage earners or own-account workers.***
- Denial of the right to organize of public servants (section 104 of the General Labour Act). The Committee recalls that, under the terms of *Article 2 of the Convention*, public servants, like all workers, without distinction whatsoever, should enjoy the right to establish organizations of their own choosing and to join those organizations without previous authorization for the promotion and defence of their interests.
- The requirement of 50 per cent of the workers in an enterprise in order to establish a trade union, if the latter is industrial in nature (section 103 of the General Labour Act). In this respect, the Committee recalls that this percentage is very high and could therefore hinder the establishment of trade unions at the industry level.
- The broad powers of supervision conferred on the labour inspectorate over trade union activities (section 101 of the General Labour Act, which provides that labour inspectors shall attend the deliberations of trade unions and monitor their activities). The Committee recalls that *Article 3 of the Convention* provides that workers' organizations shall enjoy the right to organize their administration and that the public authorities shall refrain from any interference which would restrict this right.
- The requirement that trade union officers must be of Bolivian nationality (section 138 of the Regulatory Decree of the General Labour Act) and permanent employees in the enterprise (sections 6(c) and 7 of Legislative Decree No. 2565 of June 1951). In the view of the Committee, national legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the host country, regardless of the acquisition of nationality (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118). Provisions which lay down the requirement to belong to an occupation or establishment in order to be a trade union officer are not consistent with the Convention, as they may infringe the organization's right to elect representatives in full freedom by preventing qualified persons, such as full-time union officers or pensioners, from carrying out union duties, or by depriving unions of the benefit of the experience of certain officers when they are unable to provide enough qualified persons from among their own ranks (see General Survey, op. cit., paragraph 117).
- The majority of three-quarters of the workers in order to call a strike (section 114 of the General Labour Act and section 159 of the Regulatory Decree). The Committee recalls that the requirement of a decision by over half of all the workers involved in order to declare a strike is too high and could excessively hinder the possibility of calling a strike, particularly in large enterprises. The Committee considers, for example, that it would be more appropriate to reduce the required majority to a simple majority of the votes cast.
- The illegality of general and sympathy strikes, subject to penal sanctions (sections 1 and 2 of Legislative Decree No. 2565 and section 234 of the Penal Code). The Committee recalls that the general prohibition of sympathy strikes

could lead to abuse, especially where the initial strike is legal, and that these strikes, as well as general strikes, are means of action that should be available to workers. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property or other serious infringement of rights have been committed, and can be imposed pursuant to legislation punishing such acts.

- The illegality of strikes in the banking sector (section 1(c) of Supreme Decree No. 1958 of 1950). The Committee recalls that banking services are not regarded as essential services in the strict sense of the term (services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) in which strikes may be banned or restricted. However, the Committee recalls the possibility of establishing a negotiated minimum service in cases where, although the total prohibition of strike action is not justified, and without calling into question the right to strike of the great majority of workers, it is considered necessary to ensure that the basic needs of users are met.
- The possibility of imposing compulsory arbitration by decision of the executive authorities in order to bring an end to a strike, including in services other than those that are essential in the strict sense of the term (section 113 of the General Labour Act). The Committee recalls that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even indirectly involve an absolute prohibition of strikes, contrary to the principles of freedom of association. The Committee recalls that compulsory arbitration to end a collective labour dispute and strike situations is only acceptable if it is at the request of both parties involved in a dispute, or in cases where the strike may be restricted, or even banned, that is in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, that is the interruption of which would endanger the life, personal safety or health of the whole or part of the population.
- The possibility of dissolving trade union organizations by administrative authority (section 129 of the Regulatory Decree). The Committee recalls that measures of suspension or dissolution by administrative authority constitute serious infringements of the principles of freedom of association. The Committee considers that the dissolution of trade union organizations is a measure which should only occur in extremely serious cases. Such dissolutions should only occur following a judicial decision so that the rights of defence are fully guaranteed.

The Committee expresses the firm hope that in the context of the planned legislative reform, further to the adoption of the new Constitution, all of its comments will be taken into account. The Committee requests the Government to provide information on any developments in this respect and recalls that, if it so wishes, it may have recourse to the technical assistance of the Office.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1973)

The Committee notes the Government's reply to the comments of 29 August 2008 by the International Trade Union Confederation (ITUC), referring in particular to anti-union dismissals in a mining enterprise in the department of Oruro and a telecommunications cooperative in Sucre. The Committee takes note of the Government's general comments in reply to the effect that: (1) in the event of an anti-union dismissal, the Government has the obligation to enforce the Constitution and applicable laws, either through administrative channels, namely the Ministry of Labour, Employment and Social Security, or through judicial channels and, if the dismissal is proved to be an anti-union act, immediate reinstatement must be ordered of the man or woman worker holding the trade union office who are protected by trade union immunity, in accordance with article 51, paragraph VI of the Political Constitution of the State; (2) trade union immunity implies that trade union officials may not be dismissed without trial; (3) trade union immunity protects trade union leaders from the time of their election, by virtue of Supreme Decree No. 29593 of 1 May 2008. The Committee observes that, apart from these general observations, the Government provides no specific information in response to the ITUC's allegations. *In these circumstances, the Committee asks the Government to hold an inquiry into the matter and if it is ascertained that the dismissals were anti-union in origin, to take the necessary steps to remedy the measures found to be discriminatory.*

The Committee notes the ITUC's new comments of 26 August 2009, referring to issues that are already under examination. *It requests the Government to send its observations in response.*

Legislative matters raised previously. The Committee recalls that for many years it has been addressing the following matters in its comments:

- The need to adjust the amount of the fines (from 1,000 to 5,000 bolivianos) envisaged in Act No. 38 of 7 February 1944 (former Legislative Decree No. 38) to make them sufficiently dissuasive against acts of anti-union discrimination or interference.

- The need to guarantee the right to organize of public servants and agricultural workers and, hence, their right to collective bargaining. The Committee notes that, in its report, the Government refers to a number of provisions that have gradually extended the guarantees laid down in the Convention to agricultural workers, and indicates that the Chamber of Senators of the National Congress has before it a Bill on agricultural or rural workers the aim of which is to establish conditions of work and rights for agricultural workers. ***The Committee hopes that the Bill will be adopted in the near future and will apply the guarantees laid down in the Convention to all agricultural workers, whether they are wage workers or self-employed.***
- With regard to the exclusion of public servants from the right to organize the Committee pointed out that, although *Article 6 of the Convention* allows public servants engaged in the administration of the State to be excluded from its scope, other categories of workers should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages (see General Survey on freedom of association and collective bargaining, 1994, paragraph 262).
- With regard to the need for swift and efficient procedures to ensure application of the rights laid down in the Convention, the Committee recalls that it also asked the Government to provide information on progress made in the passage of the Bill to issue the new Code of Labour Procedure, which the President had submitted to Parliament. The Committee notes in this connection the Government's statement that, in view of the adoption of the new Constitution, a new draft will have to be aligned with the Constitution and submitted to Parliament for consideration after the presidential elections of 6 December 2009. The Government indicates that the Ministry of Employment and Social Welfare will satisfy itself that the new draft is efficient and effective, allowing labour disputes or conflicts to be resolved more promptly.

The Committee takes note of the new Political Constitution of the State, promulgated on 7 February 2009. It notes with **satisfaction** that articles 14, 49 and 51 of the new Constitution recognize as universal the right to organize and the right to collective bargaining of all workers, including agricultural workers, as well as trade union immunity for union officials, and provides in article 112 that the rights established shall apply directly. The Committee notes that, according to the Government, the State has at present to adopt new legislation that is consistent with the new Constitution and that all national laws, including the General Labour Act, will therefore be amended (repealed) and aligned with the new Constitution, under which international treaties take precedence. The Committee notes the Government's statement that, as regards freedom of association, the new Constitution drew on Convention No. 98 and for that reason many of the trade union rights laid down in the legislation became constitutional rights. Specific enabling regulations are now needed for their application. In this connection, the Ministry of Labour, Employment and Social Welfare is drafting a new Labour Act consistent with the new Constitution, and the Committee's observations will be considered and incorporated in this context.

Subjects open to negotiation. The Committee recalls that in its previous comments it asked the Government to indicate the criteria used by departmental labour services to approve collective agreements, and to send copies of the agreements that they have recently approved. The Committee notes the Government's statement that an example of how collective bargaining is encouraged is to be found in Supreme Decree No. 0016 of 19 February 2009 under which a wage increase was established for the private sector to cover 2009. Ministerial Resolution No. 115/09 of 9 March 2009 regulates the abovementioned Supreme Decree and provides that agreements to increase wages are required to contain: (a) the minimum percentage increase provided for in Supreme Decree No. 0016; (b) retroactive payment to January 2009; (c) the date of the agreement; (d) the number and payroll of the workers benefiting from the increase; (e) an indication as to whether the increase granted for 2009 amounts to or exceeds the 12 per cent established in section 3 of Supreme Decree No. 0016 as the basis for collective bargaining of the increase between employers and workers; and (f) the signatures of the beneficiary workers, trade union leaders, representatives of trade union committees or delegates, and the employers' representatives, demonstrating the parties' consent to the substance of the agreement.

The Committee has been noting for years that in practice collective bargaining deals only with wages and not other conditions of work. It recalls that, according to *Article 4*, the Government has a duty to adopt appropriate measures to encourage and promote the full development and utilization of machinery for collective bargaining with a view to regulating not only wage increases but also conditions of work. ***The Committee requests the Government to take the necessary steps to encourage collective bargaining, including the bargaining of subjects other than wages such as other conditions of employment, and to provide information in this regard.***

Furthermore, the Committee notes that article 49, paragraph II of the new Constitution provides that "the law shall regulate labour relations respecting collective contracts and agreements; sectoral and general minimum wages and wage increases; reinstatement; paid rest and holidays, accounting of years of service, hours of work, overtime, supplements for night work, Sunday rates; end of year extra salary; bonuses or other schemes for participating in a company's profits; compensation and severance pay; maternity allowances; training and vocational training and other social rights". ***The Committee asks the Government to explain the exact meaning of this provision and to state specifically whether its purpose is to establish minimum standards for the areas covered or to replace provisions concluded in the framework of collective bargaining.***

The Committee expresses the firm hope that in the context of the legislative reforms that are to be carried out pursuant to the adoption of the new Constitution, all the Committee's comments will be taken into account. It asks the

Government to provide information on any developments in this area that concern the new General Labour Act and the Code of Labour Procedure, and reminds it that, if it so wishes, it may seek technical assistance from the Office.

Application of the Convention in practice. The Committee requests the Government to provide statistical information on the number of collective agreements in the public sector and the private sector, the subjects dealt with and the number of workers covered.

Bosnia and Herzegovina

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

The Committee notes the comments of both the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) dated 24 December 2007 and 28 November 2008, the Confederation of Trade Unions of Bosnia and Herzegovina (CTUBH) dated 20 August 2009, and the International Trade Union Confederation (ITUC) dated 26 August 2009 on the application of the Convention, as well as the Government's observation thereon. The Committee notes the adoption of the Law on amendments to the Law on associations.

Articles 2 and 4 of the Convention. Requirement of previous authorization for the establishment of employers' and workers' organizations and dissolution or cancellation of registration. The Committee recalls that in its previous comments it had requested the Government to amend section 32 of the Law on the associations and foundations of Bosnia and Herzegovina which authorizes the Minister of Justice to accept or refuse a request for registration and provides that the request shall be considered as rejected if the Minister does not adopt a decision within 30 days. The Committee also expressed the hope that the necessary amendments would be made to sections 30(2), 34 and 35 as regards dissolution or cancellation of registration along the lines of its previous requests. The Committee notes that the Government indicates that in case the Ministry does not resolve the application, for any reason within 30 days from the date of its submission, the request is not considered tacitly rejected, but the process continues until a decision is made. In this instance, the applicant may, however, immediately after the deadline expiration for making the first instance decision, appeal to the second instance authority in accordance with the provisions of the Administrative Procedure Law. The second instance authority shall, within three days upon receipt of appeal, request from the first instance authority all the case files and a written statement on the reason why the party's application was not resolved within the prescribed period. If the second instance authority determines that the decision is not made within the prescribed period due to a justifiable reason, or due to the party's guilt, it shall specify the term for the first instance authority to make the decision. The Committee further notes with *interest* that sections 30(2), 34 and 35 have been amended. ***The Committee requests the Government to indicate the impact in practice of these amendments.***

Registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina. The Committee further recalls that in several of its previous observations it had noted the unreasonable period which had elapsed since the filing of a registration request by the SSSBiH and had requested information on the measures taken or contemplated in order to grant registration to this organization as soon as possible. The Committee notes that the Government indicates that the Appeal Commission, as an autonomous and independent second instance authority has now made decision No. 01-02-4/08, dated 11 May 2009, rejecting the appeal of the SSSBiH. The SSSBiH appealed this decision before the Court of Bosnia and Herzegovina on 17 July 2009.

The Committee observes with *regret* that the SSSBiH has not yet been registered despite the fact that the Committee has been raising this issue for several years now. ***The Committee requests the Government to indicate in its next report the basis of the Appeal Commission's denial of the SSSBiH's request for registration and to transmit a copy of that decision. In addition, the Committee requests the Government to indicate the outcome of the litigation commenced by the SSSBiH in the Court of Bosnia and Herzegovina.***

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

The Committee notes the comments submitted by the Confederation of Trade Unions of Bosnia and Herzegovina (CTUBH) dated 20 August 2009 and the International Trade Union Confederation (ITUC) dated 26 August 2009 on the application of the Convention.

Article 4 of the Convention. Measures to encourage and promote the development of voluntary negotiation between employers' and workers' organizations. In several of its previous comments, the Committee requested the Government to indicate any measures taken or contemplated in order to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations, including at the level of the Republic as a whole. The Committee notes that the Government indicates in its report that public authorities cannot influence or ensure the organization of trade unions in the private sector. Nevertheless, the Committee also observes from the Government's report that in the Brcko District, no collective agreement has been signed between the trade unions and employers of that district. ***The Committee once again requests the Government to provide it with statistics on the number and coverage of collective agreements that have been concluded throughout the territory.***

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

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1993)

Article 1 of the Convention. Protection of workers' representatives. The Committee had previously recalled that it had taken note of the comments communicated by the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH) and the Confederation of Trade Unions of the Republika Srpska (CTURS) with regard to dismissals of trade union representatives without the mandatory approval from the Federal Ministry of Labour; the workers' organizations mentioned that although the Labour Law contained provisions on the prohibition of discrimination, it was impossible to prove the breaches of these provisions at court because discrimination often occurred in a hidden manner. The Committee had further requested the Government to specify the provisions in the Labour Law which provide that the dismissal of workers' representatives shall be subject to approval by the Federal Ministry of Labour, as indicated by the SSSBiH and CTURS in their comments. It also requested the Government, while the Labour Code and Law on changes and amendments to the Labour Code of Brcko District (*Official Gazette* of Brcko District of BiH, Nos 7/00 and 33/04) were being translated, to specify the provisions which afford protection against anti-union discrimination to workers' representatives in the Brcko District.

While the Committee is still awaiting the translation of the Labour Code and Law on changes and amendments to the Labour Code of Brcko District (*Official Gazette* of Brcko District of BiH, Nos 7/00 and 33/04), it notes with *interest* the Government's statement that section 93 of the Labour Law of the Federation of Bosnia and Herzegovina (FBiH) provides that only with the prior approval of the Federal Ministry of Labour may an employer terminate the employment agreements of trade union commissioners during their period of service, and for six months after having completed their period of service. Furthermore, the General Collective Agreement for the FBiH also includes this requirement of prior approval for the termination of trade union commissioners' employment agreements. The Committee also notes with *interest* that, according to the Government, section 26 of the Law on the Works Council provides that only with the previous consent of the works council may an employer terminate the employment of a works council member; the termination of a works council member's employment without such consent is an offence punishable by a fine.

The Committee notes the Government's indication that the Labour Law of the Brcko District includes a prohibition on discrimination on the basis of the following: membership or non-membership of a trade union; the choice of trade union; the opting in or out of trade union membership; and involvement in trade union activities. The prohibition, furthermore, extends to discriminatory dismissals. While noting this information, the Committee nevertheless recalls that, in the information submitted by the Government on the application of Convention No. 98, the Government indicates that the legislation of the Brcko District contains no sanctions against employers for acts of anti-union discrimination. ***In these circumstances, the Committee requests the Government to clarify whether the Labour Law of Brcko district or any other legislation pertaining to Brcko District affords protection against acts of anti-union discrimination, and if so to specify the relevant provisions.***

Article 2. Facilities granted to workers' representatives. The Committee had previously noted with interest the numerous facilities provided to workers' representatives according to the Government in the Federation of Bosnia and Herzegovina (time off from work, right to return to work after end of mandate, right to compensation of salary and premises, administrative and technical support for the performance of trade union representative functions). The Committee requested the Government to specify the legal texts on the basis of which these facilities were provided (e.g. law, collective agreement, etc.) in the Federation of Bosnia and Herzegovina, as well as to provide a copy of the General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina (*Official Gazette* of the Federation BiH, No. 54/05).

In respect of the above, the Committee notes that the Government indicates the following: (1) section 139 of the Labour Law of the FBiH provides that for employees elected to a professional trade union post, upon their request the rights and obligations arising from employment shall be on stand-by for no longer than four years from the day of election or appointment; (2) section 15 of the Law on the Works Council prescribes that the cost of elections of works council members shall be borne by the employer; (3) section 33 of the Law on the Works Council provides that the works council shall perform tasks and hold session during work hours. Each member of the works council shall be entitled to carry out the tasks from the scope of competencies of the works council several times per week, provided that members may assign work hours to each other. The tasks of the president or members of the works council may be carried out during full-time work hours if the sum of the assigned work hours so permits; (4) section 34 of the Law on the Works Council provides that council members shall be entitled to compensation for council-related work in the amount of the salary they would have earned for work done pursuant to their employment agreement; (5) section 35 of the Law on the Works Council provides that the president or members of the works council who have carried tasks for the works council during full-time work hours shall, once the said tasks have ceased, be entitled to return to the tasks they had previously performed or, if no such tasks remain, to other tasks corresponding to their professional qualifications; (6) section 36 of the Law on the Works Council provides that the employer shall be required to ensure to the works council the necessary space, administrative and technical conditions for work, which is more closely governed through an agreement between the employer and the works council; and (7) sections 27 and 28 of the General Collective Agreement for the territory of the FBiH provide that trade union representatives not employed by the employer but whose trade union includes members employed by the employer shall be allowed access when so required for carrying out trade union activities. Also, the employer's

employment policy must stipulate and ensure the conditions for work and activity of the trade union in compliance with the general and collective agreements in the specific industries. ***Noting this information, the Committee once again requests the Government to provide a copy of the General Collective Agreement for the territory of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation BiH, No. 54/05).***

Facilities granted to workers' representatives in the Republika Srpska and Brcko District. In respect of the Committee's previous request to provide information on the legislative or other provisions which give effect to *Article 2* of the Convention in the Republika Srpska and the Brcko District, the Committee notes that, in respect of the Brcko District, the Government states that the Labour Law of the Brcko District provides that, where an employer hires more than 15 workers, the workers shall be entitled to form the works council to represent them with the employer for the protection of their rights and interests. The Government further indicates in this regard that method and procedure of formation of the works council, as well as other issues related to the work and activity of the works council, are governed in the Law on the Works Council of Brcko District. The Committee notes this information. ***While it awaits the translation of the General Collective Agreement of Republika Srpska (Official Gazette of the Republika Srpska, No. 27/06) the Committee once again requests the Government to provide information on the legislative or other provisions which give effect to Article 2 of the Convention concerning facilities granted to workers' representatives in the Republika Srpska.***

Articles 3, 4 and 5. Relations between trade union representatives and elected representatives. The Committee had previously requested the Government to provide information on the provisions which give effect to the provisions of *Articles 3, 4 and 5* of the Convention in the Republika Srpska and Brcko District. In this regard the Committee notes that, according to the Government, the conditions for work of trade unions and the rights of labour or trade union representatives are regulated by sections 52 to 56 of the General Collective Agreement (*Official Gazette* of the Republika Srpska, No. 27/06, as well as through individual industry-specific collective agreements. ***The Committee once again requests the Government, while it awaits the translation of the General Collective Agreement of Republika Srpska (Official Gazette of the Republika Srpska, No. 27/06), to indicate the provisions which give effect to the provisions of Articles 3, 4 and 5 of the Convention in the Brcko District.***

Botswana

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

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in 2008 and 2009 on the application of the Convention. ***The Committee requests the Government to provide its observations.***

The Committee recalls that it had previously requested the Government to:

- amend section 2(1)(iv) of the Trade Union and Employers' Organizations (TUEO) (Amendments) Act, 2003 and section 2(11)(iv) of the Trade Disputes Act, both of which deny employees of the prison service the right to organize, as well as section 35 of the Prisons Act – which similarly prohibits prison officers from becoming members of a trade union or any body affiliated to a trade union;
- amend section 48B(1) of the TUEO Act, which grants certain facilities (access to an employer's premises for purposes of recruiting members, holding meetings or representing workers; the deduction of trade union dues from employees' wages, recognition by employers of trade union representatives in respect of grievances, discipline, and termination of employment) only to unions representing at least one third of the employees in an enterprise;
- amend section 10 of the TUEO Act, so as to afford industrial organizations the opportunity to rectify the absence of some of the formal registration requirements provided for in that section, and to repeal sections 11 and 15, which result in the automatic dissolution and banning of activities of non-registered organizations;
- amend sections 9(1)(b), 13 and 14 of the Trade Disputes Act, which empower the Commissioner and the Minister to refer a dispute in essential services to arbitration, or to the Industrial Court for determination; and to amend the list of essential services specified in the Schedule of the Trade Disputes Act, which includes, among others, the Bank of Botswana, railway services, and the transport and telecommunications services necessary to the operation of all of these services.

In this respect, the Committee had noted the Government's statement that it has taken note of its comments, and that consultations with the social partners on the legal provisions referred to therein are ongoing. ***Recalling that consultations with the social partners with regard to legislative amendments had commenced last year, the Committee requests the Government to indicate, in its next report, the progress made with respect to the points previously raised.***

Finally, the Committee recalls that it had previously asked the Government to amend the following sections of the TUEO Act, so as to ensure that trade unions enjoy autonomy and financial independence from the authorities: section 43, providing for the inspection of accounts, books and documents of a trade union by the Registrar "at any reasonable time"; and sections 49 and 50, providing for the inspection by the Minister "whenever he considers it necessary in the public interest" of the financial affairs of a trade union. In this regard, the Committee had noted the Government's statement that the Minister's power to inspect trade union finances under sections 49 and 50 of the TUEO Act is limited to exceptional circumstances in order to investigate a complaint by members of the union or allegations of embezzlement. ***In these circumstances, the Committee requests the Government to indicate the practical application of sections 49 and 50 of the TUEO Act, including the frequency with which these sections are invoked to inspect trade union finances. Recalling, moreover, that the control by the public authorities over trade union finances should, except when exercised on the basis of a complaint from a certain percentage of workers,***

normally not exceed the obligation to submit periodic reports, the Committee once again requests the Government to take the measures necessary to amend section 43 of the TUEO Act.

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

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009. *The Committee requests the Government to provide its observations thereon.*

Scope of the Convention. The Committee had previously requested the Government to amend section 2 of the Trade Disputes Act, section 2 of the Trade Union and Employers' Organizations (Amendment) Act, and section 35 of the Prison Act so as to ensure that prison staff are afforded all the guarantees provided under the Convention. The Committee notes the Government's indication that consultations with the social partners with regard to the said legislative amendments have not been concluded. *Recalling that consultations with the social partners with regard to legislative amendments had commenced two years ago, the Committee expresses the hope that the Government will be in a position, in the near future, to report progress on these legislative amendments to ensure to prison staff the rights enshrined in the Convention. It requests the Government to provide information on developments in this regard.*

Article 1 of the Convention. The Committee further notes the Government's statement that consultation is still ongoing concerning the ITUC's previous observation according to which if a trade union is not registered, union committee members are not protected against anti-union discrimination. *In this regard the Committee, recalling that the Government is responsible for preventing all acts of anti-union discrimination in order to give effect to Article 1 of the Convention, requests the Government to take the necessary measures to ensure that all union committee members, including those of unregistered trade unions, enjoy protection against anti-union discrimination.*

Articles 2 and 4. *The Committee once again requests the Government to provide information on the progress made with respect to the legislative changes requested in its previous comment, which it repeats as follows:*

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

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

The Committee notes that the Government's report has not been received. It must therefore repeat the points raised in its previous observation:

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

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

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

Brazil

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

The Committee notes the Government's reply to the comments of the International Trade Union Confederation (ITUC) of 2007 on the murder of leaders of rural workers' organizations and of one trade unionist in the footwear sector, and particularly that judicial investigations have been initiated into these matters. The Committee notes the comments of the ITUC of 26 August 2009, which refer to matters already raised by the Committee, such as acts of repression by the police against demonstrators, attacks against trade union premises and the homes of trade union leaders, anti-union dismissals and failure to comply with collective agreements. The Committee also notes the comments of the Workers' Union of the Electrical Energy Industries of the North and Noroeste Fluminense (STIEENNFF) alleging that an enterprise in the energy sector unilaterally modified standards agreed with the unions. Finally, the Committee notes the comments of *Força Sindical*, *Noca Central dos Trabalhadores do Brasil*, the General Union of Workers, the Single Confederation of Workers, the Confederation of Men and Women Workers of Brazil and the General Confederation of Workers of Brazil, dated 3 September 2009, on the application of the Convention. In particular, it notes with concern the allegations concerning the murder of 11 trade unionists between 1993 and 2009 and the attempted murders of trade unionists. ***The Committee requests the Government to provide its observations on this matter and to ensure without delay that investigations are launched into the allegations of violence with a view to elucidating the facts and punishing those responsible.***

Article 4 of the Convention. Compulsory arbitration. In its previous observation, the Committee noted the Government's indication that: (1) under Constitutional Amendment No. 45 of 8 December 2004 (reform of the judiciary, amendment to article 114), it was established that a collective dispute (*dissídio coletivo*) may only be determined with the agreement of both parties (the intervention of the judiciary cannot be requested unilaterally); (2) the draft trade union reform, prepared in the context of the National Labour Forum (FNT), envisages as one of the priorities the promotion of collective bargaining at all levels and in all spheres of representation, removing dialogue between workers and employers from the scope of the State; and (3) under the trade union reform, labour tribunals are designed to become bodies for the voluntary settlement of disputes (the Government indicated that the discussions in the FNT led to the consolidation of a proposal for a Constitutional Amendment, which is before the National Congress, and a preliminary draft of industrial relations legislation). The Committee requested the Government to provide information on any developments relating to the draft trade union reform, and particularly any provisions adopted in relation to arbitration as a means of dispute settlement, and to supply statistical information on the number of collective disputes (*dissídios coletivos*) dealt with by the labour tribunals since the adoption of the Constitutional Amendment of 2004.

In this regard, the Committee notes the Government's indication in its report that: (1) with reference to the draft trade union reform, the proposed Constitutional Amendment is still under examination by the National Congress with a view to bringing an end to trade union unity and promoting collective bargaining; (2) Decree No. 186 was adopted under which the parties may discuss, in the context of the Ministry of Labour and Employment, disputes which arise in relation to the registration of trade unions, thereby allowing the Ministry to act as a mediator in the dispute; (3) the labour courts may only intervene in collective bargaining at the request of both parties to the dispute; and (4) with regard to the statistical data requested on collective disputes (*dissídios coletivos*), 714 were resolved in 2005, 561 in 2006, 792 in 2007 and 820 in 2008. ***The Committee requests the Government to indicate, if it is still possible in practice, to impose a dissídio coletivo (judicial compulsory arbitration) at the request of only one party and to provide information in its next report on the progress made with regard to the draft trade union reform referred to above.***

Right to collective bargaining in the public sector. The Committee recalls that for many years it has been referring to the need, in accordance with *Article 4* of the Convention, for public employees who are not engaged in the administration of the State to have the right to collective bargaining. The Committee notes the Government's indication, as it reported previously, that there are constitutional limitations on the freedom of action of the public administration, which make collective bargaining in the public sector difficult, and it reiterates that in June 2003 the Standing National Negotiation Board (MNNP) (composed of the representation of eight ministries and all the representative bodies of federal public servants) was established with a view to seeking negotiated solutions to the issues raised by public servants and by the Federal Public Administration, formulating the legal regulations for a permanent system of negotiation, promoting discussions and negotiations of the harmonized guidelines concerning the claims of public servants, etc. ***Under these conditions, the Committee requests the Government to provide information in its next report on whether, as a result of the activities of the MNNP, there has been any change in terms of the possibility of concluding collective agreements covering public servants who are not engaged in the administration of the State, or whether other measures have been adopted to guarantee this right.*** Finally, the Committee notes the Government's indication that a draft Legislative Decree for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151) has been forwarded to the National Congress.

Subjection of collective agreements to the financial and economic policy. The Committee recalls that in its previous observations it also referred to the need to repeal section 623 of the Consolidation of Labour Laws (CLT), under the terms of which the provisions of an agreement or accord that are in conflict with the orientations of the Government's

economic and financial policy or the wage policy that is in force shall be declared null and void. The Committee notes the Government's indication that, even though in 2007 two Bills to amend the above section were tabled in the Chamber of Deputies, the Bills were set aside. The Committee recalls once again that, except in exceptional circumstances required by economic stabilization policies, it is the parties to the collective bargaining process who are best placed to determine wages and should be the ones to do so. It therefore considers that the restriction contained in section 623 of the CLT affects the independence of the social partners during collective bargaining and impedes the development of voluntary collective bargaining procedures between employers or their organizations and organizations of workers for the determination of terms and conditions of employment. ***The Committee once again requests the Government to take steps to repeal the legislative provision referred to above and to inform it in its next report of any measure adopted in this respect.***

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

Bulgaria

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions of Bulgaria (CITUB). ***The Committee requests the Government to provide its observations in this respect.***

The Committee notes the discussion in the Conference Committee on the Application of Standards in June 2008 on the application of the Convention. In particular, it notes that the Government intends to resolve issues relating to the right to strike with ILO technical assistance and through tripartite consultation. According to the Government, the provision prohibiting strikes in the energy, communications and health sectors has not been applied since 2006. Furthermore, the Government is prepared to reopen the debate once again on the right to strike of public servants with a view to reaching an acceptable solution.

The Committee notes that the Government's report has not been received. The Committee recalls that it has been referring for years to the need to amend the following provisions:

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

The Committee hopes that, in accordance with the commitments made by the Government, it will be in a position to note additional progress in relation to the issues raised. It hopes that the technical assistance requested by the Government will be provided as soon as possible.

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

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

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

The Committee requests the Government to provide its observations on the comments submitted by the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions in Bulgaria (CITUB), particularly those concerning the lengthiness of anti-union discrimination proceedings.

Article 2 of the Convention. Protection against acts of interference. Previously, the Committee had requested the Government to provide information on the provisions which protect against acts of interference by employees' and employers' organizations in each other's affairs. The Committee noted that the Government had referred to section 33 of the Labour Code – which provides for the autonomy of workers' and employers' organizations in formulating their statutes, electing their representatives, and adopting their programmes of action. In this respect, the Committee recalls that under *Article 2* of the Convention, all acts which are designed to promote the establishment of workers' organizations under the domination of employers' organizations, or to support workers' organizations by financial means with the object of placing such organizations under the control of employers or employers' organizations, shall be deemed to constitute acts of interference. The Committee

further recalls that legislation should explicitly prohibit all such acts of interference and make express provision for rapid appeals procedures, coupled with effective and sufficiently dissuasive sanctions against acts of interference, in order to ensure the application in practice of *Article 2*. Moreover, to ensure that these measures receive the necessary publicity and are effective in practice, the relevant legislation should explicitly lay down these substantive provisions, as well as appeals and sanctions to guarantee their application (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 232). ***Noting that the legislation contains no provisions concerning such protection as described above, the Committee requests the Government to take the necessary measures to ensure adequate protection, including by means of dissuasive sanctions, against acts of interference by employers' organizations.***

Article 4. The Committee had previously noted that section 51(b)(1) and (2) of the Labour Code provides that collective agreements at the level of the branch or industry are concluded between the representative workers' and employers' organizations on the basis of an agreement between the national organizations to which they are respectively affiliated, and had requested the Government to specify whether a majority organization in the industry or the branch can conclude a collective agreement, even if it is not affiliated to a national representative organization, as well as to provide a copy of the general framework agreement concluded between national organizations of employers and workers on collective bargaining at the branch or industry levels. The Committee had noted the Government's statement that organizations not affiliated to a national representative organization cannot conclude collective agreements at the branch and sectoral levels, though they may do so at the enterprise level. The Government further states that there is no framework agreement providing for collective agreements at the sectoral and branch levels. ***The Committee considers, in this regard, that requiring organizations to be affiliated with a national organization in order to be able to conclude sectoral and branch level agreements is incompatible with the principle of free and voluntary collective bargaining established in Article 4 of the Convention; it requests the Government to amend section 51(b)(1) and (2) of the Labour Code so as to eliminate this requirement.***

Articles 4 and 6. The Committee had previously taken note of the comments made by the ITUC and the CITUB on the denial of collective bargaining rights to public servants. In this respect, the Committee notes the Government's indication that, despite the absence of the right of collective bargaining in the narrow sense of the term, under section 44(3) of the Civil Service Act trade unions are able to represent and defend the rights of civil servants on civil service and social security issues through proposals, requests, and participation in the drafting of relevant internal regulations and ordinances, as well as in the discussion of issues of economic and social interest. The Government adds that representatives of organizations of civil servants may take part in the competition commission for the selection of candidates to the civil service, as well as participate in the process for the appraisal of civil servants. Issues related to income and social security in the public service, however, are discussed in the National Council for Tripartite Cooperation, in which all nationally representative employers' and workers' organizations are represented. The Committee recalled that, although *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope, other categories of public servants should enjoy the guarantees of the Convention and therefore be able to negotiate collectively their conditions of employment, including wages (see General Survey, op. cit., paragraph 262). ***The Committee therefore requests the Government to take the steps necessary to amend the Civil Service Act so as to ensure the right to collective bargaining of all public servants, with the only possible exception being those engaged in the administration of the State.***

The Committee had noted the comments of the Bulgarian Industrial Association (BIA) on the application of the Convention. ***Noting that the Government does not respond to the BIA's comments concerning section 51(a), (b) and (c) of the Labour Code, the Committee requests the Government to indicate in its next report whether employers' organizations enjoy the same right as workers' organizations to submit draft collective agreements in the course of negotiations.***

The Committee reminds the Government that it may avail itself of ILO technical assistance.

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

Burkina Faso

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

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

In its previous observation, the Committee noted the comments by the International Trade Union Confederation (ITUC) reporting restrictions on the right to strike in the legislation and acts of intimidation and threats against the leaders of the principal national trade union federations on grounds of their participation in a national strike. The Committee takes note of the Government's reply, and notes in particular that it has adopted Act No. 028-2008/AN of 13 May 2008 issuing the Labour Code. The Committee further notes the communication of 26 August 2009 by the ITUC reporting the arrest without charge and interrogation of an activist of the Union of Education and Research Workers, and the requisitioning of employees to contain strikes in various sectors. ***The Committee urges the Government to send its comments on the above.***

Article 3. Right of organizations to carry on their activities in full freedom and to formulate their programmes. Purpose of the strike. The Committee recalls that its previous comments concerned the need to amend section 351 of the Labour Code so as to enable organizations representing workers to resort to strike action in order to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular in regard to employment, social protection and standards of living. The Committee notes with *satisfaction* that, in the new Labour Code (Act No. 028-2008/AN of 13 May 2008), section 382 now defines a strike as a concerted and collective cessation of work with a view to supporting professional demands and ensuring defence of the workers' material or moral interests.

Occupation of premises in the event of a strike. The Committee notes that, according to section 386 of the Labour Code, exercise of the right to strike shall on no account be accompanied by occupation of the workplace or immediate surroundings subject to the penal sanctions established in the legislation in force. The Committee recalls in this connection that any restrictions on strike pickets and workplace occupations should be limited to cases where the action ceases to be peaceful or where observance of the freedom of non-strikers to work, or the right of management to enter the premises, are impeded. **Consequently, the Committee requests the Government to take the necessary steps to ensure that the restrictions provided for in section 386 of the Labour Code apply only where a strike ceases to be peaceful or where observance of the freedom of non-strikers to work and the right of management to enter the premises are impeded.**

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

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

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

Article 4 of the Convention. Promotion of collective bargaining. **The Committee hopes that the Government will soon be able to indicate the approximate number of workers covered by these agreements, and requests it to give an account of all measures to promote collective bargaining (including in the bakery, road transport and media sectors, in relation to which the Committee has requested information in its previous comments), taken in particular by the Directorate of Labour Relations and the Promotion of Social Dialogue.**

Collective bargaining in the public sector. **With regard to the public service advisory bodies, including the Tripartite Public Service Advisory Council, which is competent with regard to dialogue (section 51 of Act No. 013/98/AN of 13 April 1998 on the public service), the Committee notes the indication that the employees have not yet appointed their representatives and requests the Government to provide information on any developments in this regard.**

The Committee previously asked the Government to specify the categories of public servants not engaged in the administration of the State who enjoy the right to collective bargaining. **The Committee recalls that the Convention applies to all public servants not engaged in the administration of the State and requests the Government to take the necessary measures to guarantee the right to collective bargaining on conditions of employment between their trade union organizations and the employers.**

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

The Committee notes the communication of 26 August 2009 by the International Trade Union Confederation (ITUC), reporting that public servants affiliated to the National Union of Treasury Employees (SATB) and the Union of Employees of the Ministry of Foreign Affairs (SAMAE) were transferred for having taken part in protest action in May 2007, and that the General Secretary of the General Confederation of Workers of Burkina Faso (CGT-B) was arrested on 15 December 2008 following a commemorative march, and questioned by the national gendarmerie. **The Committee requests the Government to send comments in response to the ITUC's allegations of acts of anti-union discrimination.**

Burundi

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

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

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

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

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

join trade unions of minors under 18 years of age who are engaged in an occupational activity without the permission of their parents or guardians being necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to now and the sectors covered. The Committee hopes that the Government will be able to indicate substantial progress in its next report.

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

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

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1997)

The Committee notes that the Government's report has not been received and requests the Government to send its comments on the observation made by the Trade Unions Confederation of Burundi (COSYBU), according to which the legislation has not been regulated with regard to trade union representatives.

Cambodia

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

The Committee notes the comments submitted in August 2009 by the International Trade Union Confederation (ITUC) and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), concerning acts of violence, and harassment against trade union leaders and trade unionists, as well as other violations of the Convention. ***The Committee requests the Government to send its observations thereon.*** The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318 (351st Report).

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 comment, the Committee had taken note of the discussion on Cambodia in the Conference Committee on the Application of Standards in 2007, and in particular that the Conference Committee had expressed its deep concern at the statements made concerning the assassination of the trade unionists Chea Vichea, Ros Sovannareth, and Hy Vuthy; death threats; and the emerging climate of impunity in the country. The Conference Committee, recalling that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of these organizations, had called upon the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity; it further urged the Government to take steps immediately to ensure full and independent investigations into the murders of the abovementioned Cambodian trade union leaders so as to bring not only the perpetrators, but also the instigators of these heinous crimes to justice.

Having also noted the ITUC's comments on the irregularities that had attended the trials of Born Samnang and Sok Sam Oeun, the two men convicted of Chea Vichea's murder despite substantial evidence of their innocence, and numerous acts of harassment and violence against trade union leaders, the Committee had urged the Government to take the necessary measures, including the initiation of judicial inquiries, to bring an end to the acts of violence and intimidation against trade union officials and members. Finally, the Committee had noted the Government's acceptance of an ILO direct contacts mission, as requested by the Conference Committee, and had expressed the firm hope that the mission would achieve significant results in respect of all of the serious matters raised above.

Against this backdrop, the Committee notes with **concern** that according to the FTUWKC, a campaign of systematic violence and repression has been carried out against it in one factory, comprising vicious attacks on union leaders by gangs outside the factory; the violent dispersal of a FTUWKC rally, in which one worker was shot in the back by the police and 16 trade unionists were arrested and detained; the dismissal of 1,500 workers following the protest, virtually all of whom were FTUWKC leaders or members; and the subsequent blacklisting of the dismissed individuals by the management, which had distributed their names and photos to other factories. The FTUWKC also asserts that the authorities have done little to investigate the serious injuries inflicted on union leaders, and in fact have been regularly involved in the violent suppression of worker protests, strikes and marches at various factories.

The ITUC also indicates that in many factories trade unionists continue to face repression of all kinds, with virtually no intervention from the authorities. Anti-union acts include beatings from hired thugs, death threats, blacklisting, the bringing of trade unionists before the courts on false charges, wage deductions and exclusion from promotion. One FTUWKC leader was beaten by four or five masked individuals armed with iron rods on his way home from work. The ITUC also refers to the

continued obstruction of the activities of the Cambodian Independent Teachers' Association (CITA), which the Government does not recognize as a trade union and whose demonstrations and protests have often been prohibited. Another organization, the Cambodian Independent Civil Service Association (CICSA), is also not recognized as a trade union.

Finally, the Committee takes note of the report of the direct contacts mission to Cambodia, held on 21 to 25 April 2008. The Committee notes with **grave concern** that the mission report contains, inter alia, the following conclusions: (1) that the Cambodian judiciary is plagued by serious problems of capacity and a lack of independence, (2) that the conviction of Born Samnang and Sok Sam Oeun for the murder of trade union leader Chea Vichea was upheld on 12 April 2007, in a trial marked by procedural irregularities, including the Court's refusal to entertain evidence of their innocence; (3) that Thach Saveth was sentenced to 15 years in prison for the murder of trade union leader Ros Sovannareth; and (4) that no concrete steps had been indicated by the Government to ensure a meaningful and independent review of the outstanding cases. The Committee notes with **concern**, moreover, that it has received no information on any progress made in the investigation respecting Hy Vuthy.

In these circumstances, the Committee can only **deplore** the absence of any further developments in this regard in the Government's report, six months after the direct contacts mission. *It requests the Government to take the necessary measures to take concrete and tangible steps, as a matter of urgency: (1) to carry out independent inquiries, as a matter of urgency, into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy; (2) to facilitate an expedited review of the convictions of Born Samnang and Sok Sam Oeun for the murder of Chea Vichea, as well as the conviction of Thach Saveth for the murder of Ros Sovannareth, and to take steps for their release pending the outcome of the above independent inquiries; (3) to take the necessary steps to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. In this regard, the Committee suggests that the Government have recourse to the technical cooperation facilities of the Office, notably in the area of reinforcing institutional capacity, as well as with respect to the establishment of labour courts and the revision of the Law on Trade Unions. Finally, it urges the Government, as also requested by the Committee on Freedom of Association, to take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.*

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

The Committee notes the conclusions and recommendations made by the Committee on Freedom of Association in Case No. 2318 and in particular the decision of the Supreme Court on 31 December 2008 ordering the release of Born Samnang and Sok Sam Oeun. *Observing in this regard that the Supreme Court had also ordered the reopening of the investigation into Chea Vichea's murder, the Committee, like the Committee on Freedom of Association, urges the Government to ensure that the investigation is prompt, independent and expeditiously carried out, and to indicate the outcome.*

Finally, the Committee notes the Government's reply to the 2008 comments submitted by the ITUC and the FTUWKC and hopes that the task force which examines the reform of the trade union legislation will take into account all issues raised by the Committee. Furthermore, the Committee notes that the Government indicates that more than 1,000 trade unions have been established and that tripartite activities have been conducted.

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

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

The Committee notes the comments submitted in August 2009 by the International Trade Union Confederation (ITUC), which refer to matters already under examination, as well as to extremely serious and numerous acts of anti-union discrimination and interference – including instances where employers had violated trade union rights with impunity – and obstacles to collective bargaining. The Committee also notes the comments submitted by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC). *The Committee once again requests the Government to provide its observations including on the question of favouritism to the shop stewards in detriment to union leaders and the question of non prosecution in practice of anti-union practices of employers.*

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. In previous comments, the Committee had noted that in Case No. 2443 the Committee on Freedom of Association had referred to the need for appropriate legal protection against acts of anti-union discrimination, including sufficiently dissuasive sanctions, and had requested the Government to inform it of the measures adopted in order to modify the legislation so as to provide for such sanctions. *The Committee once again requests the Government to take the steps necessary to provide adequate protection in its legislation against all acts of anti-union discrimination, including by means of sufficiently dissuasive sanctions.*

Article 4. Recognition of trade unions for purposes of collective bargaining. The Committee takes note of Prakas No. 13 of 2004, which lays down the procedure for granting most representative status to professional organizations at the enterprise or institutional level. The Committee notes in particular that section 1 of Prakas No. 13 provides that the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MOSALVY) may refuse to grant most representative status to a trade union when an objection is put forward from a member of the Labour Advisory Committee, or from enterprises, institutions, or a concerned third party. The Committee considers, in this respect, that permitting the objections of third parties as grounds for refusing a union most representative status runs counter to the principle of promoting collective bargaining expressed in *Article 4* of the Convention. *It requests the Government to amend section 1 of Prakas No. 13 accordingly, and to provide information on the progress made in this respect.*

Articles 4 and 6. Public servants. The Committee had previously noted that, according to section 1 of the Labour Law, certain categories of workers, which include persons appointed to a temporary or a permanent post in the public service, are not covered by this legislation. It had further noted that the Committee on Freedom of Association (see 334th Report, paragraphs 202–226) had requested the Government to take the necessary measures to amend the Common Statutes of Civil Servants so as to guarantee the right to collective bargaining of civil servants not engaged in the administration of the State, and requested the Government to indicate whether the categories of workers in question benefit from the guarantees provided for in the Convention under other legal provisions and, if not, to take the necessary measures in order to ensure the application of the Convention to these categories of workers. In this regard the Committee notes with regret the Government's statement that the rights of judges, teachers, and temporary and permanently appointed officials in the public service are provided for by separate laws pertaining to public ministries or institutions, and that it was unable therefore to amend the labour law in accordance with the Committee's previous comments. ***In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the laws pertaining to all public sector workers, so as to ensure the right to collective bargaining for all public servants, with the exception of those engaged in the administration of the State.***

Finally, the Committee takes note of the Government's indication that it is preparing amendments to the labour law with the assistance of the ILO. ***The Committee expresses the hope that these amendments will bring the national legislation into full conformity with the Convention, in accordance with its comments above, and requests the Government to provide information on developments in this regard.***

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

The Committee requests the Government to communicate statistics on the collective agreements (workers and sectors covered in the different regions, and number of collective agreements).

The Committee notes the Government's reply to the 2008 ITUC and FTUWKC comments and hopes that the task force which examines the reform of the trade union legislation will take into account the above comments.

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

Cameroon

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

The Committee notes the elements provided by the Government in reply to the comments received in 2007 from the General Confederation of Labour–Liberty of Cameroon (CGTL), the General Union of Workers of Cameroon (UGTC) and the International Trade Union Confederation (ITUC), concerning restrictions that are already under examination. The ITUC's comments also reported mass dismissals of workers by the enterprise *DTP Terrassement* for calling a strike, the arrest and imprisonment of a member of the Confederation of Cameroon Trade Unions (CSTC) and the dismissal of the Secretary-General of the Federation of Health, Pharmaceutical and Allied Unions (FESPAC), due to his trade union activities.

In its report, the Government indicates that the dismissal of the Secretary-General of the FESPAC is unconnected with the exercise of his trade union activities and that the dismissals of workers of the enterprise *DTP Terrassement* is a result of the unlawful nature of their strike, as the local administrative authorities had prohibited any public demonstrations for the duration of the work concerned. In this regard, the Committee recalls that responsibility for declaring a strike illegal should lie with an independent body which has the confidence of the parties involved and that strikes may only be prohibited in essential services in the strict sense of the term, disputes in the public service in relation to public servants exercising authority in the name of the State or in the case of an acute national crisis. The Committee also recalls that the arrest and detention of trade unionists, without any charges being brought and without a warrant, constitute a grave violation of trade union rights.

The Committee also notes the comments of the UGTC and the ITUC, dated 16 October 2008 and 26 August 2009, respectively, relating to, in addition to the points already raised before the Committee, Government interference in various forms (favouritism towards specific organizations, refusal to recognize the Trade Union Federation of the Public Sector (CSP)) and the arrest of a leader of the CSP during the riots in February 2008. ***The Committee requests the Government to provide observations in this respect in its next report.***

Article 2 of the Convention. For many years, the Committee has been requesting the Government to take the necessary measures to amend Act No. 68/LF/19 of 18 November 1968 (under the terms of which the existence in law of a trade union or occupational association of public servants is subject to prior approval by the Minister for Territorial Administration). The Committee notes that, according to the Government, a draft amendment of this Act in relation to this point is under examination.

Similarly, the Committee has been requesting the Government for many years to take the necessary measures to amend section 6(2) of the Labour Code of 1992 (which provides that persons establishing a trade union which has not yet been registered and who act as if the said union has been registered shall be liable to prosecution) and section 166 of the Labour Code (establishing heavy fines for members of a union who commit this offence). In this respect, the Government indicates that the Bill to amend and supplement certain provisions of the Labour Code was adopted by the National Labour Advisory Commission and has been submitted for approval by the competent authorities of Cameroon. The

adoption of the proposed amendments would replace the current system for the registration of trade unions, which is equivalent to a system of previous authorization, by a procedure of declaration and would involve the disappearance of sentences and/or fines in the event of violations of the law. The Committee further notes that cancellation of the registration of an organization would lie solely with the judicial authorities, thereby bringing to an end the possibilities for the dissolution of organizations by administrative authority. ***The Committee expresses the firm hope that the Government will be in a position to indicate the progress achieved on all these points without delay.***

Article 5 of the Convention. For many years, the Committee has been requesting the Government to take the necessary measures to repeal section 19 of Decree No. 69/DF/7 of 6 January 1969 (under the terms of which trade unions or associations of public servants may not join a foreign occupational organization without obtaining prior authorization from the Minister responsible for “supervising public freedoms”). The Committee notes with ***regret*** that the Government has not provided any information on this subject. ***The Committee once again urges the Government to take the necessary measures in the very near future to amend the legislation to remove the requirement for previous authorization for the affiliation of trade unions of public servants to an international organizations.***

The Committee expresses the firm hope that the process of reforming the legislation will result in the near future in the legislation being brought into conformity with the requirements of the Convention. The Government is requested to provide copies of all the legislative texts adopted in this respect.

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

The Committee notes the Government’s reply to the comments received in 2007 from the General Union of Workers of Cameroon (UGTC) and the International Trade Union Confederation (ITUC). It also notes the comments of the UGTC and the ITUC dated 16 October 2008 and 26 August 2009, respectively. ***The Committee requests the Government to provide its observations in this respect in its next report.***

Article 1 of the Convention. The Committee recalls that, since the adoption of the Labour Code in 1992, it has been asking the Government to amend or delete sections 6(2) and 166 of the Labour Code, which allow the imposition of fines ranging between 50,000 and 500,000 francs on members responsible for the administration or management of a non-registered trade union, who act as if the union had been registered, which is in breach of ***Article 1*** of the Convention. In this respect, the Committee notes that a Bill to amend and supplement certain provisions of the Labour Code has been submitted to the competent authorities and that it would result in the abolition of the penalties and/or fines referred to above. ***The Committee expects that the Government will be in a position to indicate in its next report the progress achieved in bringing the national legislation into full conformity with Article 1 of the Convention.***

Article 4 of the Convention. In its previous comments, the Committee requested the Government to reply to the comments made by trade union organizations concerning the lack of true collective bargaining in the country since 1996. The Committee notes that, according to the Government, several collective agreements and enterprise agreements have been concluded in various sectors and branches of activity, such as: security enterprises, journalism, agriculture, polygraphic industries, banking, commerce, pharmaceuticals, dockers and stevedores, processing industries, insurance, construction and public works. It notes that certain commissions for the negotiation and revision of collective agreements are continuing their work (telecommunications, merchant shipping, water, first level hospitals, postal services and petroleum producing and storage enterprises). ***The Committee requests the Government to provide statistical data on the number of collective agreement concluded in both the public and the private sectors and the number of workers covered by these agreements.***

Canada

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

The Committee takes note of the comments from the International Trade Unions Confederation (ITUC) dated 30 September 2008 and 26 August 2009, as well as of the Government’s reply thereto.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in a number of cases concerning allegations of interference into the right to organize and carry out trade union activities, including collective bargaining, in various provinces of Canada (Case No. 2173, 354th Report, paragraphs 35–46; Case No. 2254, 355th Report, paragraphs 29–33; and Case No. 2430, 353rd Report, paragraphs 66–68).

With regard to the implementation of the Convention in a broad perspective, the Committee recalls that in its previous observation it noted with interest the decision of 8 July 2007 of the Supreme Court of Canada (*Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27), which held that freedom of association encompasses a measure of protection for collective bargaining under section 2(d) of the Canadian Charter of Rights and Freedoms, and by doing so the Court referred to Convention No. 87 as well as the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, noting that the “interpretation of these Conventions, in Canada and internationally, not only supports the proposition that there is a right to collective bargaining

in international law, but also suggests that such a right should be recognized in the Canadian context under section 2(d). The Committee notes from the Government's report that a number of tripartite round-table discussions were held pursuant to the decision of the Supreme Court, at federal and provincial levels, on its potential implications on future labour relations and the country's international obligations. The Government also indicates that it expects a number of ongoing cases before courts to further clarify the scope of the Supreme Court decision and its implication for the application of the Convention. ***The Committee invites the Government to continue to provide information on any development in relation to this decision which may have an impact on the application of the Convention.***

Article 2 of the Convention. Right to organize of certain categories of workers. The Committee recalls that it has been expressing concern for many years on the exclusion of wide categories of workers from statutory protection of freedom of association and on the restrictions on the right to strike in several provinces.

Workers in agriculture and horticulture (Alberta, Ontario and New Brunswick). The Committee recalls from its previous comments that workers in agriculture and horticulture in the Provinces of Alberta, Ontario and New Brunswick are excluded from the coverage of labour relations legislation and thereby deprived of statutory protection of the right to organize.

The Committee notes with **regret** from the Government's report that there are no plans for a legislative review in Alberta, although the province is closely monitoring the constitutional challenge to the Agricultural Employees Protection Act, 2002, before the Ontario Court of Appeal and subsequently before the Supreme Court of Canada.

As for Ontario, the Committee recalls that in its previous comments it noted the decision dated December 2001 by the Supreme Court of Canada which found the exclusion of agricultural workers from the Labour Relations Act, 1995, to be unconstitutional in the absence of any other statutory protection of their freedom of association (*Dunmore v. Ontario/Attorney-General*, 2001, 207 DLR (4th) 193 (SCC)). The Committee also noted that, although the Agricultural Employees Protection Act, 2002 (AEPA) gave agricultural employees the right to form or join an employees' association, it however maintained the exclusion of agricultural employees from the Labour Relations Act and did not provide a right to a statutory collective bargaining regime. The Committee notes from the Government's report that the appeal lodged by the United Food and Commercial Workers (UFCW) challenging the constitutionality of the AEPA before the Ontario Court of Appeal resulted in a decision acknowledging the right for Ontario farm workers to legislation that protects their ability to bargain collectively. The Ontario Government appealed the decision to the Supreme Court of Canada and the hearing on the case is expected at the end of 2009.

The Committee notes that, as regards the Province of New Brunswick, the Government reiterates that agricultural workers are not excluded from the protection of the Industrial Relations Act, 1971; however their bargaining rights are limited to units comprising at least five or more employees.

The Committee recalls once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) shall have the right to organize under the Convention. Therefore, any provincial legislation that would deny or limit the application of the Convention in relation to the freedom of association of agricultural workers should be amended. ***Consequently, the Committee urges the Government to ensure that the Governments of Alberta and Ontario take all necessary measures to amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention. The Committee requests the Government to forward the text of the decision of the Supreme Court of Canada concerning the constitutionality of the AEPA when it is delivered and to indicate any review on its implication with regard to the exclusion of agricultural employees from statutory protection of the right to organize in the Provinces of Alberta and Ontario.***

Domestic workers, architects, dentists, land surveyors, lawyers and doctors (Ontario, Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan). The Committee recalls that it has been raising for many years the need to ensure that a number of categories of workers in Ontario, who have been excluded from statutory protection of freedom of association under sections 1(3) and 3(a) of the Labour Relations Act, 1995 (domestic workers, architects, dentists, land surveyors, lawyers and doctors), enjoy the protection necessary, either through the Labour Relations Act, or by means of specific regulations, to establish and join organizations of their own choosing.

In its previous comments, the Committee also noted that legislative provisions in other provinces (*Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan*) contain similar exclusions of domestic workers, architects, dentists, land surveyors, lawyers, doctors and engineers from the scope of industrial relations law. Moreover, these workers might be excluded also in Newfoundland, Labrador and Saskatchewan if the employer has less than two or three employees, respectively.

The Committee notes with **regret** the statements from the Governments of Ontario, Alberta, Nova Scotia and Prince Edward Island that no legislative amendments are planned in respect of the exclusion of domestic workers. The Committee also takes note of the statement by the Government of New Brunswick according to which it will consult stakeholders on the potential for amendment of the Industrial Relations Act to remove the exclusion of domestic workers. With regard to the other professionals, such as architects, dentists, land surveyors, lawyers doctors and engineers (for Nova Scotia and Prince Edward Island), the Committee also notes the statement from the respective governments that

these professionals in question are generally members of professional organizations that represent their interests, including through collective bargaining. Hence, they cannot be considered disadvantaged in the labour market.

The Committee is bound to recall once again its view that the exclusion of these categories of workers from the Labour Relations Act has had as a result that, although they can still exercise their right to associate under the Common Law, their associations are devoid of the higher statutory protection provided for in the Labour Relations Act, 1995, and this can function as an impediment to their activities and discourage membership. ***Consequently, the Committee urges the Government to ensure that the Governments of Ontario, Alberta, Nova Scotia, Prince Edward Island and Saskatchewan take all necessary measures to remedy the exclusion of the abovementioned categories of workers from the statutory protection of freedom of association and to amend its legislation to adopt specific regulations so as to ensure that domestic workers, architects, dentists, land surveyors, lawyers, doctors and engineers are allowed to form and join organizations of their own choosing and that these organizations enjoy the same rights, prerogatives and means of recourse as other workers' organizations under the Convention. The Committee requests the Government to ensure that the Government of the Province of New Brunswick indicates the outcome of discussions held on the amendment to the Industrial Relations Act to remove the exclusion of domestic workers and any measures taken thereon.***

Nurse practitioners (Alberta). In its previous comments, the Committee referred to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2277 to the effect that nurse practitioners have been deprived of the right to establish and join organizations of their own choosing by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act of the Province of Alberta. The Committee notes with ***regret*** from the Government's report that there are no planned reviews of the status of nurse practitioners. The Committee once again recalls that the expression "all workers and employers without distinction whatsoever" used in ***Article 2*** of the Convention means that freedom of association should be guaranteed without discrimination of any kind. ***The Committee therefore urges the Government to ensure that the Government of the Province of Alberta takes all necessary measures to amend the Labour Relations (Regional Health Authorities Restructuring) Amendment Act so that nurse practitioners have the right to establish and join organizations of their own choosing.***

Principals, vice-principals in educational establishments and community workers (Ontario). The Committee recalls, with regard to Ontario, that its previous comments concerned the need to ensure that principals and vice-principals in educational establishments as well as community workers have the right to organize, pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 1951 and Case No. 1975. The Committee takes note of the Government's statement that it has no plan to amend the legislation concerning principals and vice-principals in educational establishments. However, the Government adds that, with regard to community workers, a detailed review of the 1998 amendments to the Ontario Works Act by the Act to Prevent Unionization with respect to community participation under the Ontario Works Act, 1997, has identified options that would be considered. While the Committee considers that it is not necessarily incompatible with freedom of association principles to deny managerial or supervisory employees the right to belong to the same trade union as other workers; such categories of workers should have the right to form their own associations to defend their interests and should not be defined so broadly as to weaken the organizations of other workers by depriving them of a substantial portion of their present or potential membership. ***Taking into account the abovementioned principles, the Committee reiterates its request to ensure that the Government of the Province of Ontario takes all necessary measures to amend the legislation so as to guarantee to principals and vice-principals in educational establishments, as well as community workers, the fundamental right to establish and join organizations of their own choosing.***

Public colleges' part-time employees (Ontario). The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2430 (see 353rd Report, paragraphs 66–68) and notes with ***interest*** that the Government of Ontario introduced the Act to Enact the Colleges Collective Bargaining Act which allows part-time academic and support staff workers at Ontario's 24 colleges to join unions for collective bargaining purposes. ***Along with the Committee on Freedom of Association, the Committee requests the Government to indicate in its next report any progress made in the adoption of this Bill which would allow part-time academic and support staff in colleges of applied arts and technology in Ontario to fully enjoy the right to organize, as enjoyed by other workers, as provided in the Convention.***

Education workers (Alberta). With regard to the right to organize of education workers in the Province of Alberta, the Committee recalls that its previous comments concerned the need to repeal the provisions of the University Act which empower the board of governors to designate the academic staff members who are allowed, by law, to establish and join a professional association for the defence of their interests. The Committee expressed its view that such provisions would allow for future designations to exclude faculty members and non-management administrative or planning personnel from membership of the staff associations whose purpose is to protect and defend the interests of these categories of workers. The Committee notes with ***regret*** that there are no plans to amend this legislation. ***The Committee is bound to request once again the Government to ensure that the Government of the Province of Alberta takes all necessary measures with a view to ensuring that all university staff are guaranteed the right to organize without any exceptions.***

Workers in social, health and childcare services (Quebec). The Committee recalls that its previous comments concerned two Acts (Act modifying the Act on health and social services (LQ, 2003, c.12) and Act modifying the Act on

early childhood centres and other nursery services (LQ, 2003, c.13)), by which the Government redefined workers in social and health services and childcare services as “independent workers”, thus divesting them of the status of “employee” and denying them the right to unionize, leading to the cancellation of their trade union registrations. While emphasizing that the Convention does not exclude any of the above categories of workers who should have the right to establish and join organizations of their choosing, the Committee expressed the hope that the domestic courts would render decisions that would take into account the provisions of the Convention.

The Committee takes note with *interest* of the Government’s indication that a decision whereby the Superior Court of Quebec held the Act modifying the Act on health and social services and the Act modifying the Act on early childhood centres and other nursery services unconstitutional as they were contrary to section 2(d) of the Canadian Charter of Rights and Freedoms and to section 3 of the *Charte québécoise des droits et libertés de la personne*. Following that court decision, the Government of the Province of Quebec adopted an Act on the representation of family-type resources and intermediate resources and on the respective collective bargaining regime (LQ 2009, c.24) as well as an Act on the representation of certain persons responsible for childcare in family environment on the respective collective bargaining regime (LQ 2009, c.36) on 12 and 19 June 2009. These new texts established a system of representation for family-type resources and intermediate resources as well as for persons responsible for childcare in family environments. A system of collective agreement “similar to the one encompassed in the Labour Code of the Province of Quebec” is established. The Committee notes with *interest* the indication that the newly adopted texts provide for rules for recognition by the Committee on labour relations of associations representing such persons, the rules of collective bargaining between these associations and the Government and the matters covered by the negotiation. They also provide for measures for better access to government programmes, such as parental insurance, the pension plan and the programme for safe motherhood.

Prosecutors (Quebec). In its previous comments, the Committee referred to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2467 with regard to the Prosecutors Act (as amended by the Act amending the Act respecting Prosecutors and the Labour Code, LQ 2004, c.22), which denied to prosecutors the right to join a trade union and deprives them of protection against hindrances, reprisals or sanctions related to the exercise of trade union rights. The Committee takes note with *interest* of the Act on the collective bargaining regime of prosecutors for criminal and penal affairs (LRQ, c. R-8.1.2), which grants them the right to organize as well as protection in the exercise of trade union rights, including the right to strike and to bargain collectively.

Article 2. Trade union monopoly established by law (Prince Edward Island, Nova Scotia and Ontario). The Committee recalls that its previous comments concerned the specific reference to the trade union recognized as the bargaining agent in the law of Prince Edward Island (Civil Service Act, 1983), Nova Scotia (Teaching Professions Act) and Ontario (Education and Teaching Professions Act).

The Committee notes with *regret* from the Government’s report that there are still no plans to amend the legislation in Prince Edward Island, Nova Scotia and Ontario. The Committee is bound to recall that, although it may consider a system in which a single bargaining agent can be accredited to represent workers in a given bargaining unit and bargain on their behalf to be compatible with the Convention, a trade union monopoly established or maintained by the specific designation of a trade union in the law is in violation of the Convention, thus suppressing any freedom of choice. ***The Committee expresses the firm hope that the Government will indicate measures taken or contemplated by the Governments of Prince Edward Island, Nova Scotia and Ontario to bring their legislation into full conformity with the standards of freedom of choice laid down in the Convention by removing the specific designation of individual trade unions as bargaining agents and replacing them with a neutral reference to the most representative organization.***

Article 3. Right to strike of workers in the education sector. The Committee recalls from its previous comments that problems remain in several provinces with regard to the right to strike of workers in the education sector (British Columbia and Manitoba).

British Columbia. The Committee recalls that its previous comments concerned the Skill Development and Labour Statutes Amendment Act (Bill No. 18), which declares education to be an essential service, and the need to adopt provisions ensuring that workers in the education sector may enjoy and exercise the right to strike pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2173. The Committee notes the information pertaining to measures undertaken to support and facilitate the bargaining process between teachers and school employers resulting in the parties achieving, through collective bargaining, a five-year collective agreement effective 1 July 2006. However, the Committee observes that progress is yet to be made on the issues raised.

The Committee notes that, when it last examined Case No. 2173 (see 354th Report, paragraphs 35–46), the Committee on Freedom of Association expressed the hope that the settlement reached in the health-care sector, following the Supreme Court decision noted above, would serve as an inspiration for the settlement of grievances prevailing in the education sector between the Government of the Province of British Columbia and the unions concerned with regard to the Skills Development and Labour Statutes Amendment Act and the Education Services Collective Agreement Act. ***The Committee invites the Government to indicate any progress made in this respect. Furthermore, while noting that decisions on essential services are made by the Labour Relations Board (LRB) in consultation with the parties concerned, the Committee requests the Government to indicate any decision taken by the LRB with regard to the essential service level (minimum service) in the education sector and the factors taken into consideration in doing so.***

Finally, while recalling that an outright ban on strikes should only be limited to essential services in the strict sense of the term and that the education sector does not qualify as such, the Committee asks the Government to specify if the Skills Development and Labour Statutes Amendment Act takes away the right of teachers to engage in strike action.

Manitoba. The Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act which prohibits teachers from engaging in strike action. The Committee once again notes with *regret* from the Government's report that there are no plans to make amendments to the Public Schools Act in the immediate future. The Committee is bound to recall that the right to strike should only be restricted for public servants exercising authority in the name of the State and in essential services in the strict sense of the term. **The Committee requests the Government to indicate in its next report any measures taken or contemplated by the Manitoba Government to amend its legislation so that schoolteachers, who do not provide essential services in the strict sense of the term and do not qualify as public servants exercising authority in the name of the State, may exercise the right to strike without undue restrictions, and suggests that the Manitoba Government give consideration to the establishment of a voluntary and effective dispute-settlement mechanism in this regard, on the basis of consultations with all organizations concerned.**

Article 3. Right to strike of certain categories of employees in the health sector (Alberta). The Committee recalls that its previous comments concerned the prohibition on strikes for all employees within the regional health authorities, including various categories of labourers and gardeners under the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. The Committee notes that the Government reiterates that the Act in question does not take away the right to strike for the vast majority of gardeners and labourers in the health-care sector, and states that these employees were rather prohibited from striking as staff members of facilities on designated hospital lists prior to the enactment of the Act. **The Committee, recalling its view that gardeners and labourers do not provide essential services in the strict sense of the term, expresses the firm hope that the Government will indicate in its next report measures taken by the Government of the Province of Alberta in order to ensure that all workers in the health-care sector, who are not providing essential services in the strict sense of the term, are not deprived of the right to strike.**

Article 3. Right to strike in the public sector (Quebec). The Committee recalls that its comments concerned Act No. 43 which put a unilateral end to negotiations in the public sector by imposing collective agreements for a determined period, and depriving the workers concerned, including teachers, of the right to strike (labour law in Quebec prohibits strikes during the term of a collective agreement). Furthermore, this Act provided for:

- severe and disproportionate sanctions in the event of an infringement of the provisions prohibiting recourse to strike action (suspension of the deduction of trade union dues merely by the employer declaring that there has been an infringement of the Act for a period of 12 weeks for each day or part of a day that the infringement is observed (section 30));
- the reduction of employees' salary by an amount equal to the salary they would have received for any period during which they infringe the Act, in addition to not being paid during that period – a measure applicable also to employees on trade union release during the period in question (section 32);
- the facilitation of class actions against an association of employees by reducing the conditions required by the Civil Procedures Code for such an action (section 38); and
- severe penal sanctions (sections 39–40).

The Committee notes the Government's statement that this Act is currently under appeal before the domestic courts. **The Committee once again urges the Government to ensure that the Government of the Province of Quebec takes all necessary measures with a view to: (i) ensuring that, where the right to strike may be restricted or even prohibited, adequate compensatory guarantees are afforded to the workers concerned, for example, conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be fully impartial and independent by the parties concerned and leading to binding awards which should be implemented rapidly and fully; (ii) reviewing the excessive sanctions provided for in the Act in order to ensure that they may be applied only in cases where the right to strike may be limited in accordance with the principles of freedom of association and that they are proportionate to the infringement committed; and (iii) reviewing the provisions facilitating class actions against an association of employees, as there is no reason, in the Committee's view, to treat such actions differently from other class actions in the Civil Procedures Code. Furthermore, the Government is requested to indicate the outcome of the appeal pending on Act No. 43 before the domestic courts.**

Article 3. Arbitration imposed at the request of one party after 60 days of work stoppage (article 87.1(1) of the Labour Relations Act) (Manitoba). The Committee recalls that its previous comments concerned the need to amend article 87.1(1) of the Labour Relations Act which allowed a party to a collective dispute to make a unilateral application to the Labour Board so as to initiate the dispute-settlement process, where a work stoppage exceeded 60 days. The Committee notes from the Government's report that there has been no change to the legislation. The Committee recalls once again that provisions which allow for one of the parties to refer a dispute to compulsory arbitration seriously limit the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and formulate their programmes (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 148 and 153). **The Committee urges the Government to ensure that the Government of the Province of Manitoba takes all necessary measures to amend the Labour Relations Act so that an arbitration award**

may only be imposed in cases involving essential services in the strict sense of the term, of public servants exercising authority in the name of the State or where both parties to the collective dispute agree.

Comments from the ITUC on Bills adopted by the Government of the Province of Saskatchewan. The Committee takes note of communications dated 30 September 2008 and 26 August 2009 from the ITUC denouncing the Public Service Essential Services Act (Bill No. 5) and the Act to amend the Trade Union Act (Bill No. 6), adopted in May 2008 by the Government of the Province of Saskatchewan. While questioning beforehand the need for such legislative texts to be adopted, the ITUC indicates that Bill No. 5 weakens the right of workers to organize, permits employers to potentially designate every worker individually as providing an essential service without recourse to such potential avenues as binding arbitration, reducing the bargaining rights of workers. Furthermore, the ITUC alleges that Bill No. 6 weakens the rights of workers and unions to organize into associations and it potentially permits employers to use coercive means to prevent the creation of union associations, and punish workers for engaging in union activities.

The Committee takes note that a number of national and provincial trade unions have filed in the provincial court in July 2008 to have Bills Nos 5 and 6 declared unconstitutional for violating, amongst other fundamental texts, the Canadian Charter of Rights and Freedoms and international Conventions ratified by Canada. ***The Committee requests the Government to indicate any outcome of the appeal lodged before the provincial court.***

The Committee also observes that the National Union of Public and General Employees (NUPGE) had presented in 2008 a complaint before the Committee on Freedom of Association in relation to Bills Nos 5 and 6.

Cape Verde

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

The Committee notes with *regret* that the Government's report has not been received. The Committee has learned that a new Labour Code was adopted by Legislative Decree No. 5/2007, which, like the earlier Code, contains provisions on protection against acts of anti-union discrimination and interference, and sufficiently dissuasive sanctions.

In its previous comments, the Committee noted that there were very few collective agreements. In the absence of a report from the Government, the Committee is unable to note any improvements in the situation. It recalls that in its previous comments it noted that the Government had sent copies of two collective agreements (telecommunications and private security) and indicated that collective bargaining must be voluntary and that the role of government is to promote it without forcing it. The Government added that technical assistance for building the capacity of the social partners in collective bargaining techniques would contribute to improving the situation. It stated that the social partners were in agreement to request such assistance.

The Committee once again asks the Government to pursue its efforts to promote collective bargaining and expresses the hope that the technical assistance requested by the Government with the agreement of the social partners would be provided in the near future.

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

Central African Republic

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, which refer to constant violations of social dialogue and the dismissal of the Secretary General of the Association of Teachers during the general strike called in January 2008. ***The Committee requests the Government to send its comments on this matter.***

Additionally, the Committee notes the adoption of Act No. 009.004 of 29 January 2009 establishing the Labour Code.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization. The Committee notes that section 17 of the new Labour Code does not limit the right to join organizations on the basis of nationality, but it does, however, draw a distinction based on the criteria of legal residence (paragraph 1) accompanied by a condition of reciprocity (paragraph 2). It recalls that, under *Article 2* of the Convention, workers, without distinction whatsoever, shall have the right to join organizations of their own choosing, with the sole exception of members of the armed forces and police. ***Consequently, the Committee requests the Government to take the necessary measures to amend section 17 of the Labour Code so as to guarantee all foreigners the right to join organizations which aim to defend their interests as workers.***

The Committee observes that, under section 26 of the Labour Code, parents and guardians may oppose the right to organize of minors under 16 years of age. It recalls that the minimum age for joining a trade union in full freedom should be the same as that established by the Labour Code for admission to employment (14 years according to section 259 of the

Code), without the permission of the parents or guardian being necessary. ***The Committee requests the Government to take the necessary measures to amend section 26 of the Labour Code in that regard.***

Article 3. Right of workers to elect their representatives in full freedom and to organize their activities freely. The Committee observes that, under section 25 of the new Code, the following persons may not be trade union officers: (1) persons who have been convicted to a prison sentence, with the exception of convictions for negligence, except in the case of the concomitant offence of leaving the scene of an accident; and (2) persons with a criminal record or persons deprived under a court decision of their right of eligibility in accordance with the law authorizing such deprivation. The Committee holds the view that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 120). ***In these circumstances, the Committee requests the Government to take the necessary measures to amend section 25 of the Labour Code taking into account the above principle.***

Further to its previous comments, the Committee previously requested the Government to take measures to amend sections 1 and 2 of Act No. 88/009 amending the Labour Code, which provide that any person having lost the status of worker cannot either belong to a trade union or participate in its leadership or administration, and that trade union officers must be members of a trade union, with a view to ensuring that qualified persons, such as persons employed by trade unions or retirees, may hold trade union office. In this regard, the Committee notes with *interest* that the legislation has been revised on this point by providing, in section 27 of the revised Code, that persons who have ceased to perform their duties or who have left their profession may continue to belong to a trade union.

On numerous occasions, the Committee has also requested the Government to take the necessary measures to amend section 11 of Order No. 81/028 concerning the Government's powers of requisition in the event of a strike when so required in the general interest so as to restrict powers of requisitioning to cases in which the right to strike may be limited, or even prohibited, that is in the public service in respect of public servants exercising authority in the name of the State, in essential services in the strict sense of the term and in a situation of acute national crisis. ***Noting with regret that the Government has not provided information on this matter, the Committee requests it to take the necessary measures to amend this provision taking the above principle into account.***

Furthermore, the Committee notes that, under section 381 of the Labour Code, during a strike, a compulsory minimum service shall be required for certain enterprises on account of their social utility or their distinctive nature. The list of enterprises concerned and the conditions for implementing the minimum service shall be determined by order of the minister responsible for labour, following consultation with the Permanent National Labour Council. The Committee recalls that the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance. Furthermore, the determination of the minimum services and the minimum number of workers providing them should involve not only the public authorities, but also the relevant employers' and workers' organizations. This not only allows a careful exchange of viewpoints on what in a given situation can be considered to be the minimum services that are strictly necessary, but also contributes to guaranteeing that the scope of the minimum service does not result in the strike becoming ineffective in practice because of its limited impact, and to dissipating possible impressions in the trade union organizations that a strike has come to nothing because of overgenerous and unilaterally fixed minimum services. ***In view of the above, the Committee requests the Government to take the necessary measures to ensure the participation of employers' and workers' organizations in the determination of the minimum service and to provide a copy of the list of enterprises concerned.***

Articles 5 and 6. Right of organizations to establish federations and confederations of their own choosing. Further to its previous comments concerning section 4 of Act No. 88/009 of 19 May 1988, which provided that occupational trade unions formed into federations and confederations could join together in a single central national organization, the Committee notes with *interest* the removal of the reference to the single trade union system in the drafting of the new Code. However, the Committee notes that, under section 49(3) of the Code, no central organization may be formed without first having the occupational federations and regional unions defined in paragraphs 1 and 2. In this regard, the Committee recalls that the Convention does not merely recognize the right of organizations to establish bodies operating at the higher level; it gives to the latter the same rights as are accorded to the first-level organizations. Emphasizing the interest in forming groups at the occupational, interoccupational or geographical level, or all three at the same time, the Committee considers that the guarantees afforded to workers' and employers' organizations imply that they may group together in full freedom into federations and confederations without intervention from the public authorities (see General Survey, op. cit., paragraphs 189 and 194). ***The Committee requests the Government to take the necessary measures to amend section 49(3) of the Labour Code to guarantee in full the right of workers' organizations to establish federations and confederations of their own choosing, and to indicate any progress in this regard.***

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

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

The Committee notes the adoption of Act No. 09.004 of 29 January 2009 issuing the Labour Code.

Article 4 of the Convention. In its previous comments, the Committee indicated that the negotiation of collective agreements by professional groupings should only be possible where no trade union exists. It requested the Government to amend the legislation in this respect. The Committee notes with *regret* that, under the terms of sections 197 and 198 of the new Labour Code, the representatives of trade union organizations and professional groups of workers are placed on an equal footing and may engage in collective bargaining. While noting that, according to the Government, collective agreements and work agreements are, in practice, always negotiated by the representatives of workers' unions and of employers, the Committee notes with *regret* that the national authorities did not take the opportunity of the reform of the Labour Code to amend the legislation as indicated. ***Recalling that the Convention promotes collective bargaining between employers and trade union organizations, the Committee once again requests the Government to take the necessary measures for the amendment of the legislation in the near future and to provide information on any progress achieved in this respect.***

Articles 4 and 6. On several occasions, the Committee requested the Government to provide its observations in reply to the comments made by the International Trade Union Confederation (ITUC), according to which in the public sector wages are fixed by the Government after consulting the trade unions, but without any negotiation. The Committee notes that, according to the Government, measures relating to the implementing texts of the Labour Code, particularly on the question of wages, are currently being adopted. The Committee observes that the new Labour Code, in section 211, envisages the right to collective bargaining in public services, enterprises and establishments where their personnel are not governed by specific conditions of service. ***Recalling that the Convention also applies to public officials not engaged in the administration of the State, the Committee requests the Government to provide clarification on the scope of the right to collective bargaining in the public sector in relation to public officials not engaged in the administration of the State and public officials who are not governed by specific conditions of service. The Committee requests the Government to ensure that all public officials, with the sole possible exception of public servants engaged in the administration of the State, the armed forces and the police, enjoy the right to collective bargaining. The Government is requested to indicate any progress achieved in this respect.***

Chad

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

The Committee notes with *regret* that the Government's report does not reply to the observations that it has been making for many years, nor to the comments received in 2008 from the International Trade Union Confederation (ITUC). The Committee notes the recent comments of the ITUC, dated 26 August 2009, referring, in addition to the legislative issues already raised before the Committee, to cases of harassment and infringement of the freedom of expression of trade union leaders. ***The Committee requests the Government to provide its observations on the new comments made by the ITUC.*** The Committee also notes the conclusions and the recommendations of the Committee on Freedom of Association in Case No. 2581 (see the 354th Report).

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

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

With regard to Act No. 008/PR/07 of 9 May 2007 regulating the right to strike in public services, the Committee reiterates its comments, which concerned the following points:

- Section 11(3) of the Act, which imposes the obligation to declare the “possible” duration of a strike. The Committee recalls that, under section 13(1), non-compliance with this condition would result in a strike being declared illegal. ***Recalling that trade unions should be able to call strikes of unlimited duration and considering that the legislation should be amended to this effect, the Committee requests the Government to indicate the measures adopted for this purpose.***
- Sections 20 and 21, under which the public authorities (the Minister concerned) have the discretion to determine the minimum services and the number of officials and employees who will ensure that they are maintained in the event of a strike in the essential services enumerated in section 19. In this respect, the Committee recalls once again that such a service should nevertheless meet at least two requirements: (1) firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations that are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear; and (2) as this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 160 and 161). ***The Committee therefore once again requests the Government to amend the legislation to ensure that the minimum service is limited to the operations that are strictly necessary to avoid jeopardizing the life or normal living conditions of all or part of the population, that the workers’ organizations concerned are able to participate in defining such a service, along with the employers and the public authorities, and to indicate any progress achieved in this respect.***
- Section 22(1) of the Act, which provides that any refusal by officials or employees to comply with requisition orders (sections 20 and 21) makes them liable to the penalties provided for in sections 100 and 101 of Act No. 017/PR/2001 issuing the general public service regulations. In this regard, the Committee recalls that these legislative provisions describe the degrees of disciplinary penalties to be imposed by order of gravity, but without indicating those which correspond to the different degrees of fault. ***The Committee once again requests the Government to clarify the scope of penalties for contraventions of legal provisions and also requests it to indicate any other penalties that can be imposed for violations of Act No. 008/PR/2007 regulating the exercise of the right to strike in public services.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1961)***

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, reporting the persistence of anti-union acts against the leaders and members of the Union of Trade Unions of Chad (UST), and the difficulties of social dialogue in the petroleum sector. The Committee recalls that in its previous observation it already noted comments by the ITUC denouncing the fact that the Government refuses to recognize, in the context of social dialogue, the status of the UST as the most representative organization, that some trade union leaders were dismissed, transferred or prosecuted for anti-union reasons and that the Government refused to negotiate with the inter-trade union association which includes the UST. As the Government confined itself to indicating that the ITUC’s allegations did not reflect the real situation, the Committee requested it to ensure that neither the UST nor its leaders or members were discriminated against on account of their trade union activities and that, in the relations between the authorities and the UST, the status of the UST as the most representative trade union organization was given due consideration. ***The Committee requests the Government to provide its observations in reply to the 2009 comments of the ITUC. In the meantime, the Committee urges the Government to guarantee, as required by the Convention, adequate protection against all acts which could jeopardize the exercise of freedom of association by trade union leaders and members, and particularly those of the UST, and to ensure that this trade union organization, the representative nature of which has not been contested by the Government, is not subject to any discrimination.***

Chile

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

The Committee notes the Government’s reply to the comments of the International Trade Union Confederation (ITUC) of 28 August 2007, which referred to matters under examination by the Committee, as well as to the prohibition of the right to strike by agricultural workers during the harvest. The Committee notes the Government’s indication that Chilean labour legislation envisages a semi-regulated procedure under which agricultural workers represented by a trade union negotiate collectively with their employer an instrument known as an “collective agreement” which, once concluded, has the same effect as a collective contract (sections 314bis A and 314bis B). Such bargaining is not of a

binding nature, so that it does not give rise to the rights, prerogatives and duties established through regulated collective bargaining, and consequently there is no right to strike. The fact that these workers cannot negotiate a collective agreement or benefit from the right to strike is due to the fact that they perform seasonal work of short duration. In this respect, the Committee recalls that the right to strike is an intrinsic corollary to the right to organize which may only be restricted in the case of essential services (the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and in the case of public servants exercising authority in the name of the State. ***Under these conditions, observing that agricultural workers do not form part of either of these categories, the Committee requests the Government to take the necessary measures to ensure in law and practice that agricultural workers can enjoy the right to strike. The Committee requests the Government to provide information in this respect.***

The Committee notes the comments made by the ITUC on 26 August 2009 on the application of the Convention. The Committee also notes the comments sent by the National Inter-Enterprise Union of Airport Workers of Chile and other unions in various sectors, dated 24 March 2009, which refer to legislative matters already raised by the Committee, and particularly to questions relating to the right to strike. ***The Committee requests the Government to provide its observations in this regard.***

The Committee recalls that for several years it has been asking the Government to amend or repeal various legislative provisions, or to take steps to ensure that certain workers are afforded the guarantees laid down in the Convention. Specifically, in its previous observation, the Committee requested the Government to take steps to:

- repeal section 11 of Act No. 12927 on the internal security of the State, which provides that any interruption or collective suspension, stoppage or strike in public services or services of public utility, or in production, transport or commercial activities which is not in accordance with the law and results in prejudice to the public order or to compulsory legal functions or damage to any vital industries shall constitute an offence and be penalized with imprisonment or relegation;
- ensure that officials of the judiciary are afforded the guarantees set forth in the Convention;
- amend article 23 of the Political Constitution, which provides that the holding of trade union office is incompatible with active membership in a political party and that the law shall lay down sanctions for trade union officials who participate in party political activities;
- amend sections 372 and 373 of the Labour Code, under which an absolute majority of the workers in the enterprise is required for a decision to strike;
- amend section 374 of the Labour Code, under which a strike must be carried out within three days of the decision to call it, otherwise the workers in the enterprise concerned shall be deemed to have refrained from going on strike and so accept the employer's final offer;
- amend section 379 of the Labour Code, which provides that at any time the group of workers concerned by the negotiations may be called upon to vote, by at least 20 per cent of them, for the purpose of taking a decision, by absolute majority, to censure the negotiating committee, in which case a new committee shall be elected forthwith;
- amend section 381 of the Labour Code containing a general prohibition on the replacement of striking workers, but which provides for the possibility of such replacement subject to compliance by the employer with certain conditions in the final offer during the process of negotiation, and the requirement to pay a bond of four units of account (UF) for each worker hired as a replacement;
- amend section 384 of the Labour Code, which provides that strikes may not be called by workers in enterprises which provide public utility services, or services the interruption of which would seriously endanger the health, public supply, the national economy or national security (the third subsection of section 384 provides that, in such cases, if no agreement is reached between the parties to the bargaining, the matter shall be referred to compulsory arbitration). The Committee noted previously that the definition of services in which strikes may be prohibited, as well as the list drawn up by the government authorities, is too broad and goes beyond services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. In particular, the list includes certain private port terminals and also the Arica–La Paz railway, which cannot be considered as essential services in the strict sense of the term. The Committee also notes Case No. 2649 examined by the Committee on Freedom of Association relating to the exercise of the right to strike by workers in sanitary enterprises (water supply).
- amend or repeal section 385 of the Labour Code, which provides that, in the event of a strike which by reason of its nature, timing or duration causes a serious risk to health, the supply of goods or services to the population, the national economy or national security, the President of the Republic may order the resumption of work;
- amend section 254 of the Penal Code, which provides for penal sanctions in the event of the interruption of public services or public utilities or the abandonment of their posts by public employees; and
- amend section 48 of Act No. 19296 which grants broad powers to the Directorate of Labour for the supervision of the accounts and financial and property transactions of associations.

The Committee observes that the Government reiterates its intention to include in the relevant domestic legislation all of the provisions necessary to bring the legislation rapidly into harmony with the Convention. ***The Committee hopes that the Government will take all the necessary measures in the near future to amend the legislation with a view to bringing it fully into conformity with the provisions of the Convention. The Committee requests the Government to provide information in its next report on any measures adopted in this respect.***

Furthermore, in its previous observation, the Committee noted the preparation of a draft revision of the Constitutional Organic Act on Municipalities, No. 18695, and hoped that it would take into account the principle that the prohibition of the right to strike in the public service should be confined to officials exercising authority in the name of the State. The Committee notes the Government's indication that the draft text is undergoing its first constitutional reading in the Chamber of Deputies, and that the proposal to adopt legislation on this subject has been approved, while the only amendments adopted concern the removal of the prohibition for trade union leaders to take office as deputies or senators. ***In these conditions, the Committee requests the Government to provide information in its next report on any progress made in relation to this draft text.***

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

The Committee notes the comments of 24 March 2009 sent by the National Inter-Enterprise Union of Airport Workers of Chile and other unions from various sectors in a lengthy communication covering numerous matters, and also the comments of August 2009 made by the International Trade Union Confederation (ITUC). ***The Committee requests the Government to send its observations in this respect, and also on the comments of the ITUC of 28 August 2007 (the Government declares that it has requested information from the competent authorities and will send it once it has been received).***

The Committee recalls that in its previous comments it referred to the following provisions of the Labour Code which are not in conformity with the provisions of the Convention:

- section 1 of the Labour Code, which provides that the Code does not apply to officials of the National Congress or the judiciary, or to workers in state enterprises or institutions, or those in which the State contributes or in which it participates or is represented, provided that such officials or workers are subject by law to special regulations;
- section 82 of the Labour Code, which provides that the remuneration of apprentices may on no account be determined by means of collective agreements or contracts, or arbitration awards issued in the context of collective bargaining, and section 305(1), which provides that workers governed by an apprenticeship contract and those engaged solely for a specific task or activity, or for a specific period, may not engage in collective bargaining;
- section 304 of the Labour Code, which does not allow collective bargaining in state enterprises dependent on the Ministry of National Defence or which are connected to the Government through this Ministry, and in enterprises in which it is prohibited by special laws, or in public or private enterprises or institutions in which the State has financed 50 per cent or more of the budget of either of the last two calendar years, either directly or through duties or taxes;
- While appreciating the Government's statement in which it indicates that it will take account of the observations made in this respect, the Committee recalls that, in accordance with *Articles 5 and 6 of the Convention*, only members of the armed forces, the police and public servants engaged in the administration of the State may be excluded from collective bargaining. The Committee therefore considers that the categories of workers mentioned above should enjoy the right to collective bargaining;
- section 334(b) provides that two or more unions of different enterprises, an inter-enterprise union or a federation or confederation may submit draft collective labour contracts on behalf of their members and the workers who agree to the contracts, but in order to do so it shall be necessary in the enterprise concerned for an absolute majority of the worker members who are entitled to engage in collective bargaining to accord representation to the trade union concerned in an assembly, by secret ballot and in the presence of a public notary. The Committee appreciates the Government's statement that it will take account of these comments in future legal discussions. In the Committee's view, these requirements are difficult to meet and do not promote collective bargaining, and should accordingly be abolished or amended;
- section 334bis, which provides that for employers, bargaining with the inter-enterprise union shall be voluntary or optional and that where an employer refuses, the workers who are members of the inter-enterprise union may submit draft collective contracts in accordance with the general rules set forth in Book IV (on collective bargaining). The Committee appreciates the Government's statement that it will take account of these comments at the appropriate time. The Committee considers that these provisions do not, generally speaking, adequately promote collective bargaining with trade union organizations;
- sections 314bis and 315 of the Labour Code, which provide that groups of workers, even when there are unions, may submit draft collective agreements. The Committee notes the Government's statement that a draft Act is currently under examination which contains various amendments to the current legislation on collective bargaining and will

enable collective bargaining to be undertaken by groups of workers formed for this purpose solely in enterprises where there is no existing trade union;

- section 320 of the Labour Code, which places an obligation on employers to notify to all workers in the enterprise the submission of a draft collective agreement so that they can propose draft texts or agree to the draft submitted. The Committee notes that the Government undertakes to keep the Committee informed of any measures adopted in this regard in the future. The Committee recalls that direct bargaining between an enterprise and its workers, over and above representative organizations where these exist, may be to the detriment of the principle that collective bargaining between employers' and workers' organizations is to be encouraged, and that groups of workers should be able to negotiate collective agreements or accords only in the absence of such organizations.

Although it appreciates that the Government is open to the introduction of improvements in relation to the application of the Convention, the Committee emphasizes that significant restrictions on the exercise of the rights established in the Convention have continued to occur for a number of years. ***The Committee expresses the hope that the Government will take the necessary steps to amend the legislation to bring it into full conformity with the provisions of the Convention. The Committee requests the Government to provide information in its next report on all specific measures adopted in this respect.***

China

Hong Kong Special Administrative Region

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

The Committee notes the observations of the International Trade Union Confederation (ITUC) dated 26 August 2009 and 9 September 2009 concerning discrimination of the authorities against the Hong Kong Confederation of Trade Unions (HKCTU) and limited protections for the right to strike. ***The Committee requests the Government to provide its comments with regard to these issues in its next report.***

The Committee previously noted the proposals to implement article 23 of the Basic Law which, among others, would allow for the proscription of any local organization which was subordinate to a mainland organization, the operation of which had been prohibited on the grounds of protecting the security of the State. The Committee previously expressed the firm hope that any further action on proposed legislation to implement article 23 of the Basic Law would take fully into account the provisions of this Convention, in particular, the right of workers and employers to form and join the organization of their own choosing and to organize their administration and activities free from interference by the public authorities. The Committee notes that the Government indicates in its report that article 27 of the Basic Law guarantees that residents of the HKSAR shall have freedom of association and the right and freedom to form and join trade unions, while article 18(1) of the Hong Kong Bill of Rights, as set out in the Hong Kong Bill of Rights Ordinance, stipulates that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests". The Committee notes that the ITUC indicates that several substantive changes have been made to the draft text of article 23 but that there has not been an announced timetable for enactment of the bill. ***The Committee requests the Government to include in its next report a copy of the draft bill for article 23 of the Basic Law and to indicate any progress made in the enactment of the bill.***

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

The Committee notes the observations of the Hong Kong Confederation of Trade Unions (HKCTU) dated August 2009 and the International Trade Union Confederation (ITUC) dated 26 August 2009 and 9 September 2009 concerning discrimination of the authorities against the HKCTU, as well as the Government's comments.

Article 1 of the Convention. Protection against anti-union discrimination. In several of its previous comments, the Committee referred to the need to provide further protection against anti-union discrimination and noted the Government's reference to the drafting of an amendment bill that would empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent. The Committee notes the Government, in its report, indicates that progress on amendments to introduce new provisions on mandatory reinstatement and re-engagement under the Employment Ordinance, Chapter 57 and that upon completion of the draft, it will be introduced into the Legislative Council. The Government indicates that it has committed to introduce a bill which criminalizes non-payment of labour tribunal awards. ***The Committee once again expresses the hope that this bill, which has been under examination since 1999, will soon be adopted so as to give legislative expression to the principle of adequate protection against acts of anti-union discrimination and requests the Government to indicate any progress made in this respect.***

Article 4. Measures to promote collective bargaining. Several of the Committee's previous comments concerned the need to strengthen the collective bargaining framework, in particular with respect to the low levels of coverage of

collective agreements which were not binding on the employer (see Committee on Freedom of Association, Case No. 1942), and the absence of an institutional framework for trade union recognition and collective bargaining. The Committee previously requested the Government to continue to provide information on measures adopted or contemplated for the promotion of new bipartite collective agreements through the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations and to indicate any further sectors covered by collective agreements, as well as the level of coverage (number of collective agreements and workers covered). In addition, the Committee previously requested the Government to take all the necessary measures to continue to promote voluntary bipartite negotiations in the private sector and to provide additional information concerning new sectors in which collective agreements have been concluded. The Committee notes that the Government refers to promotional materials, seminars, and operational activities between workers' and employers' representatives and indicates that since the last report, collective agreements have been negotiated in the food processing and security services. The Committee also notes that the Government states that it will continue to use tripartite committees as one of the useful channels for promoting bipartite voluntary negotiation at the industry level. The Government adds that it has been promoting direct and voluntary negotiations between employers' and workers' organizations. In addition, the Committee notes that the ITUC indicates that less than 1 per cent of workers are covered by collective agreements and those that exist are not binding. The Government answers that in the recent years the number of trade unions and affiliates has increased steadily. The Committee wishes to recall the comments submitted by the Hong Kong and Kowloon Trade Union Council with respect to the need for the Government to introduce legislation on collective bargaining rights. The Committee notes that the Government indicates that it has all along taken measures appropriate to local conditions to promote voluntary and direct negotiations between employers and employees or their respective organizations. ***The Committee once again requests the Government to continue to promote collective bargaining and to provide information in this regard.***

Article 6. Measures to promote collective bargaining for civil servants not engaged in the administration of the State. The Committee previously requested the Government to indicate the different categories and functions of the civil servants so as to identify which of them are in the administration of the State and which are not. The Committee notes that the Government again reports that all civil servants in the HKSAR, i.e. persons employed to work in government bureaux/departments, are engaged in the administration of the State as they are responsible for, among others, formulating policies and strategies and performing law enforcement and regulatory functions. The Committee notes that according to the ITUC, all employees in the public sector are deprived of the right to engage in collective bargaining. ***Noting that it follows from the Government's report that in the public sector there are consultations but not collective bargaining, the Committee recalls that, according to Article 4, civil servants not engaged in the administration of the State should enjoy not only the right to be consulted on their conditions of employment but also the right to bargain collectively and requests the Government to ensure this right. The Committee once again requests the Government to indicate the different categories and functions of the civil servants so as to identify which of them are engaged in the administration of the State and which are not. The Committee also requests the Government to indicate any agreement concluded in the public sector.***

Colombia

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

The Committee notes the comments made by the Single Confederation of Workers of Colombia (CUT), dated 28 August 2009 and the International Trade Union Confederation (ITUC) of 26 August 2009. These comments relate to matters that are already under examination by the Committee, and particularly acts of violence against trade union leaders and members, including murders and other acts of violence, and the impunity relating to many acts of violence (most acts of violence have been referred to the Committee on Freedom of Association). The Committee also notes the comments made by the National Association of Telephone, Communication and Allied Technicians (ATELCA) related to a case examined by the Committee on Freedom of Association. The Committee further notes the comments of the National Association of Employers of Colombia (ANDI). The Committee notes various communications from the Government related to these comments, and its reply to the comments made previously by the Union of Maritime and Inland Water Transport Workers (UNIMAR).

The Committee notes the discussions in the Conference Committee on the Application of Standards in 2009 on the application of the Convention, and particularly the commitment expressed by the Government and the social partners to reinforce social dialogue in the country. The Committee also notes that the Conference Committee invited the Government to continue receiving ILO assistance in relation to all the pending matters.

In this respect, the Committee notes with *interest* that, pursuant to the conclusions of Conference Committee on the Application of Standards, the Government of Colombia invited the Standards Department of the ILO to undertake a mission to the country with a view to observing the action taken as a result of the conclusions. The mission was undertaken from 19 to 23 October 2009 and interviewed the representatives of the Government and the social partners, as well as the representatives of the principal institutions in the country.

Finally, the Committee also notes the cases examined by the Committee on Freedom of Association (CFA) concerning Colombia. In this respect, the Committee notes with *interest* that the Government delivered a communication to the mission indicating that: (1) the Special Committee for the Handling of Conflicts referred to the ILO (CETCOIT) constitutes a special and particularly valuable forum for creating trust between the social partners; (2) it supports the reinforcement of the procedure and, to this end, will allocate the necessary resources so that it is supported for one year by a university ensuring the process of facilitating the resolution of the cases before the CETCOIT; and (3) it will examine the possibility of having recourse to the procedure of a preliminary contacts mission, envisaged in the rules of procedure of the CFA, as it holds the conviction that implementing all mechanisms can improve industrial relations in the country. ***The Committee requests the Government to provide information in its next report on any progress made in the work of the CETCOIT.***

Trade union rights and civil and political liberties

The Committee recalls that for many years it has been examining allegations of violence against trade unionists and the situation of impunity, at which it has expressed its concern. The Committee notes that the comments made by the CUT and the ITUC refer to a significant number of acts of violence against trade unionists. In the latest information provided by the CUT to the mission which visited Colombia, it reported that the acts of violence against the trade union movement in 2009 included the murder of 26 unionized workers, and that 38 convictions were handed down in 2009 against those responsible for acts of violence against trade unionists. The CUT further indicated that the trade union movement has provided to the Office of the Attorney-General a list of 2,688 murder victims during the period between January 1986 and 15 March 2009 (which was also submitted to the Committee on Freedom of Association in the context of Case No. 1787), but indicates that the list has not been taken into account by the Office of the Attorney-General. Moreover, during their interviews with the mission in October 2009, certain representatives of the trade union movement expressed concern at the possibility that the programme of protection for trade unionists would be ended at the end of 2009.

In this respect, the Committee notes the Government's indication that, according to its statistics, 23 trade unionists were murdered in 2009 and that 49 convictions were obtained against those responsible for acts of violence against the trade union movement, while protection measures were provided for 1,450 trade unionists and over US\$13 million was provided for protection measures. The Government informed the mission that, with regard to the 23 trade unionists murdered in 2009, the investigations carried out by the Office of the Attorney-General found that 15 were not for trade union reasons and, up to now, of the other eight only one was murdered because of their trade union activities. The Government adds that the number of violent deaths in the country has decreased, that its objective is for there to be no murders of trade unionists and that instructions have been given at the highest level of the Government to protect the trade union movement.

With reference to all of these matters, the Committee expresses appreciation of the tangible commitments given by the Government in a communication that it delivered to the mission which visited the country in October 2009. The communication stated that "for the State of Colombia, it is of crucial importance to elucidate violent acts committed against trade union leaders and unionized workers. In this respect, the Government undertakes to allocate the necessary financial resources for the strengthening of the Trade Union Members Sub-Unit of the National Human Rights Unit of the Office of the Attorney-General of the Nation and the Specialized Magistrates of the Higher Council of the Judiciary, so that they can complete the investigation of the acts of violence alleged in the context of Case No. 1787". The communication also indicates that "the Government, with the assistance of the ILO, will enter into dialogue with the workers' federations on the criteria to harmonize information on acts of violence against the trade union movement, for transmission to the investigatory bodies, and in this manner support the investigations". With regard to the protection of trade unionists, the Government's communication notes that "in relation to the preventive measures to avoid new acts of violence against trade union leaders and workers, the Government undertakes to continue the protection programme and to continue allocating resources to its financing and affirms that, irrespective of the body implementing protection measures, responsibility for the programme will always rest with the State." The Committee also notes the statement by the Office of the Attorney-General to the mission that it is prepared, with the additional funding made available to it by the Government, to conduct investigations into all the allegations contained in Case No. 1787 that is under examination by the Committee on Freedom of Association (concerning over 2,600 murders since 1986, to which the CUT refers in its comments).

The Committee further notes with *satisfaction* the adoption of Act No. 1309 of 2009, concerning the examination of which the Government had provided information to the Conference Committee on the Application of Standards, and which: (1) provides that the time limit for the prescription of acts punishable as murder of a member of a legally recognized trade union organization shall be 30 years; (2) considers as an aggravating circumstance for the imposition of penalties crimes against members of a trade union organization or human rights ombudsperson; (3) provides that any person who prevents or disturbs a lawful assembly or the exercise of rights granted by labour laws or engages in reprisals on grounds of strike action, assembly or legitimate association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law; and (4) provides that, in the event of threats or intimidation against a member of a trade union organization, the penalty shall be increased by one third. The Committee also notes with *interest* that the authorities of the Ministry of the Interior and Justice confirmed to the mission that the Victims Compensation Fund

established by Act No. 975 on Justice and Peace, applies to cases related to trade union leaders and members and its coverage currently amounts to 177 trade union leaders.

The Committee once again expresses *deep regret* at the murders and acts of violence against trade unionists which have been occurring for many years and those that have occurred in 2009, since the previous examination of the application of the Convention. Taking into account the gravity of the situation, the Committee recognizes all the measures, of a practical and legislative nature, that the Government has been adopting recently to combat violence in general and violence against the trade union movement, and it notes a decrease in the murders of trade unionists between 2008 and 2009, and in violence in general. The Committee hopes that the new measures will make it possible to combat violence against trade unionists effectively and will lead to the conviction of those responsible. ***The Committee requests the Government to indicate in its next report on any developments in this respect.***

Pending legislative and practical matters

Article 2 of the Convention. Right of workers, without distinction whatsoever, to establish and join organizations. The Committee referred previously to the use of associated work cooperatives as a contractual mechanism which, according to the allegations of trade union organizations, can cover actual employment relationships and are used for the performance of functions and work that are within the normal activities of the establishment and under which workers may not establish or join trade unions. The Committee noted in its previous observation the approval by the Congress of the Republic, on 22 July 2008, of Act No. 1233 respecting associated work cooperatives, following lengthy consultations with the representative organizations of associated work cooperatives, workers' federations, branch organizations representing employers and academic circles. On that occasion, the Committee noted that the Act refers to the "workers" of cooperatives and in that context recalled that under the terms of *Article 2* of the Convention, all workers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing. The Committee notes the Government's indication in its report, and the indication provided to the mission, that the new Act prohibits the use of cooperatives as a mechanism for labour mediation and grants the administrative authority the means to penalize such conduct. The representatives of the ANDI indicated to the mission that nothing currently prevents workers in cooperatives from establishing and registering trade unions, as unions exist in this sector. It referred in this respect to the SINTRACORTEROS trade union. The representatives of the workers indicated to the mission that there is a proliferation of cooperatives and that the workers in such cooperatives are not allowed to exercise the right to organize or to engage in collective bargaining. ***In this respect, taking into account the contradictory indications provided, the Committee requests the Government to consider the possibility of an independent expert undertaking a national study on the application of the Act respecting cooperatives and their use in the area of industrial relations, and also to clarify the issue of whether or not workers in cooperatives can organize. The Committee requests the Government to provide information on this matter in its next report.***

Right to establish organizations without previous authorization. In its previous comments, the Committee referred to the arbitrary refusal by the authorities to register new trade union organizations, new trade union rules or the executive committee of a trade union at the discretion of the authorities for reasons that go beyond the explicit provisions of the legislation. In this respect, the Committee requested the Government to repeal the provision of Resolution No. 626 of February 2008 which establishes, among the causes for which the competent official may refuse an entry in the trade union register, "that the trade union organization has been established for purposes that are different from those deriving from the fundamental right of association". In this respect, the Committee notes with *interest* ruling No. 695 of 2008 of the Constitutional Court, which provides that "the expression 'its legal recognition [of the union] shall be the result of the mere registration of the founding statutes', contained in article 39 of the Constitution, this statement shall be interpreted in conformity with the principle of publicity, in the meaning that such recognition does not consist of the granting of legal personality to the union, nor an act declaring its legal existence by the State, but that the founding statutes may be asserted or produce legal effects in respect of the State, as a third party, with the inclusion of all its bodies, in relation to the participants of the expression of the collective will to found the union, namely those who founded the union, and in respect of all third parties, and primarily the employer, on the basis of the above registration. Based on the above statement and taking into account that section 372, first indent, of the Substantive Labour Code (as replaced by section 50 of Act No. 50 of 1990, and explicitly amended by section 6 of Act No. 584 of 2000), may be interpreted in the sense that the registration of the founding statutes of the union with the Ministry of Social Protection is a requirement for the existence and lawful status of the union. This interpretation of section 372 would be contrary to the provisions of article 39 of the Political Constitution, and *Article 2* of Convention No. 87 of the ILO, which forms part of the constitutional provisions, such that the incorporation shall be declared enforceable as conditioned by such expression, in relation to the functions examined in this ruling, on the understanding that such registration shall exclusively fulfil functions of publicity, without authorizing the Ministry referred to above to carry out prior controls of the content of the founding statute."

The Committee also notes the Government's indication that, in accordance with this ruling, Resolution No. 626 of 2008 is not applicable and that, as a consequence, the Ministry of Social Protection has been depositing, immediately upon presentation in person, documents setting out the decision to establish trade union organizations, new executive committees and amendments to their statutes, without the application of a procedure and without prior control.

Article 3. Right of workers' organizations to organize their activities and to formulate their programmes. The Committee recalls that for a number of years it has been referring to the prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very broad range of services that are not necessarily essential (section 430(b), (d), (f), (g) and (h); section 450(1)(a) of the Labour Code, Tax Act No. 633/00 and Decrees Nos 414 and 437 of 1952, 1543 of 1955, 1593 of 1959, 1167 of 1963, and 57 and 534 of 1967) and the possibility to dismiss workers who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even when the unlawful nature of the strike is a result of requirements that are contrary to the principles of freedom of association. In this respect, the Committee notes the ruling of the Labour Cassation Chamber of the Supreme Court of Justice, of 3 June 2009 (No. 40428), indicating that the Constitutional Court in each individual case referred to it will examine whether or not a particular activity, taking into account its material content, corresponds to an essential service. The Supreme Court finds that "in accordance with constitutional doctrine, even where there may exist a legislative definition of the classification of a public service as essential, this does not prevent it being determined through interpretation that in a specific case a certain activity may effectively be considered an essential public service in view of its material content". The ruling continues by indicating that "this must be the case, as article 56 of the Constitution cannot lay down for the legislator an absolute classification such that the terms of the higher level or supra-legal text is sufficient in itself for the determination of a matter, without the interpreter examining its spirit or its objective, in the light of the constitutional principles". The Committee observes that it was found in the context of this ruling that "it may not be affirmed that the rail transport of freight may be considered an essential public service".

The Committee also notes the Government's indication to the mission in a written communication setting out its readiness to examine in a tripartite forum in the context of the National Dialogue Commission on Wage and Labour Policies the legislative discrepancies that are still pending before the ILO supervisory bodies. In this respect, the Committee observes that, in accordance with Act No. 1210 (amending section 451 of the Substantive Labour Code) "the legality or unlawful nature of a collective labour suspension or stoppage shall be the subject of a judicial ruling in a priority procedure, and that in accordance with the above holding, it rests with the judicial authorities to determine when a service is essential". ***Under these conditions, the Committee hopes that the highest judicial authority will take into account the principles of the supervisory bodies in relation to essential services, in which the right to strike may be prohibited or restricted, and it requests the Government to provide information in its next report on any development in the case law on this matter and whether it is envisaged that the legal provisions referred to above will be repealed or amended.***

Declaring a strike illegal. In its previous observation, the Committee noted the adoption of Act No. 1210 of 2008, amending section 451 of the Substantive Labour Code to read as follows: "the legality or unlawful nature of a collective work suspension or stoppage shall be declared by the judicial authorities in a priority procedure". The Committee takes due note of the fact that, following the adoption of this Act, the Constitutional Court handed down ruling No. C-349/09 declaring unconstitutional section 1(2) of Act No. 1210, which empowered the President of the Republic, with a prior favourable opinion issued by the Labour Chamber of the Supreme Court of Justice, to order the cessation of a strike at any time and the referral of the disputes which gave rise to it to compulsory arbitration where the strike, in view of its nature, is seriously prejudicial to the health, safety, public order or the economy of the whole or part of the population.

Compulsory arbitration. In its previous observation, the Committee noted that Act No. 1210 amends section 448(4) of the Substantive Labour Code and provides that: (1) the employer and the workers may, within the following three days of a labour dispute, convene any settlement, conciliation or arbitration machinery; (2) if they do not reach agreement, automatically or at the request of the parties, the Commission for Dialogue on Wage and Labour Policies shall intervene and use its good offices for a maximum of five days; (3) once this period has elapsed without it being possible to achieve a definitive solution, both parties shall request the Ministry of Social Protection to convene an Arbitration Board; and (4) the workers shall be under the obligation to return to work within three days. In this respect, the Committee takes due note of the fact that a Government representative at the Conference Committee on the Application of Standards confirmed that the request to refer disputes to an Arbitration Board must be made by both parties. The Committee observes that this was also confirmed to the mission which visited the country in October 2009.

Article 6. Restrictions imposed on the activities of federations and confederations. The Committee has been referring for several years to the prohibition on the calling of strikes by federations and confederations (section 417(i) of the Labour Code). The Committee recalled that higher level organizations should be able to resort to strikes in the event of disagreement with the Government's economic and social policy and requested the Government to amend the above provision. The Committee notes the indication by the Government in a written communication that it is prepared to analyse, in a tripartite forum in the context of the National Dialogue Commission on Wage and Labour Policies, the pending legislative discrepancies that are before the ILO supervisory bodies. The Committee also observes that, under the terms of Act No. 1210, a strike called by a federation or confederation may only be declared illegal by the judicial authorities. ***The Committee requests the Government to provide information in its next report on any developments in this respect.***

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), of 29 August 2008 and 26 August 2009; the Single Confederation of Workers of Colombia (CUT), the General Confederation of Workers (CGT) and the Confederation of Workers of Colombia (CTC), of 28 January and 13 June 2008; of the CGT of 19 August 2008; of the CUT and the CTC of 27 August 2008; and of the CUT of 28 August 2009. These organizations refer to matters that are under examination by the Committee, as well as to anti-union dismissals and the lack of adequate protection in this respect. The Committee also notes the comments made by the National Association of Telephone, Communication and Allied Technicians (ATELCA) of 16 August 2008 and 28 August 2009 referring to a case under examination by the Committee on Freedom of Association.

Finally, the Committee notes the comments of the National Association of Employers of Colombia (ANDI), of 1 September 2009, which refer to matters under examination by the Committee and mention the various committees and commissions operating in the country, of which it places emphasis on: the National Dialogue Commission on Wage and Labour Policies, the Inter-Institutional Human Rights Commission, the Special Committee for the Handling of Conflicts Referred to the ILO (CETCOIT) and the Negotiations Commission in the Public Sector. Furthermore, every five weeks a meeting is held between the President and Vice-President of the Republic, the Minister of Social Protection and workers' organizations. The ANDI also refers to USAID assistance programmes and the bipartite Swedish technical cooperation programme, which are carrying out training programmes for dispute resolution, collective bargaining and social dialogue.

The Committee also notes the various communications from the Government relating to these comments, and its reply to the comments made previously by the Union of Maritime and Inland Water Transport Workers (UNIMAR).

Furthermore, the Committee notes with *interest* the invitation made by the Government to the Office for a mission to visit the country with a view to observing the effect given to the conclusions of the Conference Committee on the Application of Standards in relation to the examination of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which nevertheless addressed certain matters relating to Convention No. 98. The mission visited the country from 19 to 23 October 2009 and held interviews with representatives of the Government and of the social partners, as well as representatives of the principal institutions in the country.

The Committee also notes the cases examined by the Committee on Freedom of Association relating to Colombia. In this respect, the Committee notes with *interest* that the Government delivered a communication to the mission referred to above, in which it indicates that: (1) the CETCOIT constitutes a special and particularly valuable forum for creating trust between the social partners; (2) it supports the reinforcement of the procedure and, to this end, will allocate the necessary resources so that it is supported for one year by a university to facilitate the resolution of the cases before the CETCOIT; and (3) it will examine the possibility of having recourse to the procedure of a preliminary contacts mission, as envisaged in the rules of procedure of the Committee on Freedom of Association, as it holds the conviction that implementing all mechanisms can improve industrial relations in the country. ***The Committee requests the Government to provide information in its next report on any progress made in the work of the CETCOIT.***

The Committee further notes the adoption of Act No. 1149 of 2007 amending the Code of Labour Procedures and Social Security by introducing oral hearings and making judicial proceedings more flexible. The Committee notes that the mission was informed that it is the responsibility of the Higher Council of the Judiciary to give effect to the Act, for which a time period of four years is envisaged. The Committee notes the existence of pilot plans for the application of these procedures in certain regions of the country, with appeals being decided upon in two months in the first instance and in one month in the second instance.

The Committee welcomes the adoption of Act No. 1309 of 2009 which provides that any person who prevents or disturbs a lawful assembly or the exercise of rights granted by labour laws or engages in reprisals on grounds of lawful strike action, assembly or association, shall be liable to a fine of between 100 and 300 minimum monthly wages as established by law or to imprisonment.

Pending issues

Collective bargaining in the public sector. The Committee recalls that for many years it has been referring to the need to give effective recognition to the right to collective bargaining of public employees who are not engaged in the administration of the State. The Committee notes with *satisfaction* that for the first time since the ratification of the Convention in 1976, and following repeated requests, on 24 February 2009 the Government issued Decree No. 535 respecting collective bargaining in the public sector and it observes that, according to the Government's indications in its report, it has already given rise to tangible results, as processes of dialogue have progressed in the District of Bogotá, in the Ministry of Social Protection and in the Ministry of Education (in the latter case, with the Colombian Federation of Educational Staff (FECODE)), resulting in the conclusion of agreements. The Committee observes that the objective of this Decree is "to establish bodies within which dialogue will be furthered between the trade union organizations of public employees and public sector entities" (section 1), with a view to determining conditions of work and regulating relations between employers and employees (section 2). The Decree also envisages the procedure for engaging in dialogue. The Committee observes that the Decree applies to all state employees, with the exception of high-level employees

discharging functions of management, direction and institutional guidance the exercise of which involves the adoption of policies or directives.

In this respect, the Committee notes the indication by the CUT in its comments that the agreement with the FECODE has not been fully respected and that the CUT has lodged an application with the State Council to strike down Decree No. 535, which is currently being examined (this organization and other representative workers' organizations informed the mission that they challenge Decree No. 535 and indicated that the first draft of the new Decree to amend it, which is not attached, is not in conformity with the Labour Relations (Public Service) Convention, 1978 (No. 151)). The Committee observes that the application for the Decree to be struck down is based in particular on the interpretation of certain provisions of the Colombian Constitution and on issues of compliance with domestic legislation, on which matter the Committee is clearly not competent.

The Committee further notes the Government's indication to the mission that it is planned to revise the Decree and that a draft Decree to amend it was forwarded to workers' and employers' organizations for discussion.

The Committee requests the Government to continue dialogue with trade union organizations with a view to improving the Decree that has already been adopted and to keep it informed on this matter. The Committee is aware that the Decree is very short, can be improved and establishes principles which probably require further regulation to comply more effectively with its objectives and to extend in practice collective agreements in the various institutions. While from a technical viewpoint such regulation may well be appropriate, the Committee recalls that the Convention does not require exhaustive regulation, but rather is compatible with systems that envisage a minimum of interference by the State in collective bargaining in the public sector.

Collective accords with non-unionized workers. The Committee recalls that in its previous observation it referred to the need to ensure that collective accords are not used to undermine the position of trade union organizations, and to the need to ensure the possibility in practice to conclude collective agreements with them. It requested the Government to provide information on the total number of collective agreements and collective accords and the respective number of workers covered by them. The Committee notes that the ITUC and the CUT refer to the low rate of collective bargaining in the country, which only covers 1.2 per cent of workers. In 2008, only 473 agreements were concluded, consisting of 256 collective agreements and 217 collective accords (negotiated directly with the workers).

The Committee notes the Government's indication that the conclusion of collective accords, which is permitted by the legislation, in no event prevents the trade union from submitting claims and concluding collective agreements, provided that they are in accordance with ruling C-345 of 2007 of the Constitutional Court, under which "direct negotiations between employers and non-unionized workers may not undermine collective bargaining and trade union rights". The Government emphasizes that the only case in which the same employer may conclude a collective labour agreement and a collective accord is when the trade union represents less than one-third of the workers in the enterprise. The Government adds that in 2008 a total of 209 collective accords were deposited, 15 per cent more than the previous year, when 182 were deposited. With regard to collective agreements, 261 were deposited in 2008, 3 per cent more than in 2007, when 254 were deposited. ***In this respect, while recalling that collective accords negotiated directly with workers should not be used to undermine the position of trade union organizations, the Committee requests the Government to provide information on the measures adopted to encourage and promote the full development and utilization of voluntary collective bargaining, in accordance with Article 4 of the Convention, and to ensure that the conclusion of collective accords negotiated directly with the workers is only possible in the absence of a trade union and that it is not carried out in practice for anti-union purposes.***

Restrictions on the content of negotiations. The Committee notes Legislative Act No. 01 of 2005, amending article 48 of the Constitution on social security, and thereby limiting the right of collective bargaining on pensions. The Committee notes that the comments of ATELCA refer to this matter. The Committee observes that the Act provides that: as from the coming into force of the present Legislative Act, pension conditions that differ from those set out in the laws on the General Pensions System shall not be established in accords, collective labour agreements, awards or any juridical act. Without prejudice to acquired rights, the scheme applicable to members of the public forces and the President of the Republic, as established in the clauses of this section, the period for which special pension schemes are in force, those covered by exceptions, as well as any other difference from the permanent provisions of the laws on the General Pensions System, shall expire on 31 July 2010.

The Committee notes the Government's indication in this respect that article 48 of the Constitution provides that social security shall be provided in accordance with the principles of efficiency, universality and solidarity. The Government adds that the universality of the system presupposes protection guarantees for all persons, without discrimination whatsoever, at all the stages of life, and that this guarantee without discrimination can only be offered by a unified system which cannot be varied at the will of one sector of beneficiaries. Account has to be taken not only of the principles governing the social security system, but also of the economic consequences of the current situation, as well as those in the medium and long term. The Government adds that Act No. 100 of 1993 already provided that pension schemes were not to be included in collective bargaining. The principal objective of Legislative Act No. 01 of 2005 is to ensure effective entitlement to a pension for all inhabitants who meet the requirements of the law for the granting of such entitlement, under conditions of equality and without privilege.

The Committee observes that this matter was examined by the Committee on Freedom of Association in the context of Case No. 2434 (see 344th Report of the Committee on Freedom of Association). The Committee of Experts observes that in its conclusions the Committee on Freedom of Association considered that, with regard to agreements concluded prior to the entry into force of the legislation, which would no longer be in force as from 2010 under the terms of the Legislative Act, this could imply in certain cases a unilateral modification of the content of signed collective agreements, which is contrary to the principles of collective bargaining, as well as the principle of the acquired rights of the parties. In this respect, it requested the Government to take the appropriate measures so that collective agreements containing clauses on pensions continue to produce their effects until their expiry date, including after 31 July 2010.

With regard to agreements concluded after the entry into force of Legislative Act No. 01, and particularly in relation to the general prohibition of the establishment of a pension scheme that differs from any established under the General Pensions Scheme, the Committee on Freedom of Association requested the Government, in order to ensure harmonious industrial relations in the country, to hold in-depth consultations on retirement and pensions with the interested parties in order to find a negotiated solution acceptable to all the parties concerned, in accordance with the Conventions on freedom of association and collective bargaining ratified by Colombia, and to ensure in particular that the parties to collective bargaining can improve statutory pension benefits or pension schemes by mutual agreement.

In the same way as the Committee on Freedom of Association, the Committee of Experts recalls that measures taken unilaterally by the authorities to restrict the scope of negotiable issues are often incompatible with the Convention; tripartite discussions for the preparation, on a voluntary basis, of guidelines for collective bargaining are a particularly appropriate method to resolve these difficulties (see General Survey on freedom of association and collective bargaining, 1994, paragraph 250).

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2000)

The Committee notes the comments made by the National Association of Telephone, Communication and Allied Technicians (ATELCA) and the Government's reply. The Committee is examining these comments in the context of its examination of the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

In its previous comments, the Committee requested the Government to provide its observations concerning the comments made by the Union of Public Officials of the University Hospital of Valle (SINSPUBLIC), of 3 April 2006, and the Single Confederation of Workers (CUT), of 4 April 2006, according to which Act No. 909 of 2004 and its implementing regulations, enacted without prior consultation with trade union organizations, compel workers in the public sector to undergo once again merit competitions in order to be confirmed in their posts, in violation of the collective agreement concluded between SINSPUBLIC and the hospital administration. ***The Committee reiterates its request.***

Article 4 of the Convention. The Committee welcomes the adoption of Act No. 1309 of 2009 (respecting conduct that may be punished which is prejudicial to the legally protected property of the members of a legally recognized trade union organization) which provides that any person who prevents or disturbs a lawful meeting or the exercise of the rights afforded by labour laws or engages in reprisals by reason of a lawful strike, meeting or association, shall be liable to a fine of from 100 to 300 minimum monthly wages as set out in the law or to imprisonment.

Article 7. The Committee is examining Decree No. 535, of 24 February 2009, on collective bargaining in the public sector, in the context of its examination of the application of Convention No. 98.

Furthermore, the Committee requests the Government to provide information on the application of the Convention in practice and to provide information on the following matters:

- ***the facilities to be afforded to representatives of recognized public employees' organizations in order to enable them to carry out their functions promptly and efficiently, both during and outside their hours of work. The Committee requests the Government to indicate the facilities applicable under the legislation and whether facilities have been established through collective agreements, and to provide examples (Article 6 of the Convention).***
- ***the independent and impartial machinery established for the settlement of disputes arising in connection with the determination of terms and conditions of employment in the context of the process of collective bargaining (Article 8 of the Convention).***

Finally, the Committee notes the Government's indication concerning the adoption of Decree No. 3399, of 8 September 2009, modifying the composition of the Inter-sectoral Commission to Promote the Formalization of Decent Work in the Public Sector, which will include the Minister of Social Protection, the Minister of Finance and Public Credit, the Director of the National Planning Department, the Director of the Administrative Department of the Public Service (and in which the Superintendent of the Solidarity Economy and a delegate of each of the public sector federations, designated by workers' confederations, will have the status of permanent invited participants).

Collective Bargaining Convention, 1981 (No. 154) (ratification: 2000)

The Committee notes the comments made by the Single Confederation of Workers (CUT), the General Confederation of Labour (CGT) and the Confederation of Workers of Colombia (CTC). The Committee notes in particular

the indication by the CUT that, despite the existence of the National Commission for Dialogue on Wage and Labour Policies, recent legislative changes were not subject to consultations with the social partners in that Commission. ***The Committee requests the Government to provide its observations on this matter.***

The Committee notes the comments made by the National Association of Telephone, Communication and Allied Technicians (ATELCA) and the Government's reply. The Committee refers in this respect to its comments on the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee notes with *satisfaction* the adoption of Decree No. 535 of 24 February 2009 on collective bargaining in the public sector. The Committee notes the comments made by the CUT, CGT and CTC in this respect. The Committee refers in this regard to its comments on the application of Convention No. 98.

Comoros

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

Article 4 of the Convention. The Committee recalls that for several years it has been requesting the Government to take measures to promote collective bargaining in the public and private sectors. The Committee notes that the Government expresses regret in its report that there has not been substantial progress in this respect and reiterates its desire to receive technical assistance to help the partners concerned gain a better understanding of the socio-economic importance of collective bargaining. In this respect, the Committee notes the comments of the Employers' Organization of Comoros (OPACO), according to which collective agreements in the pharmaceuticals and bakeries sectors, which have been under negotiation for several years, have still not been concluded, and that negotiations in the press sector are currently under way. The Committee notes with *regret* that, according to OPACO, the Government is not taking any measures to promote collective bargaining in either the public or the private sectors.

The Committee regrets the lack of progress in collective bargaining in these sectors and expresses the firm hope that it will be completed in the near future. ***The Committee expresses the firm hope that ILO technical assistance will be provided in the very near future and requests the Government to take all the necessary measures to promote collective bargaining in both the private and the public sectors. The Committee requests the Government to indicate any developments in this regard.***

Congo

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

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

The Committee notes the comments from the International Trade Union Confederation (ITUC) on the application of the Convention. ***The Committee requests the Government to provide its observations on the ITUC comments.***

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

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

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

Costa Rica

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

The Committee notes the Government's report and its reply to the comments of the International Trade Union Confederation (ITUC), dated 28 August 2007, on the application of the Convention. In its previous observation, the Committee noted the report of the high-level technical assistance mission which visited San José from 2 to 6 October 2006

in the context of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee notes the reasons given by the Government for the delay in the examination of the Bills relating to the application of the Convention by the Legislative Assembly (the need to adopt additional legislation under the Free Trade Agreement). Furthermore, the Government organized a forum with the participation of members of Parliament to promote the draft reform of labour procedures.

Article 3 of the Convention. Right of organizations to elect their representatives in full freedom. Prohibition upon foreigners from holding office or exercising authority in trade unions (article 60, second paragraph, of the Constitution and section 345(e) of the Labour Code). The Committee observed previously that Bill No. 13475 (currently on the agenda of the Legislative Assembly) amends section 345(e) of the Labour Code so that it no longer provides that the members of the executive board of a trade union must be of Costa Rican nationality or of Central American origin, or foreign nationals married to a Costa Rican woman and having completed five years of permanent residence in the country. Nevertheless, the Bill provides that the bodies of trade unions have to comply with the provisions of article 60 of the Constitution, which provides that “foreign nationals are barred from positions of management or authority in trade unions”. The Committee noted previously that a draft reform of the Constitution, prepared with the assistance of the ILO, had been submitted to the Plenary of the Legislative Assembly in 1998. The Committee *regrets* to note the Government’s indication in its report that the draft reform of the Constitution has been shelved as the four-year period has elapsed. The Government expresses its good will to make all the necessary efforts to promote this issue among the members of the Legislative Assembly. The Committee previously drew the Government’s attention to the importance of amending not only section 345 of the Labour Code, but also article 60, second paragraph, of the Constitution, to abolish the excessive restrictions that are currently placed on the right of foreign nationals to hold trade union office, which are inconsistent with *Article 3 of the Convention*. The Committee reiterates its comments in this respect.

Obligation for the trade union assembly to appoint the executive board each year (section 346(a) of the Labour Code). The Committee noted previously that Bill No. 13475 no longer establishes the requirement for the executive board to be appointed each year. The Committee notes the Government’s indication that in practice the Ministry of Labour ensures the full autonomy of organizations to determine the duration of the mandates of their executive boards.

Right of organizations to organize their activities and to formulate their programmes in full freedom. Restrictions on the right to strike: (i) requirement of “60 per cent of the persons who work in the enterprise, workplace or establishment concerned” – section 373(c) of the Labour Code; and (ii) prohibition of the right to strike for “workers engaged in rail, maritime and air transport enterprises” and “workers engaged in loading and unloading of docks and quays” – section 373(c) of the Labour Code.

The Committee noted previously that, according to the Government, on 25 August 2005 the judicial authorities referred to the Executive for its submission to the Legislative Assembly a Bill to reform labour procedures, which benefitted from ILO technical assistance. The Committee noted that, according to the Government, the Bill takes into account the ruling of 27 February 1998 by the Constitutional Chamber and the recommendations of the Committee on Freedom of Association, and has been endorsed by the trade union organizations and employers’ associations, except with regard to certain provisions. The Committee observed previously that the Bill:

- proposes 40 per cent of workers in order to call a strike (the employers’ associations rejected this percentage, citing the principle of democratic participation);
- the right to strike is restricted only in essential services in the strict sense of the term, although these include the loading and unloading of perishable goods in ports; transport is considered an essential service as long as the journey has not been completed;
- strikes may no longer be deemed unlawful before they have occurred;
- arbitration is introduced for disputes in essential services and in the public sector (in this respect, the Committee recalls that compulsory arbitration is only admissible in relation to public servants exercising authority in the name of the State and in essential services the interruption of which would endanger life, personal safety or health); and
- a special and very short summary procedure is introduced for workers with trade union immunity.

Moreover, in a direct request, the Committee observed previously that the Bill establishes a maximum limit for strikes of 45 calendar days (after which arbitration is compulsory).

With regard to the right to strike, the Committee also noted that a magistrate of the Supreme Court of Justice had indicated that of the 600 or so strikes that had occurred over the past 20 or 30 years, no more than ten had been declared lawful. Furthermore, according to trade union federations, the procedure to set a strike in motion could last up to three years.

The Committee notes that in its latest report the Government indicates that: (1) the Bill to reform labour procedures has been placed on the agenda of the Plenary of the Legislative Assembly as a result of the Government’s promotional activities; and (2) the establishment of a joint commission of the Legislative Assembly to further the Bill was decided upon and agreed to in the Higher Labour Council (a tripartite body).

Articles 2 and 4. The need for Bill No. 13475, in amending section 344 of the Labour Code, to establish a specific and short period during which the administrative authority is to reach a decision on the registration of trade unions and

after which, in the absence of a decision, legal personality is deemed to have been obtained. The Committee notes the Government's repeated indication in its latest report that in practice registration procedures are carried out without any delay and that, if they fall short of the legal documentary requirements, applicants are asked to remedy the matter and are entitled to appeal. The Department of Trade Union Organizations has 15 days within which to respond and, if it issues a favourable opinion within that period, the Ministry of Labour issues its decision as soon as possible thereafter, and in any event within one month of the report being issued. The Committee notes that, according to the Government, the issue raised by the Committee, in addition to being superseded in practice, is no longer valid in relation to the law, as the General Act on the public administration provides that, where the statutory time limits are not respected, those concerned may appeal to the respective higher authority. The Committee previously invited the Government to have these deadlines set out explicitly in Bill No. 13475 and notes the Government's indication in its latest report that it has forwarded a copy of this request to the President of the Legislative Commission. **The Committee requests the Government to indicate any developments in this respect.**

Submission of legislative matters to a joint commission in the National Assembly. The Committee notes the Government's indication in its report of its complete readiness and will to resolve the problems raised.

The Committee previously noted the initiatives taken by the high-level mission with a view to expediting the draft texts submitted to the Legislative Assembly on the matters raised by the Committee of Experts and that, when attending a special session of the Higher Labour Council (a dialogue body composed of some of the most important representatives of trade unions and employers and the Minister of Labour), the mission consulted its members and it was agreed unanimously to call on the Legislative Assembly to establish a joint commission with the technical assistance of the ILO to examine the Bill to reform labour procedures. It was also resolved that the Council would examine the other draft texts pending on labour matters with a view to studying them and facilitating their passage to the extent to which consensus was achieved.

The Committee hopes that the above joint commission in the National Assembly will address all pending matters without delay. The Committee requests the Government to provide information in this respect. The Committee notes that the Government has requested the technical assistance of the ILO to ascertain the conformity of the Bill to reform labour procedures (No. 15990) with the principles of Conventions Nos 87 and 98 and it suggests that such assistance should be provided as soon as the joint commission is established in the Legislative Assembly.

The Committee once again emphasizes that the pending matters raise important issues relating to the application of the Convention. **Taking into account the various ILO missions that have visited the country over the years and the gravity of the problems, the Committee hopes to be in a position to note substantial progress in the near future in both law and practice. The Committee requests the Government to provide information on this matter in its next report.**

Comments by trade union organizations. The Committee noted previously that the Union of Public and Private Enterprise Workers (SITEPP) indicates that the unionization rate in the country is only 2.5 per cent in the private sector and that the commitments made to the ILO over many years relating to the draft legislation submitted to the Legislative Assembly have only been vain promises. The Committee notes that, according to the Government, the unionization rate is 9.37 per cent. **The Committee requests the Government to provide official statistical data on the number of trade unions and higher level organizations (in the public and private sectors) and the number of trade union members.** The Committee also notes the Government's reply to the previous comments of the ITUC referring to acts of violence against the premises of a trade union and death threats against a trade union leader. The Committee notes that it consists of a criminal matter (and not unfair labour practices), and that the judicial authorities are competent as the matter relates to acts of common vandalism.

Finally, the Committee requests the Government to provide its comments on the ITUC's communication, dated 26 August 2009 and particularly on: (1) its allegation that in the event of a strike the unions are required to provide the names of the strikers; (2) its statement that unions are practically non-existent in the private sector; (3) the alleged unlawful arrest of a trade union leader in the construction sector; and (4) the violation of the Act by prohibiting trade union activities by solidarist associations in certain banana and pineapple ranches.

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

In its previous comments, the Committee noted the report of the High-level Mission that visited Costa Rica in October 2006, and Cases Nos 2490 and 2518, examined by the Committee on Freedom of Association, which confirmed that a large number of trade unionists had been dismissed. The Committee took note of the comments on the application of the Convention made by the International Trade Union Confederation (ITUC), the Confederation of Workers Rerum Novarum (CTRN), the Petroleum, Chemical and Allied Workers' Union (SITRAPEQUIA) and the Costa Rican Federation of Chambers and Associations of Private Enterprises (UCCAEP). The Committee notes the Government's reply to the comments in the CTRN's communication of 12 September 2008. Lastly, it notes the discussion on the application of the Convention that took place in June 2009 in the Conference Committee on the Application of Standards.

Slowness and ineffectiveness of procedures regarding complaints and compensation in the event of anti-union acts. The Committee noted that, according to the High-level Mission that visited the country in 2006, the proceedings in cases of anti-union discrimination are so slow that it takes at least four years to obtain a final ruling. The Committee notes that

in its comments the ITUC states that the problem still exists. The employers' organization UCCAEP states that legislative and judicial treatment of anti-union discrimination is satisfactory, and points out that the criticism of Costa Rican law has mostly been levelled at the slow proceedings for complaints claiming cancellation of dismissals of trade union leaders, and that work has been done to improve matters, particularly through a Bill to reform labour procedures currently on the agenda of the Legislative Assembly.

The Committee notes the Government's statements to the effect that: (1) discussion of the legislation being developed under the Free Trade Agreement, signed by Central America, the Dominican Republic and the United States, has delayed discussion of the Bill to reform labour procedures in the Legislative Assembly but, because the Executive called for discussion of the Bill at the first meeting of the Assembly's extraordinary plenary session (August 2009), at which the Executive determines the order of agenda items, the Bill to reform labour procedures (which addresses the problem of slow proceedings in cases of anti-union acts and strengthens the right to collective bargaining in the public sector) is the second item on the agenda of the Legislative Assembly's Legal Affairs Committee (whose subcommittee was attended by three deputies, the President of the Second Chamber, a representative of the Ministry of Labour and representatives of employers' and workers' organizations); (2) the Bill, which also had the backing of the Higher Labour Council (a national tripartite body), introduces oral proceedings, strengthens protection against anti-union acts and is the outcome of ILO technical assistance; (3) furthermore, Bill No. 13475 to reform various provisions of the Labour Code, Act No. 2 of 27 August 1943, and sections 10, 15, 16, 17 and 18 of Decree No. 832 of 4 November 1949, and the amendments thereto is high on the agenda of the Assembly's plenary session; the aim of this initiative is to strengthen trade union activity in the country through amendments to the Labour Code that contribute to the establishment of unions in private enterprises and to compliance with ILO international standards; the deputies are aware that this proposal forms part of the Government's commitments still outstanding in the ILO, yet the Executive has placed adoption of the Bill to reform labour procedures higher on the plenary agenda, because it is broader and more inclusive than the provisions of Bill No. 13475.

The Committee further notes the information from the Government to the effect that various training activities have been conducted in connection with the problems pointed out by the Committee of Experts and have included judges, deputies and employers' and workers' organizations.

The Government adds that in 2008 the Judiciary had some 22,563 new labour-related cases before it, but completed 27,936 out of a total case load of 30,029. It can be inferred from this that the Judiciary has significantly shortened the average length of the proceedings in labour cases, and has reduced the case load. It is also pursuing a programme to deal with the backlog of cases, the aim being to develop a new system to improve the response and running of the administration of justice. To this end, a process has begun to reorganize the supernumerary judges' programme by switching from an office-based scheme for the distribution of judges to a centralized scheme consisting of groups, each with a maximum of 20 judges and a work programme geared to providing assistance to offices with workloads that exceed their normal capacity; between the start-up of this programme in 2001, and 2008, 46,398 cases were received, in 38,209 of which there have been judgements, and in 8,189 of which files have been returned and matters have been settled from which it can be inferred that 82.3 per cent of the cases submitted were resolved by judges belonging to the abovementioned programme. Specifically, in 2008 the annual average of cases received was 5,799, with an annual average of 4,776 cases judged. In order to strengthen the justice administration system even further, the Supreme Court of Justice, at a plenary sitting held on Monday, 12 March 2007, approved the establishment of the Conciliation Centre of the Judiciary, which promotes flexible, informal and effective judicial mechanisms; in the course of 2008, in the various chambers of the abovementioned Conciliation Centre, 3,505 conciliation hearings were held and 2,606 agreements were reached, in other words conciliation agreements were reached in 74.35 per cent of the cases heard. The Government further indicates that the Ministry of Labour and Social Security is also engaged in strengthening alternative methods of administrative dispute settlement, and that through the Alternative Dispute Settlement Centre (RAC) of the Ministry's Labour Relations Department, in 2008 and the first quarter of 2009 the number of persons heard rose to 8,738, with an average of 2,815 applications for conciliation hearings.

The Committee welcomes the actions and initiatives referred to by the Government that are described in the above paragraphs, particularly in the light of the Government's previous report stating that in 2005 there were 38 cases of complaints of anti-union discrimination. There is no doubt that the general improvement in the administration of justice and the efficiency of proceedings will likewise have a positive effect on cases of anti-union practices. The Committee nonetheless notes that the Government has not assessed the impact of the general improvements in the administration of justice on proceedings relating to trade union actions, where the main problem is that owing to appeals and constitutional complaints (*recursos de amparo*), it can take years for a decision to be handed down. Nor has the Government provided information on the number of instances where penalties were imposed for breach of the labour legislation on trade union rights, and the number of decisions in such cases that have become final, as well as the length of the proceedings.

The Committee hopes that the Bill to reform labour procedures will be adopted in the near future and asks the Government to provide the text of the future Act as soon as it is adopted.

The Committee notes with regret, however, that Bill No. 13475 to reform various provisions of the Labour Code and other legal texts has not as yet been discussed although it is high on the agenda of the Legislative Assembly's plenary session, and requests the Government to take steps to move the processing of the Bill forward, and to provide

information in this regard. The Committee recalls that, at its session of June 2009, the Conference Committee on the Application of Standards asked the Government to submit, this year, a detailed time schedule of steps taken and future steps so that the legislative reforms were made a reality, and expressed the hope that the bills upon which tripartite consensus has been reached would be adopted without delay.

Submission of collective bargaining to criteria of proportionality and rationality. In its case law, the Constitutional Chamber of the Supreme Court of Justice had ruled unconstitutional a significant number of clauses in collective agreements in the public sector, at the instigation of public authorities (Citizens' Ombudsman, General Prosecutor of the Republic) or one or another political party.

In its previous observation, the Committee noted that SITRAPEQUIA and the CTRN emphasized the seriousness of the problem of collective bargaining in the public sector and the constraints placed on public employers by the Committee on Negotiation Policy. It further noted that the CTRN and the country's other confederations held the view that the long delay in the adoption of the bills to amend the legislation and ratify the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154) (which resulted from a tripartite agreement), demonstrates a lack of interest in moving forward.

The Committee observes that the Government referred to statements it had made in previous reports to the effect that: (1) the Government possesses the will and commitment to resolve the problems raised by the Committee of Experts; (2) it has requested the ILO's technical assistance and trusts that this will enable it to overcome the problems raised; (3) the Government's efforts (many of them supported by tripartite agreement) to solve these problems have included the submission of several legislative proposals to the Legislative Assembly and their reconsideration: a draft constitutional amendment (of article 192), a Bill on collective bargaining in the public sector and the addition of a subsection (5) to section 112 of the General Act on Public Administration (the three initiatives are intended to strengthen collective bargaining in the public sector); a draft amendment to the chapter of the Labour Code on freedom of association; approval of ILO Conventions Nos 151 and 154; (4) the Government's efforts have also included other types of initiatives in legal actions of unconstitutionality brought in order to annul specific clauses in the agreements; (5) the present Government has the will to push forward draft legislation to resolve pending problems and has maintained contact with the Executive – including the Ministry of the Presidency – and parliament (deputies from various parties as well as the leaders of the principal opposition party which also supports the reforms sought by the ILO) for the re-examination of the draft texts in question. The Government states that it has sent reports to the judiciary forwarding the observations and position of the Committee of Experts. The Government lays emphasis on the follow-up meetings held by the Minister of Labour and Social Security, on occasion with the technical assistance of the ILO Subregional Office, with this assistance including the gathering of information on matters relating to Conventions Nos 151 and 154 on collective bargaining. The Government adds that a meeting was held with various representatives of all the sectors involved (the authorities, civil society, etc.) to analyse and seek consensus for the bill to reform labour procedures which is on the agenda of the Legislative Assembly.

The Committee requested the Government to provide information on developments regarding the draft legislation that has been under examination by the Legislative Assembly for years and which is intended to achieve greater efficiency and speed in the procedures for collective bargaining in the public sector, and on any developments regarding the Supreme Court of Justice's case law on this matter.

The Committee notes that, at its session of June 2009, the Conference Committee on the Application of Standards took note of the Government's commitment to create a bipartisan congressional committee with participation of all the State Powers and the social partners to promote the adoption of the bills that had tripartite support, with ILO technical assistance. The Committee recalls in this connection that the Conference Committee on the Application of Standards expressed the firm hope that in the very near future it would be able to note considerable progress in the application of the Convention, and trusted that the bills upon which tripartite consensus had been reached would be adopted without delay. It likewise trusted that the report due this year for examination by the Committee of Experts would include a copy of the bills so that the Committee of Experts could verify their conformity with the Convention. It asked the Government to submit, this year, a detailed time schedule of steps taken and future steps so that the legislative reforms were made a reality.

The Committee notes that in its latest report the Government reiterates many of its earlier statements, and indicates that the Higher Labour Council (a tripartite advisory body) agreed to analyse the bills relating to collective bargaining issues to determine which of them can be promoted on a tripartite basis, and that they include the bills relating to ILO Conventions Nos 151 and 154. The Committee notes that, according to the Government, the bill to reform labour procedure – which has tripartite support – is the second item on the agenda of the Legal Affairs Committee of the Legislative Assembly and that it aims, among other things, to strengthen the right to collective bargaining in the public sector. According to the Government, the Bill on the collective negotiation of collective agreements in the public sector, and the addition of a subsection (5) to section 112 of the General Act of Public Administration, is currently under examination. It was referred by the Legal Affairs Committee for consideration by the Special Commission on Human Rights. It is currently item No. 14 on the latter's agenda. A legal report on the bill has been submitted by the Technical Services Department of the Legislative Assembly and it is expected that the deputies will move to have it discussed in ordinary sittings. As to the other bills and the ILO Conventions relating to freedom of association and collective bargaining, the Government indicates that, as soon as circumstances allow, they will be submitted to the Legislative

Assembly, bearing in mind that these are matters pending for the Government which are of vital importance to strengthening the trade union rights of men and women workers in Costa Rica. The Committee notes with *regret* that discussion of the bills has again delayed.

According to the UCCAEP, the bill in question deals satisfactorily with collective bargaining in the public sector. The Government states that it is attaching copies of the bills as requested by the Committee on the Application of Standards at the 98th Session of the International Labour Conference. However, these texts have not been received and it is therefore not possible to verify their consistency with the Convention, as the Conference Committee asked.

It is with *regret* that the Committee must take note of this statement, in view of the fact that in previous years it was informed that these bills, which aimed to strengthen collective bargaining in the public sector, and most particularly those relating to ratification of Conventions Nos 151 and 154, had tripartite support and had already been submitted several times to the Legislative Assembly. ***The Committee asks the Government to do everything in its power to ensure that the bills to strengthen the right to collective bargaining in the public sector, including those relating to the ratification of Conventions Nos 151 and 154 are examined and, it is to be hoped, adopted by the Legislative Assembly.***

The Committee also takes note of the information sent by the Government concerning developments in the case law since it last examined the application of the Convention, regarding relevant judicial decisions cancelling collective agreements on the basis of “criteria of proportionality and rationality”.

The Government states in particular that it views with optimism the developments regarding the issue of the cancelling by judicial bodies of clauses in collective agreements, and sees these developments as a positive outcome since there have been significant changes in the practical effect given to Convention No. 98 in recent years, owing to intense training and information activities that it has been carrying out with technical assistance from the ILO. The Government also expresses the view that it sees as positive the advances in the case law of the Second Chamber of the Supreme Court of Justice, the highest court dealing with labour matters. Time and again in its decisions, the Chamber has risen fully to the challenge set by the constitutional case law, finding collective agreements in the public sector to be constitutional. Furthermore, in its case law the Chamber cites not only the ILO Conventions that Costa Rica has ratified but also Conventions it has not ratified, such as Conventions Nos 151 and 154, as well as citing the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work and recalling that freedom of association and the right to organize, and effective recognition of the right to collective bargaining are established in the abovementioned instrument as fundamental rights to be applied by all member States of that Organization; it also confirms that Convention No. 98, along with the rights laid down in the ILO Declaration on Fundamental Principles and Rights at Work, not only take precedence over the law, but would be divided of their substance if exemption from the right to collective bargaining were to become the rule.

The Second Chamber thus finds that allowing collective bargaining is the rule and to restrict it the exception. In support of its finding, the Chamber cites Executive Decree No. 29576 of 31 May 2001 regulating the negotiation of collective agreements in the public sector. This decision, along with the dissenting opinions of the Constitutional Chamber, which the High-level Mission noted, together with the Second Chamber’s acceptance of the Regulations on collective bargaining in the public sector, are important legal events which could not only reduce but ultimately preclude the challenging of approved clauses in collective agreements, which might be the beginning of a *ius laboris* approach to analysis of an issue that has been dominated in recent years by administrative law scholars. But there are other positive cases where the Constitutional Chamber itself has found against appeals challenging public sector collective agreements as unconstitutional, as in Decision No. 2005-6858 of 1 June 2005.

The dissenting opinions of the Constitutional Chamber, referred to in the previous report (2008), which were noted by the High-level Mission, and the Second Chamber’s acceptance of the Regulations on collective bargaining in the public sector, are important legal events which could preclude any future appeals against approved clauses in collected agreements, which could be the beginning of a *ius laboris* approach to analysis of an issue which has for years been dominated by scholars of administrative law. This, says the Government, would increase the Costa Rican Government’s interest in overcoming the shortcomings pointed out by the Committee of Experts, for which it trusts that there will be international cooperation and technical assistance from the ILO.

The Committee welcomes these developments in the case law and infers from the foregoing that in 2008–09 there has been no further cancelling of clauses in collective agreements, and requests the Government to provide information on any new developments.

The Committee also welcomes the training for members of the three Powers of State and the social partners, referred to by the Government, and appreciates in particular the forthcoming workshop on collective bargaining in the public sector, which is to include an up to date study on developments on constitutional case law and the strengths and weaknesses of the existing regulations; information on this will be sent to the Committee.

The Committee recalls that, although there may be instances of serious breach of constitutional rights in certain clauses of agreements, it is normal and usual for collective agreements to provide favourable treatment for trade union members, particularly as many such agreements arise in the context of a collective dispute in which both parties make concessions, there is nothing preventing non-unionized from joining one or another union if they are seeking more favourable treatment, and in any event collective bargaining, as an instrument for social peace, cannot be repeatedly

subjected to recurrent scrutiny as to constitutionality, without losing its credibility and enormous usefulness. In other words, undue recourse to constitutional challenge is to be avoided.

With regard to SITRAPEQUIA's comments on the constraints that the Committee on Policy Negotiation places in practice on negotiation procedures in the public sector, the Committee asks the Government to refer this matter to the Higher Labour Council and to ask the latter and other relevant public authorities to undertake a thorough examination of the working of the current system, it being understood that state resources are not unlimited and that the Government has many social needs to meet.

With regard to the tripartite assessment requested by the Committee of Experts, relating to the high proportion of agreements concluded directly with non-unionized workers in relation to collective agreements, and which the Committee had asked to be carried out in the light of the report of an independent technical expert, the ITUC states that most such direct agreements are promoted by employers and that as a result the number of collective agreements in the private sector has been reduced to a minimum. The employers' organization UCCAEP states that all parties have drawn attention to the importance of standing workers' committees and the protection that arises for them pursuant to the Workers' Representatives Convention, 1971 (No. 135), ratified by Costa Rica, and it is clear that this is a reality in Costa Rica which has acted as a means of guaranteeing freedom, democracy and social peace and that to eliminate standing workers' committees or direct agreements is to overlook and abuse the right of workers to associate freely and settle their disputes peacefully and through dialogue.

The Committee welcomes the Government's statement that it placed the abovementioned expert report on the agenda of the Higher Labour Council's meeting of 30 April 2008; the meeting of 26 June 2008 re-examined the need for an analysis of the report, which proved owing to discussion of other items. The Government states that only collective bargaining has constitutional rank and that an administrative directive of 4 May 1991 bans the labour inspectorate from looking into the content of a direct agreement when there is an established union, so that when there is such a union the direct agreement must be rejected outright. The Committee notes that the Government is aware of the need to reactivate as soon as possible the tripartite study of the content of the expert report and hopes to be able to report on progress when discussions are resumed in the Higher Labour Council.

Lastly, the Government indicates that, in the Conference Committee on the Application of Standards, it sought ILO technical assistance to prevent standing committees of workers (non-unionized) and direct agreements (with non-unionized workers) from having any anti-union impact in practice, as pointed out by the independent expert. The Government states that the matter is complex and hopes that in the near future there will be an agreed-upon proposal for a satisfactory solution to the situation noted by the independent expert.

The Committee recalls that the independent expert pointed out a little over two years ago that there were 74 direct agreements in force whereas only 13 collective agreements remained. Lastly, the Committee recalls that at its meeting of June 2009 the Conference Committee asked the Government to submit this year a detailed time schedule of steps taken and future steps, so that the legislative reforms would be made a reality.

The Committee hopes to receive information on a tripartite approach to the problem of direct agreements with non-unionized workers in the light of the expert report, and of any other satisfactory solution proposed, including measures to promote collective bargaining with existing organizations of workers and to avoid direct agreements being used for anti-union purposes, which is to be presumed where a representative trade union already exists.

The Committee notes that in its report the Government states that it is fully disposed and willing to resolve the abovementioned problems. The Committee noted previously the initiatives taken by the High-level Mission to promote the bills submitted to the Legislative Assembly that pertain to the issues raised by the Committee of Experts, and that, at a special meeting of the Higher Labour Council (a tripartite body) that it attended, the Mission consulted the members and agreed unanimously to request the Legislative Assembly to set up a joint committee with ILO technical assistance for the processing of the bill to reform labour procedure. ***The Committee expresses the hope that the abovementioned joint committee in the Legislative Assembly will be established without delay and will take up the issues pending. It requests the Government to provide information in this regard. It notes that the Government has requested ILO technical assistance in ascertaining the consistency of the text of the Bill to reform labour procedure (No. 15990) with the principles of Conventions Nos 87 and 98, and suggests that such assistance be provided as soon as the Joint Committee is set up in the Legislative Assembly.***

The Committee again points out that the issues pending raise important problems regarding the application of the Convention. ***Bearing in mind the various ILO missions that had visited the country over the years and the seriousness of the problems, it expresses the hope that it will be in a position to note significant progress in the near future in both the legislation and practice. The Committee requests the Government to indicate any developments in this regard.***

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

The Committee notes the comments made by the Union of Public and Private Enterprise Workers (SITEPP) on the application of the convention. The Committee also notes the comments of the Costa Rican Federation of Chambers and Associations of Private Enterprises (UCCAEP). ***The Committee requests the Government to send its observations in this respect.***

In its previous observations the Committee noted that the number of protected trade union representatives was small (section 365 of the Labour Code – one leader for the first 20 unionized workers and one for every additional 25 up to a maximum of four) and expressed the view that it would be appropriate to extend protection to a larger number of representatives without prejudice to satisfactory general protection for all workers against acts of anti-union discrimination. In view of the fact that the Government has not sent any observations on this matter, the Committee urges the Government to examine this issue in the Higher Labour Council (a tripartite national body).

The Committee also previously noted a draft Act before the Legislative Assembly to extend and improve protection against anti-union discrimination. It noted that the draft Act, which fully addresses acts of anti-union discrimination and interference, provides for rapid procedures prior to dismissal which have to be undertaken by the employer, for summary proceedings before the judicial authorities, with compulsory time limits to ascertain the reasons for the dismissal, and for severe penalties for refusal to reinstate the worker where justified grounds are not found to exist. The Committee notes the Government's statement that the draft Act contains two key components: (1) establishing expeditious (summary) proceedings in the administrative and judicial bodies with the purpose of establishing whether or not the challenged dismissal complies with the law; and (2) ensuring that the legislation promotes the harmonious and orderly development of the labour sector and its representatives. The draft Act is high on the legislative agenda. The Government adds that in 2005 the Executive Authority submitted a draft Act to the Legislative Assembly on procedural reforms in labour legislation containing a special chapter which governs special procedures taking into account the protection of trade union immunity and the recommendations of the ILO supervisory bodies. The abovementioned draft Act (file No. 15990) has been under examination since June 2009 by a new subcommittee, which meets on a weekly basis, and was included on the agenda of extraordinary meetings of the Legislative Assembly held from 1 to 31 August 2009. The Committee expresses the hope that the draft Act on labour reform will be approved in the near future and will be in full conformity with the provisions of the Convention. ***The Committee requests the Government to send a copy of the Act, once it has been adopted. The Committee also underlines the importance of the prompt adoption, by means of expeditious procedures, of the draft Act defining anti-union acts. The Committee reminds the Government that this draft Act has received tripartite support and, taking into account the cases of dismissals of union leaders examined by the Committee on Freedom of Association in recent years, urges the Government to take steps to ensure that it is discussed and adopted in the Legislative Assembly.***

Croatia

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

The Committee notes the Government's reply to the 2007 International Trade Union Confederation (ITUC) comments concerning the right to strike as well as the imposition of sanctions against strikers in specific cases mentioned by the ITUC. In this instance, the Committee notes the Government's indication that the law prescribes that trade unions and their higher level associations have the right to call and undertake a strike in order to protect and promote the economic and social interests of their members or on the ground of non-payment of salary or salary compensation within 30 days of their maturity date, and that a worker may be dismissed only if he or she organized or participated in a strike which was not organized in compliance with the law, collective agreement or trade union rules, or if in the course of a strike he or she commits some other grave violation of a labour contract. Furthermore, the Committee notes that, as regards the cited cases of strikers dismissed, the Government indicates that those cases were before the courts and that it would send the relevant court decisions.

Article 3 of the Convention. The Committee recalls that for several years it has been commenting on the issue of the distribution of trade union assets. In this respect, it had urged the Government to determine the criteria for the division of trade union assets, in consultation with workers' organizations, and to fix a specific time frame for completing the division of the property. ***Noting that the Government has not provided information in regard to this matter, the Committee once again urges the Government to undertake the abovementioned measures and to indicate developments in this regard.***

Finally, the Committee notes the comments made by the ITUC in a communication dated 26 August 2009 with regard to violations of the Convention. ***The Committee requests the Government to submit its observations thereon.***

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

Article 1 of the Convention. The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009 which refer, inter alia, to excess court delays in dealing with cases of anti-union discrimination. The Government indicates, in this respect, that Parliament has adopted a judicial reform strategy and legislative steps have been taken to improve the functioning of the judicial system. Furthermore, a comprehensive process of reform has been initiated to, inter alia, enhance the efficiency of the judicial process and reduce the backlog of cases. There has thus far been a 35.5 per cent reduction in the backlog of cases before the municipal courts. The Government also states that a pilot project on mediation in courts, which offers an alternative means of dispute

resolution, is being implemented and has shown positive results. *The Committee notes this information and requests the Government to inform it of the progress made with respect to the measures referred to.*

Articles 4 and 6 of the Convention. The Committee requests the Government to submit its observations on the ITUC's comment according to which the Act on salaries in public services also limits collective bargaining rights in the public sector by setting coefficients for the workplace, with the result that public sector workers can negotiate on their basic salaries only.

The Committee had previously noted the ITUC's allegation that the Act on the realization of the government's budget of 1993 allows the Government to modify the substance of a collective agreement in the public sector for financial reasons, and had requested the Government to provide a copy of the legislative provisions allowing the Government to modify the substance of collective agreements in the public service and to provide information on their application in practice. The Committee notes with *regret* that the Government provides no information respecting this matter. *Recalling that, in general, a legal provision which allows one party to modify unilaterally the content of signed collective agreements is contrary to the principles of collective bargaining, the Committee once again requests the Government to provide a copy of the said legislative provisions, as well as information on their application in practice.*

Cuba

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 26 August 2009 and those of the Independent National Confederation of Cuba (CONIC) (of which the Government contests the trade union status) of 10 August 2009. The Committee also notes the Government's reply to these comments.

Trade union rights and civil liberties

The Committee recalls that in its previous comments it requested the Government to take the necessary measures for the immediate release of trade union members and leaders sentenced to terms of imprisonment of between 12 and 26 years for treason and conspiracy. The Committee notes the regret expressed by the Government that account has not been taken of the replies that it has provided and reiterates the comments made on previous occasions. The Government emphasizes that there are no trade unionists who are imprisoned, persecuted or under threat in Cuba for the fact of being trade union members, and denies that property belonging to trade union organizations has been confiscated. The Committee recalls that in its previous comments it noted that, according to the Government: (1) none of those convicted were trade union leaders as, by their own decision, they had had no employment relationship for several years; (2) those sentenced were engaged in activities to overthrow the political, economic and social system decided upon by the Cuban people and enshrined in the Constitution; (3) the responsibility of all of them was proven for actions that amounted to crimes intended to undermine the sovereignty of the nation and they were penalized under section 91 of the Penal Code and Act No. 88 of 1999 to protect the national independence and economy of Cuba; (4) none of them were convicted or sentenced for exercising or defending freedom of opinion or expression; (5) all of them had taken action prejudicial to the human rights of the Cuban people, and particularly against the exercise of their rights to free determination, development and peace; (6) at the present time, most of those convicted remain in prison serving the corresponding sentences, although some of them have benefited from extra-penal leave for humanitarian reasons; and (7) the human dignity and physical and psychological integrity of those convicted have been rigorously respected, and the detainees have received in prison the full benefits available to the entire prison population in Cuba.

In this respect, the Committee notes with *concern* that in its 2009 comments CONIC refers to the deplorable conditions of detention suffered by trade unionists who are still detained (including physical punishment, ill treatment and threats). While emphasizing that the Committee on Freedom of Association also examined these convictions and called for the release of the convicted leaders, the Committee reiterates its previous observations and recalls that freedom of industrial association is only one aspect of freedom of association in general, which must itself form part of the whole range of basic civil liberties, all interdependent and mutually complementary, which were enumerated by the Conference in the resolution of 1970 and consist in particular of: (a) the right to freedom and security of person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media irregardless; (c) freedom of assembly; (d) the right to a fair trial by an independent and impartial tribunal; and (e) the right to protection of the property of trade union organizations. *In these conditions, the Committee urges the Government to take the necessary measures without delay to release the trade union members and leaders sentenced to severe penalties of imprisonment, investigate the allegations of the CONIC and, if they are found to be true, punish those who committed such acts.*

The Committee also requested the Government to provide its observations on the comments made by the ITUC, of 28 August 2007, which referred to other specific cases of the detention of workers who are members of the CONIC, persecution and threats of imprisonment against delegates of the Light Industry Workers' Union (SITIL), the confiscation of materials and humanitarian aid sent from abroad to the Single Council of Cuban Workers (CUTC, the trade union status of which is contested by the Government). The Committee notes that the ITUC adds in its latest comments, of 26 August

2009, that four leaders of the CUTC who had been convicted have been released and expelled from the country, but that five others remain in prison. The Committee further notes that the CONIC refers (in its comments of 10 August 2009) to: (1) the arrest between 18 and 24 February 2009 of 14 members of the CONIC; (2) the disappearance on 24 February 2009 of a leader of the CONIC; and (3) the intimidation by the public authorities of trade union leaders of the CONIC, of the Independent Union “William Le Santé” and of the Independent Union of Light Industries so that they refrain from participating in trade union activities.

The Committee notes the Government’s indication in this respect that the persons mentioned are not trade union leaders and do not enjoy any representative status; the acts with which they were charged were duly proven with all the guarantees of due process set out in the Cuban legislation; they committed offences set out in Cuban legislation and were duly tried and sentenced by courts of law; none of them were tried or sentenced for exercising or defending trade union rights and the responsibility of all of them was proven in acts classified as crimes directly intended to undermine the sovereignty of the Nation. The Government adds that neither the CUTC nor the CONIC are trade unions and denies that the leaders released were expelled from the country, but indicates that they were freed for humanitarian reasons and travelled of their own free will to other countries. With regard to the communication of the CONIC in 2009, the Government indicates that it contains unfounded allegations which amount to a political manoeuvre intended to misinform the world’s trade unionists and project an image of division among Cuban workers, discrediting the Cuban trade union movement and its achievements. The above organization does not associate workers and its few members are not covered by any labour relationship, nor do they represent any sector of workers. It adds that in Cuba there are no restrictions or prohibitions on the exercise of trade union rights. Cuban workers enjoy one of the most complete and rigorous systems of the protection of labour and trade union rights. The Government indicates that it will provide the Committee with further information so that it can make a comprehensive and impartial assessment. The Committee notes the contradictory nature of the ITUC’s comments and the Government’s reply. ***Under these conditions, taking into account the very high number of allegations relating to human rights and civil liberties, the Committee requests the Government to provide copies of the court rulings to which it refers in its report.***

Legislative matters

In its previous observations, the Committee noted the Government’s indication that the process of revising the Labour Code was continuing. The Committee expressed the hope that the revision of the Labour Code would be completed in the near future and would take into account its comments. The Committee notes the Government’s indication in its report that the legislation that is in force is being maintained and that a process has recently been commenced of changes in the structure and operation of the bodies of the Central State Administration, and that efforts are being made to further improve institutions and their effectiveness. On 2 March 2009 an important restructuring was carried out of various central bodies and the examination is continuing of the current structure and operation of the Government, which is inevitably having an impact on the country’s legislative programme. The Government adds that the process of consultation and the updating of the Labour Code is being continued in accordance with current programmes. ***In this respect, the Committee hopes that the revision of the Labour Code will be completed in the near future and that the comments that it has made on the application of the Convention, which are examined below, will be taken into account. The Committee reminds the Government that the technical assistance of the Office is at its disposal and requests it to provide a copy of the draft Labour Code to which it refers.***

Trade union monopoly

Articles 2, 5 and 6 of the Convention. For many years, the Committee has been referring to the need to delete the reference to the Confederation of Cuban Workers from sections 15 and 16 of the Labour Code of 1985. The Committee notes the Government’s reiterated indication that the legislation in force and everyday practice in all work units guarantee the full exercise of trade union activities and the broadest application of the right to organize. According to the Government, the representation of workers is exercised at different levels and in different decision-making bodies by national sectoral unions and the Confederation which, by decision of the workers themselves, as adopted in their assemblies, constitutes the expression of the desire for the unity of the Cuban trade union movement. The existence of a single trade union confederation was not imposed by the Government, nor does it correspond to any provision that is not the expression of the sovereign will of Cuban workers. The application of the Convention in practice is guaranteed by legal provisions establishing that “all workers, both manual and intellectual, shall be entitled, without previous authorization, to organization voluntarily and to establish trade union organizations”. These rights are guaranteed in practice by the existence of 19 national sectoral unions with their municipal and provincial structures and in 169 municipal areas and 14 provinces, which gather together around 110,000 trade union chapters and first-level unions. In each labour unit, there are one or more trade union chapters. Their leaders are elected by the workers themselves. In each labour unit collective labour agreements are concluded between the administration and the trade union organization and are approved in workers’ assemblies, where the workers are able to make suggestions and express opinions on the matters contained in the agreements. The Government adds that neither the Labour Code that is in force, nor the supplementary legislation, provide for restrictions on the establishment of trade unions. All Cuban workers have the right to establish and freely join trade union organizations without previous authorization. The Government reiterates that section 15 of the Labour Code reaffirms the essential provisions of *Article 3* of the Convention. The statutes, rules and principles governing the activity of the 19 national sectoral unions and the Confederation of Cuban Workers, in which they are federated of their own will,

are discussed and approved in their own congresses, and there is no provision in law setting standards relating to trade union structure. The Committee is nevertheless bound to emphasize once again that trade union pluralism must remain possible in all cases and that the law must not institutionalize a factual monopoly by referring to a specific trade union confederation; even in a situation where at some point all workers have preferred to unify the trade union movement, they should still remain free to choose to set up unions outside the established structures should they so wish and to join the organization of their own choosing (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 96). ***Under these conditions, the Committee requests the Government to take the necessary measures to ensure that all workers, without distinction whatsoever, are able to establish and join organizations of their own choosing. The Committee further requests the Government to take measures to amend the above sections of the Labour Code and to provide information in its next report on any measure adopted in this respect.***

Article 3. The Committee recalls that for several years it has been referring to the need to amend section 61 of Legislative Decree No. 67 of 1983, which confers upon the Confederation of Cuban Workers the monopoly to represent the workers of the country on government bodies. The Committee notes the Government's indication that the workers who are members of each union put forward and elect their leaders at the various levels, from first-level workers' assemblies, up to the respective congresses which are held periodically, in complete compliance with the strictest trade union democracy. The trade union representatives democratically elected by the workers participate with broad powers in management boards, where the decisions are taken which affect them, both at the basic enterprise level, and in the bodies and institutions of the State administration. The Government adds that work is being carried out on the restructuring and operation of various bodies of the Central State Administration and the structure of the Government as a whole. ***The Committee firmly hopes that, in the context of the studies that are being conducted into the structure and functioning of the State administration, the Government will amend in the near future section 61 of Legislative Decree No. 67 of 1983 so as to guarantee trade union pluralism, for example by replacing the reference to the Confederation of Cuban Workers by the expression "the most representative organization".***

Right to strike

For many years, the Committee has been referring to the absence of recognition of the right to strike in the legislation and the prohibition of its exercise in practice and it requested the Government to take measures to ensure that no one suffers discrimination or prejudice in their employment for having peacefully exercised this right, and to keep it informed in this regard. The Committee notes the Government's repeated indication that Cuban legislation does not establish any prohibition on the right to strike, nor does the legislation establish any penalty for the exercise of this right, and that it is the prerogative of trade union organizations to take the respective decisions. If, at some point, Cuban workers decided to have recourse to strike action, nothing could prevent them from doing so. The Government adds that the claim that certain rights of workers who advocate in many countries recourse to the circumstantial mechanism of strike action, has in practice been superseded in industrial relations in Cuba by the existence and use of other more effective mechanisms for the exercise of their rights, to which workers systematically have recourse through their multiple forms of effective participation and the exercise of real decision-making power in the matters that affect them, which cannot be considered a limitation or prohibition of the right to strike. In the various institutionalized forms of participation by workers and their representatives in the resolution of disputes and in decision-making procedures, trade union representatives enjoy broad capacities and mandates. Cuban workers are the beneficiaries of participatory and democratic social dialogue at all decision-making levels, and an approach of collaboration rather than conflict has been developed, which has led to improvements in the level of wages, social security benefits and safety and health measures, among other matters, and in the continuous development of their capacities. Trade union representatives participate in all the processes for the preparation of labour and social security legislation and on many occasions draft texts are referred for consultation to workers' assemblies in work units. The Committee recalls that the Convention does not require the adoption of legal provisions to regulate the right to strike provided that this right may be exercised in practice without organizations and participants being at risk of the imposition of penalties. The Committee further recalls that almost all States have opted for the explicit recognition and/or regulation of the right to strike. ***The Committee therefore invites the Government, with a view to safeguarding the legal security of workers who decide to have recourse to strike action, to consider, in the context of the current legislative reform to which the Government refers, the adoption of provisions explicitly recognizing the right to strike and the fundamental principles indicated by the Committee (see General Survey, op. cit., paragraphs 136–179).***

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

The Committee notes the comments of the Independent National Confederation of Cuba (CONIC) (the trade union status of which is contested by the Government), dated 10 August 2009, and the comments of the International Trade Union Confederation (ITUC), of 26 August 2009, referring to matters that are already under examination. The Committee also notes the Government's reply to these comments.

The Committee further notes the comments of the Workers' Central Union of Cuba (CTC), which were forwarded with the Government's report.

Article 4 of the Convention. The Committee recalls that in its previous comments it referred to the need to amend or repeal the following provisions to bring them into conformity with the Convention:

- Section 14 of Legislative Decree No. 229 on collective agreements and section 8 of its implementing regulations, which require any disputes that arise in the drafting phase of a collective labour agreement (including when first-level unions are concerned) to be referred to the highest levels of the parties concerned (Confederation of Workers of Cuba), with the participation of those affected.

The Committee notes the Government's indication that the implementing regulations of Legislative Decree No. 229/2002 (Resolution No. 27 of 2 July 2002) have been repealed by Resolution No. 78/2008, issuing new implementing regulations. In this respect, the Committee notes that section 8 of the new Regulations, which amends section 8 of the previous Regulations, provides that where any disputes occur in the process of drafting, amending or revising the agreement, the parties may refer them to the respective higher levels or, where appropriate, to arbitration, during or after the negotiation phase, as applicable. The Committee notes the Government's indication that this wording confirms the voluntary nature and the total autonomy of the parties in the process of negotiating, amending or revising collective labour agreements in seeking solutions to disputes which may arise, as the procedure to be adopted has to be by common agreement between the parties, and that furthermore such a procedure is voluntary and not compulsory.

In this respect, the Committee expresses appreciation for this development; nevertheless, with a view to achieving greater legislative coherence and avoiding confusion, the Committee also requests the Government to amend section 14 of Legislative Decree No. 229 in the same manner as section 8 of the new implementing regulations, that is to ensure that any dispute during the process of the formulation of a collective labour agreement can be resolved with the intervention of the authorities and the Confederation of Workers of Cuba only where both parties to the dispute so request.

- Section 17 of Legislative Decree No. 229 and sections 9, 10 and 11 of its implementing regulations, which require any disputes that arise once the agreement has been concluded to be referred, when the conciliation procedure has been exhausted, for arbitration by the National Labour Inspection Office with the participation of the Confederation of Workers of Cuba and the parties concerned, with the decision that is adopted being binding.

The Committee takes due note of the Government's indication that sections 9, 10 and 11 of the implementing regulations are null and void as they are totally repealed by the second final provision of the new implementing regulations of 2008.

The Committee nevertheless observes that section 17 of the Legislative Decree has not been amended. This provision establishes that "disputes which arise during the process of the formulation, amendment or revision of the collective labour agreement or while it is in force, concerning the interpretation of its provisions or failure to comply with its clauses, after the conciliation procedure described above has been exhausted, shall be submitted for arbitration to the National Labour Inspection Office with the participation of the Confederation of Workers of Cuba and the parties concerned. The final decision adopted shall be binding". In this respect, the Committee recalls once again that, except in the public service and in essential services in the strict sense of the term, compulsory arbitration by the authorities is contrary to the principle of the voluntary negotiation of collective agreements laid down in Convention No. 98 and, hence, contrary to the autonomy of the parties to bargaining. The Committee also considers that legislation which requires the referral of disputes relating to collective bargaining to the administrative authority, and which also provides for the participation of the Confederation of Workers of Cuba, also raises problems of incompatibility with the Convention. ***The Committee requests the Government to take measures with a view to the amendment of section 17 of Legislative Decree No. 229 in order to ensure that where disputes arise between the parties in the process of collective bargaining, the interference or intervention of the authorities and the Confederation of Workers of Cuba is not imposed as an obligation and that, except in the public service and in essential services in the strict sense of the term, recourse to binding arbitration is only possible with the agreement of all the parties to the negotiations.***

- Section 11 of Legislative Decree No. 229, which provides that "discussion of the draft labour collective agreement at a general assembly of workers shall proceed in accordance with the methodology determined for that purpose by the Confederation of Workers of Cuba".

In this respect, the Committee notes the Government's indication that, in accordance with the principle of the independence and autonomy of trade unions, the Government cannot prevent trade unions from adopting the decisions that they consider appropriate. The Government refers to the comments sent by the Confederation of Workers of Cuba, according to which the workers, far from considering the participation of the CTC and its methodology in bargaining processes and the resolution of disputes as an undesired interference, perceives it as a benefit. The CTC adds that it is the workers who immediately refer matters to the CTC through its various bodies to obtain the necessary support and guidance for their claims and interests, which does not prejudice the will of the parties, but ensures the necessary guidance, without undermining the principal role played by first-level unions in negotiation. With regard to the methodology itself, the CTC indicates that it consists of the application of the law which assists the national trade union organization to guide and instruct its affiliates, which represent 95 per cent of the workers in the country. Furthermore, the methodology and the other instruments guiding this action are not imposed, but are analysed and discussed in the various bodies of the trade union movement at both the central and sectoral levels, and in many cases by the workers themselves.

The Committee nevertheless considers that, in the context of the monopoly trade union system of the Confederation of Workers of Cuba as set out by the legislation (see the observation on the application of Convention No. 87), section 11 imposes upon all trade union organizations a methodology for the discussion of draft collective agreements established by the Confederation which, when combined with the existence of overly detailed provisions on the manner in which negotiations are to be held, does not adequately promote free and voluntary collective negotiations within the meaning of Article 4 of the Convention. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 11 of Legislative Decree No. 229 by deleting the explicit reference to the Confederation of Workers of Cuba and ensuring the autonomy of the parties to collective bargaining.***

- Section 5 of Legislative Decree No. 229 and section 3 of the implementing regulations, which provide that the National Labour Inspection Office shall approve the conclusion of collective labour agreements in the units provided for in the budget and in the production and service activities of bodies, sectors, branches and activities that share the same characteristics, when so agreed and requested by the head of the body and the Secretary-General of the corresponding federation.

The Committee observes that the former section 3 of the implementing regulations has been amended by the new regulations and that it no longer refers to this matter. With regard to section 5 of Legislative Decree No. 229, the Committee notes the Government's reiteration that: (1) the provision is of an exceptional nature and is only applied when so requested by common agreement between the head of the body and the corresponding trade union; (2) it does not apply to all sectors, nor to all the entities belonging to the same sector, but to small local service units with the same or similar characteristics in relation to working conditions; (3) the objective of the provision is to ensure that the collective agreements that are adopted in these units are specifically adapted to these specific characteristics; and (4) this procedure is not made compulsory in the legislation, but it is a possibility that is allowed when it is assessed by common agreement, and in exceptional cases requested by the parties.

The Committee recalls that in a previous report the Government indicated that the provision applied to units in the budget with similar characteristics, such as bakeries, schools, hairdressers, service centres and polyclinics. The Committee emphasizes that the law subjects the conclusion of collective agreements in a broad sector of activities to approval by the National Labour Inspection Office. More specifically, the text of section 5 provides that: "the units provided for in the budget and the production and service activities of bodies, sectors, branches and activities that share the same characteristics may, on an exceptional basis, conclude collective labour agreements, when this is advisable in view of the similarity or analogue nature of the working conditions, where so agreed by the head of the body and the corresponding national union with the prior approval of the Ministry of Labour and Social Security". ***The Committee considers that this situation is contrary to the principle of free and voluntary negotiation and once again requests the Government to take the necessary measures to repeal section 5 of Legislative Decree No. 229 with a view to ensuring that full effect is given to the principle of free and voluntary negotiation.***

Czech Republic

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

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) and by the Czech-Moravian Confederation of Trade Unions (CMKOS).

Articles 1 and 2 of the Convention. Protection against anti-union discrimination and interference. The Committee's previous comments concerned measures taken to increase the efficiency of the system of protection against anti-union discrimination and interference. ***The Committee once again requests the Government to provide in its next report an overall assessment of the effectiveness of the system of protection against anti-union discrimination and interference, in consultation with the most representative employers' and workers' organizations, including data on the number of complaints brought to the labour inspection and the courts, as well as the duration of proceedings and their outcome.***

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

Democratic Republic of the Congo

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

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

The Committee notes the observations from the International Trade Union Confederation (ITUC) concerning cases of violation of the Convention. ***The Government is requested to send comments in reply to the observations made by the ITUC.***

Articles 2 and 5 of the Convention. In its previous comments, the Committee had noted that section 1 of the Labour Code excluded from its scope of application magistrates, career officials in the state public services governed by the general conditions of service, and career employees and officials of the state public services governed by specific conditions of service. The Committee had requested the Government to provide information on the trade union rights of these categories of state employees. The Committee had also noted that, by virtue of section 56 of Act No. 81-003 of 17 July 1981 issuing the conditions of service of career members of the state public services, public officials and employees were affiliated automatically to the then Union of Workers of Zaire (UNTZA). However, pending the amendment of these conditions of service, the Minister for the Public Service had issued Order No. CAB.MIN/F.P./105/94 of 13 January 1994 establishing provisional regulations respecting trade union activities within the public administration, amended by Order No. CAB.MIN/F.P./0174/96 of 13 September 1996. The Committee had noted that, according to the Government, the reform of the public administration was under way and that it will bring about a revision of the conditions of service of career members of the state public services. ***The Committee trusts that the reform of the public administration will allow, as soon as possible, all state employees to benefit from the guarantees provided under the Convention. It requests the Government to indicate any new developments in this respect, in particular the repeal of section 56 of Act No. 81-003.***

Article 3. The Committee had requested the Government to take the necessary measures to ensure that trade union elections were organized in various branches of activity and to provide specific information on the results of these elections. ***The Committee requests the Government to indicate any progress in the organization of trade union elections in other branches of activity and contain the results of these elections.***

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

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

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

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

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

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

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

The Committee observes that the Government has sent the text of Ministerial Order No. 12/CAB.MIN/TPS/ar/NK/054 of 12 October 2004, establishing the procedures for the representation and recourse to elections of workers in enterprises or establishments of all types. The Committee also notes the Government's indication that it intends to regulate the salaries of public servants set by negotiated agreements in the context of the imminent reform of the public administration. In this regard, the Committee also notes the comment by the ITUC that the staff of decentralized entities (towns, territories and sectors), who comprise a subcategory of public servant, do not enjoy the right to bargain. ***The Committee reiterates its previous request to the Government to take steps to ensure that the legislation guarantees the right of collective bargaining for public servants not engaged in the administration of the State, as established under Articles 4 and 6 of the Convention, and requests the Government to indicate the developments concerning the reform of the public administration.***

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

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

Denmark

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

The Committee recalls that in several of its previous observations, it requested the Government to indicate the measures taken to ensure that Danish trade unions may represent all their members – residents and non-residents employed on ships sailing under the Danish flag – without any interference from the public authorities, in accordance with *Articles 3 and 10 of the Convention* and whether, in particular, these unions may freely represent seafarers who are not Danish residents in respect of their individual grievances. The Committee notes with *satisfaction* that the Government, in its report, indicates that the Danish International Ships Register (DIS) agreement states that seafarers not resident in Denmark working on board DIS ships have the right to be members of several trade unions (i.e. both a Danish trade union, and a trade union in their home country). This agreement enables the seafarers' contracting parties to represent a seafarer who is not domiciled in Denmark or a foreign trade union in matters relating to the Danish Legislation and assist seafarers without a Danish residence in relation to the Danish public authorities. *The Committee requests the Government to include in its next report a copy of the DIS agreement.*

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1955)

Article 4 of the Convention. In several of its previous comments, the Committee had noted that section 10 of Act No. 408 – the Danish International Ships Register Act (DIS) – has the effect of, on the one hand, restricting the scope of negotiable issues by Danish trade unions by excluding from their bargaining power seafarers working on ships under the Danish flag who are not Danish residents and, on the other hand, preventing these seafarers from freely choosing the organization they wish to represent their interests in the collective bargaining process.

In its previous report the Government had indicated that the framework agreement between the social partners – the agreements on mutual information, coordination and cooperation concerning DIS ships, concluded since 1997 – had been prolonged to 31 December 2007. The Committee notes that the Government indicates in its report that this agreement has been most recently renewed for an indefinite period.

The Government indicated that this prolongation had taken the form of two agreements of 16 January 2004 (collective agreement with protocol attached) and of 15 December 2005 (collective agreement with protocol incorporated). The Government indicated in its report that two unions representing seafarers of a lower rank had wished not to be parties to the agreements: the United Federation of Danish Workers (3F) and its branch organization, the Union of Danish Seafarers, and the Union of Restaurant Workers (RBF) which had from 1 July 2006 been part of 3F. The Government had also indicated that the agreements still dealt with the conditions for seafarers and contained objectives concerning employment of Danish seafarers at an internationally competitive level, training of Danish seafarers and coverage of collective agreements between Danish shipowners and foreign unions, etc.

The Committee notes that the Government indicates that the agreement also states that seafarers not resident in Denmark working onboard DIS ships have the right to be members of several trade unions (i.e. both a Danish trade union, and a trade union in their home country) and that this enables the seafarers' contracting parties to represent a seafarer not domiciled in Denmark or a foreign trade union in matters relating to the Danish legislation and assist seafarers without a Danish residence in relation to the Danish public authority. Additionally, the Government indicates that it has not received information that the collective agreements concerning wages and general working conditions on board Danish ships, regardless of whether they were concluded by Danish or foreign trade unions, were not at internationally acceptable levels.

In several of its previous comments, the Committee welcomed the agreements between the social partners, but observed that the legislative aspect of the matter had not been resolved and that two trade union organizations had again decided not to be bound by the new agreements. The Committee had underlined section 10 of Act No. 408 which has the effect of restricting the activities of Danish trade unions by prohibiting them from representing, in the collective bargaining process, those of their members who were not considered as residents in Denmark. *Taking due note of the figures presented by the Government concerning the Danish shipping industry, and, in particular, that as of 2008, out of a total of 9,594 seafarers on DIS ships, 5,317 were foreigners and, stressing that this issue has been examined since 1989, the Committee requests, once again, the Government to indicate in its next report the measures taken or envisaged to amend section 10 of Act No. 408 so that Danish trade unions may freely represent all their members – Danish residents and non-residents – working on ships sailing under the Danish flag in the collective bargaining process, in conformity with Article 4 of the Convention.*

Collective bargaining rights of majority organizations. This issue again relates to the application of section 12 of the Conciliation Act and had been raised in several previous comments following an examination by the Committee on Freedom of Association in Case No. 1971 in 1999. Section 12 makes it possible for an overall draft settlement, made by the public conciliator and sent out for ballot, to cover collective agreements involving an entire sector of activity, even if

the organization representing most of the workers in that sector rejects the overall draft settlement. In several of its previous comments, the Committee had requested the Government to review the legislation, in consultation with the social partners, and to provide information on these consultations.

The Committee notes that the Government indicates in its report that, in the view of the Government, the rule on combining mediation proposals also takes into account the way in which the Danish employees' and employers' organizations wish things to be organized and that the Government will resubmit the issue of section 12 concerning the possibility of the public conciliator to combine mediation to the permanent ILO committee. While taking note of the Government's arguments, the Committee recalls that it had stressed in several of its previous comments that section 12 of the Conciliation Act could, in some cases, have the result of excluding the most representative trade union organizations from the outcome of the negotiations of collective agreements or from the resolution of a conflict.

The Committee once again encourages the Government to engage in dialogue with the most representative workers' and employers' organizations on this issue in order to find the means to resolve it. The Committee requests the Government to indicate any developments in this regard, including the results of the resubmission of this issue to the permanent ILO committee. The Committee trusts that every effort will be made to fully ensure the collective bargaining rights of the most representative organizations and the principles of free and voluntary collective bargaining.

Djibouti

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

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

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

- *Sections 41 and 42 of the Labour Code.* These provisions concern the suspension of employment contracts. Section 41 provides that the employment contract shall be suspended, among other cases, for the duration of any regular, political or trade union office held by the worker which is not compatible with paid employment (paragraph 8). Section 42 provides in addition that the period during which the employment is suspended shall not be counted for the purpose of determining the worker's seniority within the undertaking. The Committee considers that the holding of trade union office is not incompatible with professional life and, consequently, any worker holding trade union office should be able to remain employed. The Committee therefore considers that sections 41 and 42 of the Labour Code, in providing for a more or less automatic suspension of the employment contract when a worker holds trade union office, are likely to be detrimental to the rights of all workers to establish and join the organization of their own choosing or to hold trade union office (*Articles 2 and 3 of the Convention*). ***The Committee therefore requests the Government to amend sections 41 and 42 of the Labour Code by providing that the possibility of suspending the employment contract during a period in which a worker holds a trade union office that is incompatible with a professional activity is a matter for negotiation between the employer and the trade union, who must establish the relevant arrangements, and that in any case such suspension cannot be automatic.***
- *Section 214 of the Labour Code.* This section provides that any person convicted "by any court" may not hold office as a trade union leader. The Committee recalls that a law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association (*Article 3 of the Convention*), when the activity condemned is not prejudicial to the attitude and integrity required to exercise trade union office. In this case, the Committee considers that section 214 of the Code, in deeming any person who has been convicted to be unsuitable for trade union office, is formulated too broadly and would cover situations in which the nature of the conviction is not inherently such as to rule out the holding of trade union office. ***The Committee therefore requests the Government to amend section 214 of the Labour Code so as to ensure that only court convictions for offences which by their nature call into question the integrity of the individual are deemed to be incompatible with the holding of trade union office.***
- *Section 215 of the Labour Code.* This section concerns the formalities for registration and verification of the legality of a trade union. Under the terms of this section, the founders of any occupational trade union are required to deposit their

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dominica

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

Article 3 of the Convention. Right of organizations freely to organize their activities and to formulate their programmes. The Committee recalls that it has been referring, for a number of years, to the need to amend legislation so as to exclude the banana, citrus and coconut industries as well as the port authority, from the schedule of essential services annexed to Act No. 18 of 1986 on industrial relations, which makes it possible to stop a strike in these sectors by compulsory arbitration. The Committee recalls that the right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State or in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). Nevertheless, the Committee recalls that in order to avoid damages which are irreversible or out of proportion to the occupational interests of the parties to the dispute, as well as damages to third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 160).

The Committee had also requested the Government to amend sections 59(1)(b) and 61(1)(c) of the Act that empowers the minister to refer disputes to compulsory arbitration if they concerned serious issues in his or her opinion. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is acceptable only if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted or prohibited (as mentioned above, i.e. for public servants exercising authority in the name of the State or in essential services in the strict sense of the term).

The Committee notes that the Government indicates that there has been no change in the legislation or practice since its last report.

In these circumstances, the Committee requests the Government once again to take the necessary measures to amend the legislation to bring it into conformity with the principles of freedom of association. The Committee further requests the Government to indicate in its next report any evolution in this respect.

Dominican Republic

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

The Committee notes the Government's reply to the comments of the International Trade Union Confederation (ITUC), dated 28 August 2007, relating to matters that are under examination and the imprisonment of and imposition of excessive fines on two trade union leaders of the National Transport Confederation (CONATRA) and the National Dominican Transport Federation (FENATRADO) for having organized a strike in the transport sector. In this respect, the Government indicates that the persons concerned are employers in the transport sector who engaged in misappropriation of State property and were convicted by the courts of first and second instance in rulings that were confirmed by the Supreme Court of Justice.

The Committee notes the new comments of the ITUC, dated 26 August 2009, referring to legislative matters that are already under examination and the difficulties faced by workers engaged under subcontracts and by Haitian workers in sugar plantations to organize in trade unions. The Committee notes the Government's indication that, from a legal and practical point of view, workers are entirely free to establish trade union organizations (in 2008, the registration of trade unions increased by 9.5 per cent). The Committee also notes the Government's indication that, in the same way as in other commercial or service enterprises, workers enjoy full freedom in the sugar sector to establish unions and to engage in collective bargaining. Furthermore, the files of the Secretariat of State for Labour record a significant number of trade unions registered in this sector of the national economy. The Government adds that the Supreme Court of Justice has found on various occasions that foreign workers who work in the country enjoy labour rights irrespective of their status as migrants.

Article 2 of the Convention. The Committee recalls that it has been commenting for a number of years on:

- the explicit exclusion from the scope of the Labour Code (Principle III) and the Civil Service and Administrative Careers Act of employees of autonomous and municipal state institutions (section 2); and
- the requirement of 40 per cent of the total number of employees in the institution for public servants to be able to establish organizations (section 142(1) of the Regulations adopted under the Civil Service and Administrative Careers Act).

The Committee notes the Government's indication that on 16 January 2008 the Public Service Act No. 41-08 was adopted, which recognizes the right of public servants to organize in accordance with the provisions of the law and any other standards that are in force. The Committee also notes the adoption of the Regulations issued under the Act (Decree No. 523-09). The Committee observes that the new Act repeals the Civil Service and Administrative Careers Act (section 104) and provides in section 1 that the Act shall apply to public servants working for the State, municipal authorities and autonomous entities. The Committee further notes that the implementing Regulations maintain the requirement that no less than 40 per cent of all the employees in the respective institution who are entitled to organize for the establishment of organizations of public servants (section 84(I) of Decree No. 523-09). The Committee recalls that the requirement of a minimum number of members to establish an organization is not in itself incompatible with the Convention, although it considers that this number should be fixed in a reasonable manner so that the establishment of organizations is not hindered (see paragraph 81 of the 1994 General Survey on freedom of association and collective bargaining). ***The Committee requests the Government to take the necessary measures to amend section 84(I) of the implementing Regulations (Decree No. 523-09) to reduce the percentage required for the establishment of organizations of public servants.***

Articles 3 and 5. The Committee recalls that for many years it has been commenting on certain provisions of the Labour Code relating to:

- the requirement that federations must obtain a two-thirds majority vote by their members to be able to establish a confederation (section 383 of the Labour Code of 1992); and
- the statutory requirement of a majority of 51 per cent of workers' votes in the enterprise in order to call a strike (section 407(3) of the Labour Code).

In this respect, the Committee notes the Government's indication in its report that tripartite discussions have been resumed in the Labour Advisory Council with a view to discussing relevant reforms of these provisions. ***The Committee expresses the firm hope that the tripartite discussions that have been initiated will produce tangible results in the near future and that they will lead to the amendment of the legislation to bring it into full conformity with the provisions of the Convention.***

The Committee requests the Government to provide information in its next report on any measure adopted to bring the legislation into full conformity with the Convention.

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) dated 28 August 2007, which refer to various acts of anti-union discrimination, particularly the dismissal of workers in various enterprises (betting and lottery, cardboard packaging, beverages, agri-exports and an enterprise in an export processing zone (EPZ)) for attempting to set up trade unions. The ITUC also alleges delays in the admission and handling of cases. The Committee further notes the Government's indication that: (1) the length of labour judgements has been reduced considerably and they currently take less than one year; (2) special labour courts have been set up in most provinces which have a large economically active population; (3) the number of labour inspectors has been increased and their salaries have improved (12 of these inspectors undertake periodic visits to sugar refineries); (4) a programme has been implemented for awareness raising of rights at work, particularly on freedom of association and trade union immunity. The Committee also notes the Government's statement that, in 2006 and 2007, 18 unions were registered in the EPZs. With regard to the allegations of anti-union discrimination, the Government points out that, in the betting and lottery enterprise, the registration of the enterprise union was effected; in the cardboard packing enterprise, infringements were reported and a negotiation process is currently under way; in the beverages enterprise, an infringement of freedom of

association was reported and an agreement was reached between the workers and the representatives of the enterprise. As regards the agri-export enterprise and the EPZ enterprise, the Government states that no violations of freedom of association were found.

The Committee also notes the comments from the ITUC dated 26 August 2009 which refer to the matters examined by the Committee and the length of judicial proceedings, which go on for some 18 months or more, and indicate that collective agreements have been negotiated in only four export processing enterprises. ***While noting the Government's statement that the length of judicial proceedings has been reduced to less than one year, the Committee requests the Government to send its observations on these comments.***

Article 2 of the Convention. Lack of sufficiently dissuasive penalties against acts of anti-union discrimination. The Committee previously asked the Government to carry out a full investigation into the allegations from the ITUC dated 31 August 2005 regarding the absence of effective penalties for acts of anti-union discrimination, the dismissal on trade union grounds of leaders in sugar plantations, the drawing up of blacklists of trade unionists in EPZs and the dismissal of all the founding members of a trade union which the administrative authority had refused to register. The ITUC refers once again to this matter in its comments made in 2009. The Committee previously asked the Government to provide further information on the absence of effective penalties for acts of anti-union discrimination. In its 2009 comment, the ITUC emphasizes the fact that the penalties are not sufficiently dissuasive. While observing that the Government has not sent any specific information in reply to the allegations made by the ITUC in 2005, the Committee notes the Government's statement that information and guidance are provided on an ongoing basis to workers who report violations of their trade union rights. Moreover, in 2007 and 2008 numerous inspections were carried out (12 of them in EPZs) on the basis of requests made by union federations or the unions themselves, and on the occasions when violations of freedom of association were established, reports of the infringements were drawn up and sent to the courts so that the appropriate penalties could be imposed. Accordingly, nine reports of infringements were dealt with in 2007 and seven in 2008. ***Recalling once again that investigations should be carried out without delay in cases where acts of anti-union discrimination are reported, the Committee expresses the firm hope that the Government will carry out an investigation without delay into these allegations and thus be able to assign responsibility and, if appropriate, impose sufficiently dissuasive penalties. The Committee also requests the Government to state which specific penalties may be imposed under the legislation for persons found guilty of anti-union acts.***

Article 4. Majorities required to engage in collective bargaining. The Committee recalls that it has been commenting for many years on the fact that, in order to engage in collective bargaining, a trade union must represent an absolute majority of the workers in an enterprise or the workers in a branch of activity (sections 109 and 110 of the Labour Code). The Committee observes that the Government has not sent its observations in this respect and recalls that in its previous observation it noted that the Labour Advisory Committee had held a meeting with a view to establishing consensual proposals between the social partners and the Government for amending the legislation. The Committee recalls that in cases where the law provides that, in order to be recognized as a bargaining agent, a union has to obtain the support of 50 per cent of the members of a specific bargaining unit, problems may arise since a majority union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 241). ***The Committee again requests the Government to take the necessary steps without delay to amend sections 109 and 110 of the Labour Code in order to bring them into conformity with the provisions requiring the promotion of collective bargaining.***

Right of collective bargaining in the public sector. The Committee notes with ***interest*** that, on 16 January 2008, Act No. 41-08 concerning the civil service and its implementing regulations (Decree No. 523-09) were enacted. The Committee appreciates that this Act establishes the right to organize for civil servants, including in federations and confederations, and that it applies to those employed in the service of the State, municipalities and autonomous entities, guaranteeing special protection (organizational immunity) to the founders of associations and to some members of their executive committees. Penalties for violations of this protection are also provided for, ranging as far as dismissal from the post concerned.

The Committee expresses the hope that the protection provided for in the new legislation extends to acts of anti-union discrimination at the time of recruitment and in the course of employment, prohibiting any discrimination on the basis of union membership or participation in legitimate union activities. The Committee also requests the Government to establish specific protection for associations against interference from the employer aimed at interfering in or controlling the activities of the organization, whether in the form of financial control or otherwise. The Committee also requests the Government to lay down sufficiently dissuasive penalties against such acts of discrimination or interference.

Finally, the Committee observes that although the new regulations guarantee the legal right to strike, they are silent with regard to the right to collective bargaining of public servants not engaged in the administration of the State, who, under the terms of *Article 6* of the Convention, should enjoy the right to collective bargaining. ***The Committee therefore requests the Government to take the necessary steps, in consultation with the trade unions concerned, to ensure recognition of this right and provide information in this respect.***

Right to collective bargaining in practice. The Committee further notes the Government's statement that 15 collective agreements were registered in 2007 and 14 collective agreements were filed for registration in 2008, in the latter case benefiting 7,420 workers. The Committee observes that the numbers of agreements and workers covered are low, and it is not clear from the information supplied by the Government whether the figures refer to the private or public sector. ***While recalling that, under Article 4 of the Convention, the Government has the obligation to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers and workers, the Committee requests the Government to take specific measures in this respect and send statistical information on any collective agreements concluded in the public and private sectors, including in the EPZs, indicating the numbers of workers covered by them.***

Ecuador

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

The Committee notes the Government's reply to the comments of 28 August 2007 by the International Trade Union Confederation (ITUC) concerning the removal by the police of workers taking part in a strike in the banana sector on 11 February 2006. According to the Government, the police removed the workers in order to prevent damage to the facilities and avoid a confrontation between the workers and the owners of the plantation. Furthermore, the Committee notes with *regret* that the Government has not sent its observations on the other comments of the ITUC concerning repression by the police and the army of a demonstration called by the trade union federations in 2006, causing serious injuries and arrests, or on the alleged threats and acts of intimidation against leaders of the CTE and CEDOCUT. The Committee reminds the Government in this connection that the arrest or detention, even for short periods, of trade union leaders and members engaged in legitimate trade union activities constitutes a grave violation of the principle of freedom of association, and emphasizes that in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately as the most appropriate means of fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. Lastly, the Committee notes the comments of 24 August 2009 by the National Federation of Workers of the Enterprise "Petróleos del Ecuador" (FETRAPEC) and those of 26 August 2009 by the ITUC referring to legislative issues highlighted by the Committee, and in particular certain provisions of the new Constitution of Ecuador (especially article 326, paragraph 16, which provides that state institutions and private law entities in which public resources have a majority share that carry on representational, management, administrative or professional activities, shall be subject to the laws regulating the public administration and that all others shall be covered by the Labour Code). ***The Committee requests the Government to send its observations on this matter.***

The Committee also notes the comments of 30 August 2009 by the International Organisation of Employers (IOE) in which the latter asserts that the new Constitution of Ecuador includes certain amendments that adversely affect relations between workers and employers and that although representatives from various sectors played an active part in the preparation of the new constitutional texts, there was no real or effective participation or any balanced input to the framing of constitutional provisions from the main partners in the labour relationship, and hence no objective analysis and diagnosis of the issues to be treated in the Constitution. The IOE objects in particular to article 326, paragraph 8, which establishes that the State shall promote the democratic, participatory and transparent operation of workers' and employers' organizations with alternation of leadership, on the grounds that this provision constitutes a form of state intervention in the internal activities of workers' and employers' organizations, in breach of the Convention.

New Constitution of Ecuador

The Committee notes that on 28 September 2008 a new Constitution was adopted, which entered into force on 20 October 2008. The Committee observes that some of its provisions raise problems of compatibility with the Convention:

- article 326, paragraph 8, which provides that "the State shall encourage the creation of organizations of men and women workers and of men and women employers, in accordance with the law; and shall promote democracy, participation and transparency in their running with alternation in their leadership". In this connection, the Committee emphasizes that according to *Article 3 of the Convention*, decisions as to alternation in executive offices rest solely with the organizations of workers and employers and their members. ***In these circumstances, the Committee asks the Government to take the necessary steps to repeal or amend this provision so as to allow the re-election of officers of workers' and employers' organizations.***
- article 326, paragraph 12, which establishes that collective labour disputes shall, in all instances, be referred to courts of conciliation and arbitration. The Committee reminds the Government that compulsory arbitration to end a collective labour dispute or a strike is acceptable only where requested by both parties to the dispute and where the strike may be restricted or prohibited, namely in disputes in the public service involving public servants who exercise authority in the name of the State or in essential services in the strict sense, i.e. services the interruption of which would endanger the life or personal safety of the whole or part of the population. ***The Committee requests the***

Government to take all necessary steps to repeal or amend this provision to ensure that compulsory arbitration is possible only in the instances cited above.

- article 326, paragraph 15, which prohibits suspension of public services in education, social security, production and transformation of hydrocarbons, transport and distribution of fuel, and provides that the law will provide limits to ensure the said services' operation. In this respect, the Committee recalls that the right to strike can only be restrained or prohibited: (1) for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of term (i.e. services the interruption of which could endanger the life or personal safety of the whole or part of the population). The Committee also recalls that in order to avoid damages which are irreversible or out of all proportion to the parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in other services which are of public utility. ***The Committee requests the Government to take appropriate measures in order to modify this provision so as to ensure that the right to strike can be exercised in the abovementioned services, with the possibility to provide a system of minimum services which is to be determined with the participation of workers' and employers' organizations.***

Pending legislative issues

The Committee points out that for many years it has been asking the Government to take steps to repeal or amend:

- sections 450, 459 and 466 of the Labour Code establishing a minimum requirement of 30 workers for the creation of associations, works committees or assemblies to organize works committees;
- section 26(g) of the Codification of the Framework Act on the Civil Service and Administrative Careers and the Unification and Standardization of Public Sector Remuneration which prohibits work stoppages on any grounds in public services which may not be deemed essential in the strict sense (education, social security, hydrocarbon production, fuel processing, transport and distribution, and public transport) and provides for dismissal for failure to observe the prohibition;
- section 522, second paragraph, of the Labour Code respecting the determination of minimum services by the Ministry of Labour in case of disagreement between the parties in the event of a strike;
- section 505 of the Labour Code which implicitly denies federations and confederations the right to strike;
- Decree No. 105 of 7 June 1967 establishing the imposition of prison sentences for participation in unlawful work stoppages and strikes; and
- section 466(4) of the Labour Code requiring Ecuadorian nationality for service as a trade union officer.

The Committee notes that in its report the Government states that a detailed study will be conducted in the National Assembly for the drafting of a bill to amend the Labour Code and that the Committee's observations will be submitted to the National Assembly. ***The Committee hopes that it will be able to note progress in the legislation in the near future and asks the Government in its next report to provide information on all developments in this regard.*** It reminds the Government that it may seek technical assistance from the Office in the context of its reform of the Labour Code.

The Committee has received information about two proposals for acts being debated in the National Assembly: the Basic Public Service Act and the Basic Act on Public Enterprises. ***The Committee hopes that the new texts will establish in full the rights laid down in the Convention: the right to organize of public officials and employees and the right to strike of public servants other than those exercising authority in the name of the State.***

Furthermore, the Committee once again asks the Government to provide information on the number of associations that have been set up for the promotion and defence of the interests of public servants, the sectors covered and the approximate number of members.

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

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

The Committee notes the comments of 24 August 2009 by the National Federation of Workers of the Enterprise "Petróleos del Ecuador" (FETRAPEC) alleging that some provisions of the new Constitution of Ecuador are inconsistent with the Convention. The Committee also notes the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) referring to legislative issues raised by the Committee, and particularly certain provisions of the new Constitution of Ecuador and to the following matters: anti-union repression and intimidation of trade union officers and workers in a telecommunications enterprise; the dismissal of four trade union officers in the petroleum sector; lengthy proceedings; restriction of the subjects that may be negotiated collectively in cement enterprises and electricity and drinking water supply enterprises; interference by employers who encourage the establishment of "solidarista" organizations and acts of anti-union persecution against union officials in the judiciary which are being examined by the Committee on Freedom of Association. ***The Committee requests the Government to send its observations on these***

matters and on the ITUC's comments of 28 August 2007 asserting that the law does not provide for sufficiently dissuasive penalties for breaches of labour and trade union law.

The Committee furthermore notes with *regret* that the Government has not sent its observations on the comments of 10 August 2006 by the ITUC concerning the lack of collective bargaining rights for subcontracted or outsourced workers, the use of “blacklists” in Los Rios Province and anti-union dismissals. Observing that, according to the ITUC's latest comments, subcontracting persists through so-called “complementary services”, the Committee reminds the Government that the right to negotiate working conditions freely with employers is an essential component of freedom of association and that all workers, with the possible exception of the armed forces, the police and persons engaged in the administration of the State, are covered by the Convention and particularly *Article 4*. ***In these circumstances, the Committee requests the Government to ensure that workers performing “complementary services” are able fully to exercise trade union rights and, in particular, bargain collectively.***

Furthermore, with regard to the alleged use of “blacklists” in one province, the Committee points out that the practice of placing trade union officials or members on “blacklists” is a serious threat to the free exercise of trade union rights, and requests the Government to hold an inquiry and, if the allegation of blacklisting is confirmed, to take the necessary steps to ensure that this practice is sanctioned by sufficiently dissuasive penalties.

New Constitution of Ecuador

The Committee notes that on 28 September 2008 a new Constitution was adopted and that it entered into force on 20 October 2008.

The Committee notes that, in the context of the Constitution's adoption, the Constituent Assembly passed a number of “Constituent Resolutions”, which are mandatory decisions of a “supraconstitutional” nature and are not subject to oversight or challenge by any other authority (including judicial review). The Committee notes that the Committee on Freedom of Association examined the conformity of these resolutions with the provisions of the Convention in the context of Case No. 2684. The Committee refers in particular to:

- Constituent Resolutions Nos 002 and 004 which place a ceiling on public sector pay, compensation for unfair dismissal and other grounds of termination of the employment relationship, and ban supplementary private pension funds that involve input from state funds (Executive Decree No. 1406 provides that no state resources shall be contributed to supplementary funds). The Committee is of the view that these provisions, which apply even when public sector enterprises have sufficient income, impose permanent limitations on collective bargaining that are incompatible with the Convention. ***In these circumstances, the Committee requests the Government to take the necessary steps for the removal of these limitations and for the reinstatement of the right to collective bargaining on all subjects that affect the working and living conditions of workers.***
- Constituent Resolution No. 008 establishes the need to revise clauses in public sector contracts that contain abuses and undue privileges, and Ministerial Order No. 00080 and Order No. 00155A lay down administrative procedures for the automatic adjustment and revision of work contracts that include such clauses. The Committee points out in this connection that the checking of clauses in public sector agreements for possible abuses should be done not by the administrative authority – which in the public sector is both judge and party – but by the judicial authority, and only in extremely serious cases. The Committee is of the view that regulations that allow the administrative authority unilaterally to cancel or reduce the clauses of a collective agreement are contrary to the principle of free and voluntary bargaining. ***In these circumstances, the Committee requests the Government to take the necessary measures to repeal or amend Ministerial Order No. 00080 and Order No. 00155A and to indicate whether Constituent Resolution No. 008 is compatible with judicial review of certain clauses in public sector collective agreements that may contain abuses.***

The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 2684 objecting to the unilateral review by the administrative authority of collective agreements it deemed abusive in the petroleum and health sectors. ***The Committee requests the Government to indicate whether the constituent resolutions abovementioned and the provisions adopted in its development are still in force or whether they have been modified or repealed by the new Constitution.***

Pending legislative issues

The Committee again reminds the Government that for several years it has been commenting on the following matters:

- The need to include in the legislation provisions that ensure protection against acts of anti-union discrimination at the time of recruitment. The Committee notes the Government's statement in its report that the protection is ensured by virtue of section 44(f) of the Labour Code which provides that it is prohibited “to require a worker, by whatever means, to leave the association to which he belongs ...”. The Committee points out that this protection covers anti-union discrimination: (1) at the time of recruitment; (2) in the course of employment; and (3) upon termination of the employment relationship, and includes all measures that are discriminatory in nature (whether dismissals, transfers, relegations in grade or any other measures adversely affecting the worker).

- The need to amend section 229, second paragraph, of the Labour Code respecting the submission of the draft collective agreement, so that minority trade union organizations with a membership amounting to no more than 50 per cent of the workers subject to the Labour Code may, on their own or jointly (when there is no majority union representing all the workers), negotiate on behalf of their own members.
- The need for teachers and heads of education establishments in the public sector and for staff performing technical and vocational duties in the education sector who are governed by the Higher Education Act (Act No. 2000-16) and the Act on Educational Careers and Posts in the Public Teaching Sector (Act No. 94 of 1990) to enjoy the right to collective bargaining. The Committee notes that in this connection that the Government refers to articles 96–99 of the new Constitution of Ecuador. The Committee also observes that Constituent Resolution No. 008 guarantees collective bargaining in public sector institutions. ***It requests the Government to indicate whether this guarantee extends to public sector teaching staff.***

Noting the Government's statement that the National Assembly is working on amendments to various laws including a proposal for a Labour Code Reform Act, a proposal for a Basic Public Service Act and a proposal for a Basic Act on Public Enterprises, the Committee expresses the hope that these will take full account of the provisions of the Convention recognizing the right to collective bargaining of public sector organizations and adequate protection against acts of anti-union discrimination and interference, with sufficiently dissuasive sanctions. It reminds the Government that it may seek technical assistance from the ILO in proceeding with the amendment of the Labour Code and the Public Service Act.

Egypt

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 29 August 2009, which refer to matters already raised by the Committee, as well as the violent repression by the police of a demonstration by workers on 6 and 7 April 2008, resulting in the death of six workers and the detention of 500 people, including three trade unionists who were held in detention for 54 days. In this respect, the Committee recalls that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial enquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions, and that the arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade union activities, without any charges being brought and without a warrant, constitute a grave violation of the principles of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 29 and 31). ***The Committee requests the Government to provide its observations in this respect.***

The Committee notes the discussion during the Conference Committee on the Application of Standards in June 2008 on the application of the Convention. In particular, the Committee notes the Government's indications during that meeting, in relation to the ITUC's comments made in 2007, that: (1) trade union elections were conducted in conformity with the rules adopted by the trade unions at their general assemblies; (2) all candidatures were registered, under legal supervision, in the framework of this election cycle, and over 18,000 persons were elected to the workers' representative bodies in the enterprises and undertakings of the country; (3) 23 new trade unions were established; (4) the Central Council of the Confederation of Trade Unions also held elections and re-elected 70 per cent of its executive committees; and (5) a process of such a large scale as this, which mobilized over 4 million workers, gave rise to rivalry and incidents which required the intervention of the security forces, although such intervention could not be seen as Government intervention in trade union affairs. The Committee also notes the Government's indication that its comments on the application of the Convention would be submitted to the Labour Advisory Council with a view to taking the necessary measures to review the Labour Code and the Trade Union Act and bringing them into conformity with the Convention. The Committee notes that the Conference Committee invited the Government to accept an ILO technical assistance mission and welcomed the Government's readiness in this regard.

The Committee notes that the technical assistance mission requested by the Conference Committee on the Application of Standards visited Egypt on 20–23 April 2009.

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

- the institutionalization of a single trade union system under Act No. 35 of 1976 (as amended by Act No. 12 of 1995), and in particular sections 7, 13, 14, 17 and 52;
- the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42, and 43 of Act No. 35 (as amended by Act No. 12);

- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of Act No. 35 of 1976);
- the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the same Act;
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term (sections 179, 187, 193 and 194 of the Labour Code); and
- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

In this respect, the Committee notes the Government's indication that, following the technical assistance mission referred to above, the Government and the social partners signed a memorandum of understanding through which they undertook to participate in a tripartite seminar to be organized by the ILO subregional office to analyse the issues raised concerning the application of the Convention, and to study the comparative experience of other countries and make proposals for the measures to be adopted so as to give effect to the Committee's comments. The Committee considers that the holding of this seminar will be an important first step in addressing this longstanding matter. *The Committee expresses the hope that the seminar referred to above will be held in the near future and will take up all the matters raised in its comments. The Committee further hopes that, following this activity, the necessary measures will be taken to bring the legislation into conformity with the Convention. The Committee requests the Government to provide information in its next report on any measures adopted in this respect.*

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in 2009 on the application of the Convention. The Committee observes that the ITUC refers again to the provisions of the 2002 Special Economic Zones Law, which exempts investment companies newly established in the zones from the legal provisions concerning the organization of labour, and to anti-union acts, including pressure on members to leave unions. The union also previously stated that most workers in the Tenth of Ramadan City zone were forced to sign letters of resignation before beginning employment so that they could be fired at the employers' convenience. The ITUC also alleges that trade unionists were harassed by the authorities, including in connection with the promotion of union membership, and that administrative penalties were imposed on a number of trade unionists. The Committee notes the Government's reply to the ITUC comments, stating in particular that: (1) workers in special economic zones are covered by the provisions of the Labour Code (Labour Law No. 12 of 2003); (2) the Labour Code lays down procedures for ensuring their application and frequent inspections are carried out in such zones by duly trained inspectors with the authority to impose penalties, pursuant to an order of the Ministry of Justice, and; (3) no evidence of the allegations made by the ITUC has been submitted. *The Committee requests the Government to take steps to carry out an investigation into the alleged anti-union acts and the imposition of administrative penalties for activities undertaken by a number of trade unionists referred to by the ITUC.*

Article 4 of the Convention. The Committee recalls that it has been making comments for a number of years on various provisions of the Labour Code, as follows:

- as regards section 154 of the new Labour Code, under which any clause of a collective agreement contrary to the law on public order or general ethics shall be null and void, the Committee asked the Government to provide information on the scope of this section and the impact the broad wording of this section might have on the application of the principle of voluntary negotiation. Further noting that section 154 referred to a law that was still in its preparatory phase, the Committee asked the Government to provide a copy of the relevant provisions of the law, once adopted, in order to assess their compatibility with the principle of voluntary negotiation contained in *Article 4* of the Convention. The Committee notes the Government's indication that the section in question does not refer to a law which is in the preparatory phase and that it merely provides that collective agreements must respect the law, public order and general ethics. The Government also indicates that public order derives from economic, ethical, political and social foundations on which the society of a country is based. The Committee welcomes the Government's explanations and requests it to indicate the specific cases in which use has been made in practice of section 154 of the Labour Code;
- as regards section 158 of the new Labour Code, the Committee asks the Government to amend that section so as to ensure that the approval of a collective agreement may only be refused if: (1) it contains a procedural flaw; or (2) it does not conform to the minimum standards laid down by the labour legislation (the Committee had observed that the legislation does not state the specific reasons why the registration of a collective agreement may be refused). The Committee notes the Government's statement that the only reasons for refusing the registration of a collective agreement are those mentioned by the Committee and that, since the promulgation of the Labour Code in 2003, the administrative authority has not refused the registration of any collective agreement;

- as regards sections 148 and 153 of the Labour Code, the Committee asked the Government to take the necessary steps to repeal these sections, as they enable higher level organizations to interfere in the negotiation process conducted by lower level organizations. The Committee notes the Government's indication that the purpose of the participation of higher level organizations in the negotiation process of a union is to support and strengthen the position of smaller unions. According to the Government, the application of the Convention is ensured by concluding agreements which apply to all workers belonging to a higher level organization. The Committee recalls that such interference by higher level organizations in the bargaining process undertaken by lower level organizations is incompatible with the autonomy which must be enjoyed by bargaining parties which, as such, must have the right to free and voluntary negotiation of collective agreements. *The Committee therefore requests the Government once again to take the necessary steps to repeal the sections in question. Observing that, in the context of the examination of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by Egypt, the Government stated that a tripartite symposium would be held to analyse the Committee's comments in this respect, the Committee expresses the hope that these comments will be examined by that body. The Committee requests the Government to provide information in its next report on any measures taken in this respect.*

Finally, the Committee previously asked the Government to take the necessary steps to amend the Labour Code (sections 179 and 187, in conjunction with sections 156 and 163 of the Labour Code) so that the parties could have recourse to arbitration only by mutual agreement. The Committee observes that the Government has not sent its observations in this respect. *The Committee requests the Government to take the necessary steps to amend the abovementioned provisions of the Labour Code so that compulsory arbitration is possible only for public servants engaged in the administration of the State or in essential services in the strict sense of the term and requests the Government to provide information in its next report on all progress made in this respect.*

El Salvador

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 2006)

Article 2 of the Convention. Right of workers' organizations, without distinction whatsoever, to establish and join organizations of their own choosing. The Committee recalls that under article 47 of the Constitution of the Republic, public officials and public employees did not enjoy the right to establish organizations. The Committee notes with **satisfaction** the amendment of article 47 of the Constitution by Decree No. 33 of June 2009, which establishes that employers and workers in the private sector, without distinction as to nationality, sex, race, creed or political persuasion, and whatever their activity or the nature of the work they perform, have the right freely to associate in order to defend their respective interests, forming occupational associations or unions; the same right is given to workers of autonomous official institutions, public officials and employees and municipal employees. The Committee has furthermore been informed that legal personality was recently granted to the Union of Men and Women Workers of the Judicial Body (SITTOJ), the Union of Judiciary Employees of El Salvador (SINEJUS), and to unions of workers in education, ministries and municipalities.

As regards other issues relating to article 47 of the Constitution and other legislative matters, including the exclusion of certain categories of public employees from the right to organize, the Committee is addressing a request directly to the Government.

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 2006)

Article 1 of the Convention. Exclusion of public servants. The Committee recalls that under article 47 of the Constitution of the Republic, civil servants and public employees did not enjoy the right to establish unions. The Committee notes with **satisfaction** that article 47 of the Constitution, as amended by Decree No. 33 of June 2009, establishes that employers and workers in the private sector, without distinction as to nationality, sex, race, creed or political views, regardless of the activity or the nature of the work they perform, have the right to associate freely in order to defend their respective interests, by forming professional associations or unions; the same right applies to workers in autonomous official institutions, civil servants, public employees and municipal employees. The Committee notes in this connection that legal personality has recently been granted to a number of unions in ministries, municipalities and the judiciary.

In its previous comments, the Committee referred to section 4(k) and (l), under which certain categories of public employees are excluded from the safeguards established in the Convention. *The Committee understands that some of the former provisions of the Civil Service Act have been eliminated following the amendment of the Constitution and asks the Government to provide particulars.*

Articles 6, 7 and 8. Facilities and procedures for determining the conditions of employment of public employees. In its previous comments, the Committee asked the Government to send information on the measures taken to apply the Convention and to indicate whether, in the context of collective bargaining, it was possible to establish facilities for trade

unions. The Committee notes in this connection that, according to the Government, with the amendment of the Constitution, the right of public employees to collective bargaining has been recognized. The Government adds that it will take the necessary measures to promote collective bargaining processes in the public sector and that the Ministry of Labour will launch a process for training of the staff of the Civil Service Tribunal in procedures regarding collective disputes of an economic nature. It further notes that, according to the Government, a number of collective agreements have been registered in the public sector which include trade union leave and time off, contributions for social, cultural, artistic and sports facilities and the grant of trade union premises. ***The Committee requests the Government to examine with the social partners how to promote, on a broader basis, the facilities to be granted to workers' representatives, and to provide information on any developments regarding the legislation that applies to collective bargaining and dispute settlement.***

Equatorial Guinea

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

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

The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 26 August 2009, which refer to the application of the Convention and also to the administrative authority's persistent refusal to register the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). According to the ITUC, the administrative authority does not recognize trade unions which are classified as independent and obstructs the registration process. The Committee recalls that the discretionary power of the competent authority to grant or reject a registration request is tantamount to a requirement for previous authorization which is not compatible with *Article 2 of the Convention* (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 74). ***The Committee therefore urges the Government once again to register without delay those trade unions which have fulfilled the legal requirements and provide information in this respect in its next report.***

The Committee recalls that it has been asking the Government for a number of years to:

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

The Committee again urges the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and to send the information requested. The Committee reminds the Government that it may seek technical assistance from the Office in this respect.

Finally, observing that the Conference Committee on the Application of Standards noted with regret at its 2008 meeting that it had been unable to examine the case of the application of the Convention by Equatorial Guinea due to the fact that the Government was not represented at the Conference, the Committee expresses the strong hope that the Government will take all possible steps without delay to renew constructive dialogue with the ILO.

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

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

Article 4 of the Convention. Collective bargaining. The Committee notes the comments from the International Trade Union Confederation (ITUC) dated 26 August 2009, which refer once again to the impossibility of establishing any trade union organization which the authority considers to be "too independent". The Committee recalls that in 2004 the Government indicated in its report that there were no trade unions in the country owing to the lack of a trade union tradition. The Committee emphasizes once again that the existence of trade unions established freely by workers is a prerequisite for the application of the Convention and for exercising the right to collective bargaining. ***The Committee urges the Government to take the necessary steps without delay for creating appropriate conditions for the establishment of trade unions which can engage in collective bargaining with a view to regulating conditions of employment.***

Article 6. Right of public servants not engaged in the administration of the State to bargain collectively. The Committee notes that, according to the comments made by the ITUC, the right of workers in the public service to establish trade unions has still not been recognized by law, despite the fact that section 6 of Act No. 12/1992 on trade unions and collective labour relations provides that the right to organize of officials in the public administration shall be regulated by a special law. ***The Committee requests the Government once again to state whether the special law has been adopted, whether this law guarantees public servants' right to organize, and to send detailed information on the application of the Convention with regard to public servants who are not engaged in the administration of the State.***

The Committee infers from the above that the situation concerning collective bargaining is a source of *concern* and reminds the Government once again that it may seek technical assistance from the Office with regard to these issues. ***Finally, observing that the Conference Committee on the Application of Standards noted with regret at the 2008 session that it had been unable to examine the case of the application of the Convention by Equatorial Guinea due to the fact that the Government was not represented at the Conference, the Committee expresses the firm hope that the Government will make every effort without delay to renew a constructive dialogue with the ILO.***

Eritrea

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

The Committee notes the Government's reply to its previous direct request.

The Committee notes the comments of the International Trade Union Confederation (ITUC) of 26 August 2009, which refer to matters previously raised by the Committee.

Articles 1 and 2 of the Convention. In its previous comments, the Committee had noted that section 28(3) provides for reinstatement of trade union leaders in case of an unjustifiable dismissal and had requested the Government to take the necessary steps to amend section 23 of the Labour Proclamation, which protects workers against dismissal linked to trade union membership or trade union activities, so as to broaden the protection to cover acts of anti-union discrimination committed at the time of recruitment or during the course of employment (transfers, relocations, demotions, etc.).

In this connection, the Committee, while noting the Government's statement that article 120(7) of the Labour Proclamation, which covers labour disputes, also includes complaints directed against steps taken by the employer on promotion, job transfer and training of employees, observes that article 120(7) merely sets out the types of collective labour disputes which may be subject to conciliation or arbitration. The Committee must therefore recall that the Convention requires protection against discrimination against workers for anti-union reasons to cover recruitment and all prejudicial acts during the course of employment, including dismissal, transfer, relocation, demotion, deprivation and restrictions of all kinds (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 212). ***Noting the Government's indication that the Ministry would consider broadening the protection against anti-union discrimination to cover recruitment and all prejudicial acts during the course of employment, including dismissal, transfer, relocation, demotion, deprivation and restrictions of all kinds, the Committee once again expresses the hope that section 23 of the Labour Proclamation will be amended accordingly in the near future. The Committee requests the Government to provide information on the measures taken or envisaged in this regard.***

The Committee recalls that it had previously considered that a fine of 1,200 nakfa, set out in section 156 of the Labour Proclamation, to punish those guilty of anti-union discrimination or acts of interference, did not constitute an adequate protection and had noted the Government's indication that section 692 of the Transitional Penal Code became applicable in cases where an offence was considered severe or repeated.

In this respect, the Committee had requested the Government to provide information concerning the cases, means and method by which an offence of anti-union discrimination or interference by employers in workers' organizations was deemed to become so severe as to attract higher penalties than those provided for in section 156 of the Labour Proclamation. The Committee notes the Government's indication that any breach of the law – even a petty one – is also punishable under the Transitional Penal Code. ***The Committee requests the Government to indicate the sanctions applicable and provide copies of penal sentences regarding cases of anti-union discrimination and interference.***

The Committee recalls that the existence of general legislative provisions prohibiting acts of anti-union discrimination and acts of interference is not enough, if they are not accompanied by effective and rapid procedures to ensure their application in practice (see General survey, op. cit., paragraph 214). ***The Committee expresses the hope that the legislative amendments mentioned by the Government concerning anti-union discrimination will take into account the Committee's observations and requests the Government to indicate the measures taken or envisaged in this respect.***

The Committee had further requested the Government to indicate whether, by referring solely to breaches by employers' associations, section 156 of the Proclamation only provided for sanctions against employers' organizations and not against individual employers who may or may not be members of organizations. The Committee notes the Government's statement that section 156 in the national language indeed applies to individual employers.

Articles 1, 2, 4 and 6. Previously, the Committee had expressed the strong hope that the Ministry would issue a regulation in the near future that ensured that domestic employees were entitled to exercise their trade union rights,

guaranteed under Conventions Nos 87 and 98. The Committee notes the Government's statement that domestic employees, like all other categories of workers, are entitled to the right to organize and collective bargaining, since the promulgation of the Labour Proclamation No. 118/2001. It also notes that the Government's statement that a trade union organization of domestic workers, the *Dembe Sempel Houses Association*, has been constituted and is affiliated with the National Confederation of Eritrean Workers.

The Committee had previously requested the Government to provide specific information concerning the status of the draft Civil Service Proclamation. The Committee *regrets* that the Government reiterates that the drafting of the legal text concerning public servants, which would guarantee the right to organize to civil servants, reached its final stage and would be communicated to the ILO once adopted. *In this regard, the Committee once again expresses the hope that the Government will take the necessary measures, in consultation with the social partners, to improve its legislation on public servants in respect of the rights enshrined in the Convention and requests it to transmit copies of the relevant legislative acts upon their adoption.*

Estonia

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, which refers to matters previously raised by the Committee.

The Committee recalls that for a number of years it had been raising the issue of the prohibition of the right to strike in the public service (section 21(1) of the Collective Labour Dispute Resolution Act), and had previously requested the Government to inform it of the progress achieved with respect to the adoption of legislative provisions ensuring the right to strike for public servants who do not exercise authority in the name of the State. The Committee takes note of the Government's statement that it has approved the draft Public Service Act, which had been submitted to the Parliament and successfully underwent a first reading. The draft legislation retains the prohibition on the right to strike of public servants, but the term "public servant" would be more narrowly defined. The Government further indicates that, according to the explanatory memorandum to the draft Public Service Act, 45 per cent of the current public service would gain the right to strike. *In these circumstances, the Committee, recalling that the right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State, expresses the hope that the Public Service Act would ensure the right to strike in the public service in accordance with this principle and requests the Government to provide a copy of the said legislation once it is adopted.*

In its previous comments, the Committee had requested the Government to provide the list of services where the right to strike will be restricted, as referred to in section 21(3) and (4) of the Collective Labour Dispute Resolution Act. In this regard, the Committee notes the Government's statement that it has experienced problems establishing the list of enterprises and agencies wherein the right to strike will be restricted (through a minimum service), in accordance with section 21(4) of the said law, as the list must be based on the services provided by the enterprises or agencies and not on the names of the enterprises or agencies themselves. The Government further indicates that it has started to review the entire industrial relations field and that the current laws and regulations – including those concerning minimum services – needed to be analysed and discussed with the social partners before amendments could be introduced. *The Committee notes this information and requests the Government to indicate the progress achieved in respect of the adoption of legislative provisions ensuring that the right to strike may be prohibited only in essential services in the strict sense of the term (i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) and for public servants exercising authority in the name of the State.*

Ethiopia

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

The Committee notes the information provided by the Government in relation to the recommendations of the 2008 direct contacts mission, the comments submitted by the International Trade Union Confederation (ITUC) in communications dated 29 August 2008 and 26 August 2009 on the application of the Convention. The Committee further notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009.

In its previous comments, the Committee had urged the Government to conduct a full and independent inquiry without delay into the allegations made by the ITUC and the Education International (EI) relating to arrests of trade unionists, their torture and mistreatment when in detention, and continuing intimidation and interference. The Committee notes the Government's indication that all allegations presented with credible evidence are fully investigated by constitutional bodies including the courts, the Ethiopian Human Rights Commission, the Office of the Ombudsman, or by a mechanism approved by the House of Peoples' Representatives. *The Committee requests the Government to indicate in*

its next report the status and specific details on the outcome of the ongoing investigations of each of the abovementioned allegations.

In its previous comments, the Committee urged the Government to take the necessary measures to ensure the resolution of the registration of the National Association of Ethiopian Teachers (NTA). It further notes the conclusions of the Conference Committee in which the Government was asked to report on the measures taken to ensure concrete progress including the registration of the NTA. ***The Committee regrets to note that the NTA has not yet been registered despite its comments and the conclusions of the Conference Committee and urges the Government to ensure its registration without delay so that all teachers may fully exercise the right to establish and join organizations of their own choosing.***

The Committee recalls that in previous comments it had requested the Government to take measures to amend the Civil Servant Proclamation, so as to ensure the right of civil servants, including teachers in public schools, to form and join trade unions. The Committee notes that the Government indicates that this right is enshrined under article 42 of the Constitution and provides that government employees whose work compatibility allows for it and who are below a certain level of responsibility have the right to form associations to improve their conditions of employment and economic well-being. In addition, the Government states that it has expressed to all relevant bodies that it shall achieve full compliance gradually by preparing the necessary conditions and the capacity of the country to shoulder the full extent of this right. The Committee recalls that public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. ***The Committee once again urges the Government to provide in its next report information on the measures taken to fully guarantee the rights under the Convention to civil servants (including teachers in the public sector).***

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

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

The Committee ***regrets*** that the Government provides no indication as to the concrete measures taken to bring the legislation and practice into greater conformity with the Convention, nor is there any mention of a timetable on steps to be taken as requested by the Conference Committee. ***In these circumstances, the Committee urges the Government to provide detailed information with its next report on the measures envisaged in this regard and on the time frame for such action.***

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1963)***

The Committee recalls the previous comments submitted by the International Trade Union Confederation (ITUC) and Education International (EI) concerning specific violations of the Convention regarding teachers' trade union rights in the public sector, including the control by the Government of a teachers' trade union, and the harassment of teachers (dismissals, transfers, etc.) in connection with their expression of their freedom of association rights. ***The Committee once again urges the Government to conduct a full and independent inquiry without delay into these allegations and to provide full information in its next report.***

The Committee had previously noted that the national legislation, in particular the Labour Proclamation (2003), provided inadequate protection of the rights afforded by the Convention and expressed the following concerns:

- *Scope of application of the Convention.* According to its section 3, the Labour Proclamation was not applicable to the employment relations arising out of a contract concluded for the purpose of upbringing, treatment, care of

rehabilitation, education, training (other than apprenticeship), contract of personal service for non-profit-making purposes and managerial employees. The Committee had requested the Government to take the necessary measures to ensure that the categories of worker excluded from the scope of the Labour Proclamation enjoy the rights under the Convention, either by amending the Labour Proclamation or by adopting specific legislative provisions.

- *Absence of adequate protection against acts of interference.* The Committee had requested the Government to amend its legislation by adopting specific provisions coupled with effective and sufficiently dissuasive sanctions, providing for protection of organizations of employers and workers against acts of interference by each other's agents or members in their establishment, functioning or administration so as to give full effect to *Articles 2 and 3 of the Convention*.
- *Article 4. Collective bargaining.* The Committee had requested the Government to amend section 130(6) of the Labour Proclamation, as amended by Proclamation No. 494/2006, providing that, if the negotiation to modify or replace a collective agreement is not finalized within three months from the expiry date of the collective agreement, the provisions of the collective agreement relating to wages and other benefits shall cease to be effective. The Committee considered that this provision did not take into account the reasons behind a failure to finalize a new agreement nor the eventual responsibility of one or the other party for this failure and was not conducive to promoting collective bargaining. The Committee also considered that it was up to the parties to decide on the moment when the collective agreement becomes inapplicable after the date of its expiration.

The Committee had noted the Government's indication in its previous report that the above comments with regard to the application of the Convention to the employment relations arising out of a contract concluded for the purpose of upbringing, treatment, care, rehabilitation, education, training (other than apprenticeship), contract of personal service for non-profit-making purposes were on the agenda to be discussed by the Ethiopian labour law reform committee and that the discussion would be extended to the Committee's observation protection to be granted to workers' and employers' organizations against acts of interference committed by each other, as well as on *Article 4* of the Convention. ***The Committee hopes that the Labour Proclamation will be amended without delay so as to ensure its full conformity with the Convention and requests the Government to indicate progress made in this respect. The Committee further requests the Government to indicate the measures taken or envisaged to ensure the rights under the Convention of managerial employees.***

The Committee recalls that it had previously taken note of article 4 of the draft regulation concerning employment relations established by religious or charity organizations, which provided that "religious or charity organizations employing persons for administrative or charity work shall not be obliged to enter into collective bargaining concerning salary increment, fringe benefits, bonus and similar other benefits which may incur financial expense upon the organization". Recalling that collective bargaining should be promoted also in respect of these categories of worker and that no restrictions on the scope of bargaining should be imposed on workers by religious or charity institutions, the Committee had requested the Government to bring this draft into conformity with the Convention. The Committee had noted the Government's indication that the draft regulation has already been presented at the consultative meeting with the persons concerned and it was decided that the draft regulation should be replaced with a new draft regulation. ***The Committee requests the Government to indicate any developments in this regard and to transmit a copy of the bill once it has been drafted.***

Articles 4 and 6. ***The Committee once again urges the Government to amend the Civil Servant Proclamation so as to ensure the right of civil servants, including public teachers, to defend their occupational interests through collective bargaining. It requests the Government to indicate the measures taken or envisaged in this respect.***

Fiji

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in communications dated 29 August 2008 and 4 September 2009 concerning issues already raised by the Committee, as well as allegations of police disruption of the National Union of Public Workers annual meeting and of the brief detention of its general secretary and his lawyer. The Committee recalls, in this regard, that recourse to force during trade union activities is unjustified, unless it is absolutely necessary, and that the arrest and detention of trade union leaders, without any charges being brought and without a warrant, constitutes a grave violation of the principle of freedom of association. ***The Committee requests the Government to submit its observations on the ITUC's comments.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. The Committee had previously requested the Government to amend section 3(2) of the Employment Relations Act No. 36 of 2007 (ERA) so that prison guards enjoy the right to establish and join organizations of their own choosing. In this respect, the Committee notes that the Government reiterates that the prisons and correction services are governed by separate legislation but that they enjoy similar privileges in regard to terms and conditions of employment except for the right to strike or access to the institutions under the ERA, and that on 29 November 2006, the Parliament

had committed to undertake a revision of section 3 of the ERA to also include the correctional authorities (including workers in the prisons and correction services). The Committee must once again recall that the only admissible exceptions to the right to organize are those explicitly provided for under *Article 9* of the Convention, i.e. the armed forces and the police. All other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing. The Committee considers that the functions exercised by prison guards are different from the regular functions of the army and the police and do not justify their exclusion from the right to organize (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). ***The Committee hopes that, under the revision of section 3(2) of the ERA, prison guards will enjoy the right to establish and join organizations of their own choosing and requests the Government to indicate the progress made in that regard in its next report.***

Right to join organizations of their own choosing. In its previous comments, the Committee had requested the Government to amend section 119(2) of the ERA, in order to enable workers exercising more than one occupational activity in different occupations or sectors to join the corresponding trade unions as full members. While noting the Government's statement that it is almost unknown for a worker to have two jobs in Fiji and that it considers multi-union membership as a luxury, the Committee considers that demanding that workers belong to no more than one union in order to sign an application for registration may unduly infringe upon the right of workers to join organizations of their choosing. ***Accordingly, the Committee once again requests the Government to take measures to amend section 119(2) of the ERA so as to allow workers who engage in more than one occupational activity in different occupations or sectors to join corresponding trade unions.***

Right of workers and employers to establish organizations without previous authorization. Previously, the Committee had asked the Government to amend section 122(1)(c) of the ERA, which grants the Registrar the power to determine whether a trade union name is "undesirable" and refuse the organization's registration until an alteration has been made. In this respect the Committee notes with *regret* the Government's statement that it is appropriate for the Registrar to hold and wield these general discretionary powers as the adoption of appropriate names has always been the source of conflicts and social unrest. The Committee recalls once again that the term "undesirable" is too general and establishes a genuinely discretionary power in the Registrar. ***The Committee once again requests the Government to take measures to amend section 122(1)(c) of the ERA so as to establish safeguards against interference by the Registrar.***

The Committee had previously requested the Government to provide information as to the manner in which the principal objectives of the persons seeking registration were determined and evaluated by the Registrar, who under section 125(1)(a) of the ERA may refuse registration if the principal objectives of the persons seeking registration are not in accordance with those set out in the definition of a trade union. The Committee takes note of the Government's answer that the Registrar exercises his discretion and that the factors used by the Registrar are whether the applicants are genuine in their application for the purposes of collective bargaining as an extension of social dialogue to improve terms and conditions of employment or a mere formality. The Committee considers, in this respect, that section 125(1)(a) of the ERA confers upon the authorities wide discretionary powers in deciding whether or not an organization meets all the conditions for registration. ***In these circumstances, the Committee requests the Government to take measures to amend section 125(1)(a) of the ERA, by ensuring, for instance, that refusals to register an organization under the said section are determined on the basis of objective criteria.***

Article 3. Right to draw up constitutions and rules. In its previous comments, the Committee had requested the Government to amend section 184 of the ERA, which entitled the courts to decide the sanctions against trade union members for refusal to participate in a strike, so as to grant this power to the trade unions themselves. The Committee takes note of the Government's statement that the Committee's comments will be taken to social partners through the Employment Relations Advisory Board for deliberation. ***In these circumstances, the Committee expresses the hope that section 184 of the ERA will soon be amended so that the issue of sanctions against trade union members for refusal to participate in a strike can be left to trade union constitutions and rules and requests the Government to indicate the results of the Employment Relations Advisory Board's deliberations.***

Right to elect workers' and employers' representatives in full freedom. Previously, the Committee had requested the Government to amend section 127 of the ERA, which provides that officers of a registered trade union must have been engaged or occupied for a period of not less than six months in an industry, trade or occupation with which the union is directly concerned and 127(d) of the ERA, which forbids non citizens of the Fiji Islands to be trade union officers. The Committee takes note of the Government's statement that the Committee's comments will be taken to the social partners through the Employment Relations Advisory Board for deliberation. The Committee recalls that provisions of this type infringe the organization's right to elect representatives in full freedom by preventing qualified persons from carrying out union duties or by depriving unions of the benefit of the experience of certain officers (see General Survey, op. cit., paragraph 117). ***The Committee expresses the hope that section 127 of the ERA will soon be amended so as to allow for a certain proportion of the officers to come from outside the particular profession, and to allow non-citizens to run for trade union office at least after a reasonable period of residence in the country. It further requests the Government to indicate the outcome of the Board's deliberations with respect to sections 127 and 127(d) of the ERA.***

Right of workers' and employers' organizations to organize their administration. The Committee had previously requested the Government to amend section 128 of the ERA, which provides that the account books and other related documents must be open to inspection during normal business hours by the Registrar, and that the Registrar may request

detailed and certified accounts from the treasurer and also provides for fines or imprisonment in case a person obstructs or impedes the Registrar in carrying out an inspection. The Committee takes note of the Government's statement that the obligation for submission of annual returns has been put back by five months and that, furthermore, the Registrar only intervenes when a complaint has been lodged. However, the Committee must recall that a provision which grants authorities the power to examine the books of an organization at any time, unless there is a complaint from a certain percentage of the trade union members, infringes the Convention (see General Survey, op. cit., paragraph 125). **Accordingly, the Committee once again requests the Government to take measures to amend section 128 of the ERA so as to ensure that the power of the Registrar to examine trade union accounts is explicitly limited to cases where a complaint from a certain percentage of members needs to be investigated, or when the annual returns give rise to a manifest need to inspect trade union accounts.**

Secret ballot. The Committee recalls that it had previously requested the Government to amend section 175(3)(b) of the ERA, which provides that each issue on which a strike mandate is sought must be supported in a strike ballot by more than 50 per cent of all members entitled to vote. The Committee notes the Government's indication that the situation in Fiji is such that allegiance to the extended family influences the result of the secret ballot, thus justifying the maintenance of section 175(3)(b) of the ERA. In these circumstances, the Committee must once again recall that although a ballot requirement does not, in principle, raise problems of compatibility with the Convention, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice. If a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at a reasonable level (see General Survey, op. cit., paragraph 170). **In these circumstances, the Committee requests the Government to take measures to amend section 175(3)(b) of the ERA so as to ensure that only a simple majority of the votes cast in a secret ballot is required.**

Previously, the Committee had requested the Government to amend section 180 of the ERA, which allowed the Government to declare the illegality of a strike, in order to grant that power to an independent body which has the confidence of the parties involved. It takes note of the Government's statement that the criteria to determine the legality of a strike are stated by the law, but that the Minister still has a discretionary, but not mandatory, power, after considering other factors, to declare strikes or lockouts unlawful. It further notes that such decision may be appealed to the courts, by means of section 241 of the ERA. The Committee recalls once again that responsibility for declaring a strike illegal should not be with the Government. **The Committee once again requests the Government to take the necessary measures to amend section 180 of the ERA, so that responsibility for declaring a strike illegal lies with an independent body which has the confidence of the parties involved.**

Compulsory arbitration. The Committee had previously requested the Government to amend sections 169 and 170 of the ERA, which enable each party to a dispute to refer it to the Permanent Secretary, who must refer it to mediation, and sections 181(c) and 191(1)(c) of the ERA, which enable the Minister to apply to the Court for an injunction to discontinue a strike if satisfied that the strike is not in the public interest or will jeopardize or is likely to jeopardize, inter alia, the economy. The Committee takes note of the Government's statement that the said laws are necessary for the preservation of the fragile economy during industrial disputes. Nevertheless, the Committee must recall once again that a very serious prohibition may also result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned. These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with *Article 3* of the Convention (See General Survey, op. cit., paragraph 153). **Accordingly, the Committee once again requests the Government to amend sections 169, 170, 181(c) and 191(1)(c) of the ERA so as to ensure that compulsory arbitration can only be imposed at the request of both parties to a dispute, or in essential services in the strict sense of the term or for public servants exercising authority in the name of the State.**

In its previous comments, the Committee had requested the Government to amend sections 204, 206 and 207 of the ERA, which stated the composition, appointment (seemingly without predetermined criteria), term of office and vacation of members of the Employment Tribunal, so as to reinforce the independence and the appearance of impartiality of its members. It takes note of the Government's statement that mediators operate under a code of ethics, that their conduct can be reviewed by a judge and that one key criterion for the qualification of members of the Employment Tribunal is the acquisition of a recognized professional mediation accreditation. The Committee notes in this regard that the said code of ethics for mediators sets minimum standards to guide mediators in performing their duties and functions, that it provides that parties should come to a voluntary, uncoerced decision in which each party makes free and informed choices, and that a mediator must conduct mediation in an impartial manner and avoid conduct that gives the appearance of partiality.

Penalties against the staging of an unlawful strike. The Committee had previously requested the Government to amend section 256(a) of the ERA, which, when read with section 250 of the ERA, provides for a possible penalty of imprisonment in case of the staging of an unlawful strike. The Committee notes the Government's statement in this regard, including that the said clause's purpose is to encourage good faith in employment relationships, that all prison

sentences must be justified, and that all defendants are accorded sufficient judicial safeguards. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee therefore once again requests the Government to take measures to amend section 256(a) of the ERA, taking into account the abovementioned principle.***

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) on the application of the Convention and requests the Government to submit its observations thereon.

Article 1 of the Convention. Protection against anti-union discrimination. The Committee had previously referred to the dispute in the Vatukoula Mining Company (concerning the refusal to recognize a union and the dismissal of striking workers 15 years ago), and had requested the Government to give consideration to the recommendation of the Senate Select Committee for assistance to help the remaining workers re-establish themselves. It takes note of the Government's statement that there has been a change of ownership in the mines, that a significant number of these strikers and their children have been employed by the new employer in the mines and that the Government has also provided those still unemployed with alternative means of livelihood through a small business scheme subsidized by the Government since the beginning of 2007.

Article 4. Promotion of collective bargaining. Previously, the Committee had requested the Government to indicate the measures taken or contemplated so as to amend section 10 of the Counter-Inflation (Remuneration) Act which envisages, if need be, the restriction or regulation of remuneration of any kind by order of the Prices and Incomes Boards and stipulates that any agreement or arrangement which does not respect these limitations will be illegal and deemed to be an offence. While noting the Government's statements that section 10 restricts bargaining on wages only, that it would be activated only in the event of an economic crisis, taking into account the economy's vulnerability to external shocks, and that it had been used only twice in the past 30 years, the Committee must once again recall that the possibility of reactivating this provision at any time is not in conformity with the principle of free and voluntary collective bargaining. ***Accordingly, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to amend section 10 of the Counter-Inflation (Remuneration) Act and bring it into full conformity with Article 4 of the Convention.***

Gabon

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

In its previous observation, the Committee noted the comments of the International Trade Union Confederation (ITUC) of 2007 reporting the arrest and arbitrary detention of representatives of the Free Trade Union Confederation of Gabon (CGSL) over recent years. It notes that, in a communication dated 26 August 2009, the ITUC once again reports cases of the arrest and harassment of members of the CGSL. The Committee notes the Government's indication in its report that replies to the issues raised by the ITUC have been provided to the Committee on Freedom of Association and that the dispute which gave rise to the arrests has been resolved. The Committee recalls that the arrest and detention, even if only briefly, of trade union leaders and trade unionists for exercising legitimate activities without any charges being laid or court warrants being issued constitutes a serious violation of the principles of freedom of association. ***The Committee urges the Government to guarantee the representatives of the CGSL the unimpeded exercise of their trade union rights.***

Furthermore, the Committee noted the 2007 observations of the Trade Union Congress of Gabon (CSG) reporting the Government's refusal to consider the issue of the representativeness of trade unions and calling for the organization of trade union elections. The Committee notes the Government's indication in its report that the designation of the most representative trade union confederations in the country is not the result of a unilateral decision by the Government, but the outcome of an agreement concluded on 27 March 2007 between six trade union confederations (COSYGA, CGSL, USAP, UTG, CONSINEQ and *Intersyndicale*), which designated the four most representative organizations to participate in the consultative bodies envisaged by the Labour Code, prior to their subsequent determination through trade union elections. In this respect, the Government, confirming that the issue of the representativeness of trade union confederations raised by the CSG remains topical, once again requests the assistance of the Office for the organization of trade union elections. The Committee recalls that the determination of the most representative organizations must be based on objective, pre-established and precise criteria so as to avoid any possibility of bias or abuse (see the 1994 General Survey on freedom of association and collective bargaining, paragraph 97). ***The Committee trusts that the Government will take the necessary measures to resolve the problem of the representativeness of trade union organizations, which it***

acknowledges, and hopes that it will be able to benefit from ILO technical assistance. The Committee requests the Government to indicate any progress achieved in this respect in its next report.

Gambia

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

The Committee notes the Labour Act No. 5 of 2007, which replaces the Labour Act No. 12 of 1990, and wishes to raise in this respect, the following points.

Scope of the Convention. The Committee recalls that it had previously requested the Government to guarantee that the rights afforded by the Convention were ensured for workers engaged in the prison service, domestic service and civil servants not engaged in the administration of the State. The Committee **regrets** that the new Labour Act does not apply to the abovementioned categories of workers (section 3(2)). The Committee recalls that only the armed forces, the police and public servants engaged in the administration of the State can be excluded from the guarantees of the Convention. **The Committee requests the Government to ensure that the rights afforded by the Convention are guaranteed to prison service workers, domestic service workers and civil servants not engaged in the administration of the State.**

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. The Committee recalls that it had previously requested the Government to ensure that all workers were guaranteed protection against acts of anti-union discrimination, regardless of whether their employment relationship was based or not on a written contract. The Committee notes with **satisfaction** that the new Labour Act applies to all employment relationships (section 3(1)). The Committee further notes with **satisfaction** section 50 providing for nullity of contractual provisions prohibiting trade union membership in a contract of employment, and section 83(2)(e) prohibiting dismissals and disciplinary actions on account of trade union membership and activities. The Committee also notes with **satisfaction** that the new Act provides remedies of reinstatement and/or compensation for anti-union dismissals (section 92(2)).

Articles 2 and 3. Protection against acts of interference. The Committee recalls that it had requested the Government to ensure sufficient protection against acts of interference by workers' and employers' organizations (or their agents) in each other's affairs. The Committee notes with **satisfaction** that section 109(1) of the new Act prohibits an employer from promoting the establishment of workers' organizations under its domination and provides for a sanction of not less than 50,000 dalasis in case of non-compliance with this provision. The Committee further notes that a court can order the cancellation of the registration of a workers' association dominated by an employer or any other adequate remedy (section 109(3) and (4)).

Article 4. Measures to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or their organizations and workers' organizations. The Committee recalls that in its previous comments it had expressed its concern at the discretionary power of the authorities to deny registration of collective agreements. The Committee notes with **satisfaction** that under section 123 of the Act, the commissioner responsible for registering a collective agreement has an obligation to register such an agreement upon the application of both parties.

The Committee notes that according to section 130 of the Act, in order to be recognized as a sole bargaining agent, a trade union should represent a certain percentage of employees under a contract of service (30 per cent in the case of a single union and at least 45 per cent if the establishment in question employs at least 100 people; in this case, the bargaining agent could be composed of two or more trade unions). The Committee recalls that where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should not be denied to other unions in the unit, at least on behalf of their own members. **It requests the Government to take the necessary measures in order to bring the legislation into conformity with the Convention.**

The Committee further notes that section 131 of the Act provides that an employer may, if he or she wishes, organize a secret ballot to establish a sole bargaining agent. The Committee considers that the organization of a ballot for determining representativeness should be carried out by the authorities or an independent party upon a request presented by a union. **The Committee requests the Government to amend section 131 of the Act in accordance with the principle above.**

Georgia

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

The Committee notes the comments made by the Georgian Trade Union Confederation (GTUC) in a communication dated 27 August 2008, the observations made thereon by the Georgian Employers' Association (GEA), as well as the Government's reply. The Committee also notes that the GTUC submitted allegations referring to the same matters to the Committee on Freedom of Association.

The Committee recalls that its previous comments concerned the Law on trade unions and the Labour Code of 2006. It notes that, in its report, the Government indicates that a memorandum was signed between the Ministry of Health, Labour and Social Affairs (MoHLSA), the GTUC and the GEA with a view to institutionalizing social dialogue in the country. Since then, the social partners have been regularly holding sessions to discuss issues concerning the labour legislation with an emphasis on the issues of compliance with Conventions Nos 87 and 98. The Committee further notes with *interest* that, in line with the conclusions of the Conference Committee on the Application of Standards, over the course of 2009, the ILO has been providing technical support to the tripartite constituents to advance the process of dialogue and the review of the labour legislation. The Committee further notes with *interest* the holding in October 2009 of an ILO tripartite round table in Tbilisi which discussed the current status of national labour legislation, application of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and promotion of tripartism in Georgia. The Committee also notes with *interest* Decree No. 335 of 12 November 2009 issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and recommendations of the Committee and to propose the necessary amendments. ***The Committee hopes that any proposed amendments will take into account its comments and requests the Government to provide information on the developments in this regard.***

Law on trade unions. The Committee had previously requested the Government to amend section 2(9) of the Law on trade unions so as to lower the minimum trade union membership requirement set at 100. The Committee notes the Government's indication that this requirement concerns establishment of trade union confederations and not of primary trade unions. The Government provides examples of primary trade unions with a membership below 100 persons. The Committee notes that, according to section 2(3) of the Law, trade unions can be established at any enterprise, institution, organization and other places of work, and that, according to section 2(6), "a trade union should be formed on a sectoral, territorial and other basis of the occupational nature". According to section 2(7), "trade unions are entitled to form primary trade unions at the enterprises, institutions and other places of work", and "nation-wide trade union organizations and associations (federations) ... regional, district, town trade union organizations and associations, as well as trade union organizations and associations and the enterprises and institutions". The Committee understands that section 2(9) refers to trade unions and not primary trade unions, which are regulated under section 3(9) and indeed require 15 members for their establishment. The Committee further notes that section 2(9) refers expressly to "trade unions", that is trade unions established on a sectoral, industrial, occupational and other levels pursuant to section 2(6) and not to "confederations of trade unions". The Committee considers that the minimum requirement of 100 workers to establish unions by branch of activity, occupation or for various occupations is too high and should be reduced. ***The Committee therefore once again requests the Government to provide information with its next report on the measures taken or envisaged to amend section 2(9) of the Law on trade unions so as to lower the minimum trade union membership requirement and, in the meantime, to indicate the impact of this provision on the establishment of trade unions at the branch or sectoral levels, including information on the number of such trade unions and their respective membership.***

Labour Code. The Committee had previously noted section 49(5) of the Code providing that, after the warning strike, the parties shall participate in the amicable settlement procedures pursuant to the Labour Code. The Committee had noted, however, that the Labour Code did not provide for such a procedure and requested the Government to give consideration to appropriate mechanisms of conciliation, mediation or voluntary arbitration instead. The Committee notes that, according to the Government, amicable settlement procedures are provided for in section 48 of the Code. The Committee notes that, under this section, such procedures involve: (1) a written notice of commencement of the amicable procedure reflecting the grounds of dispute and claims by one party; (2) a review of the notice by the other party and its reply; and (3) written decision by the representatives of the parties, which would become a part of the existing contract of employment. If no agreement has been reached within 14 days, the "other party is entitled to apply to court or arbitration" (section 48(5)). The Committee considers that the legislation could establish specific mechanisms to facilitate dispute settlement between the parties. Such procedures could involve a neutral and independent third party, in whom the parties have confidence, and who could facilitate breaking a stalemate which the parties are unable to resolve themselves. ***Noting that in its report the Government recognizes the need to develop mechanisms of conciliation and mediation to help reduce the incidence of disputes, the Committee requests the Government to indicate the concrete measures taken to that end.***

With regard to section 48(5) of the Code, according to which, if an agreement is not reached within 14 days, one of the parties is entitled to submit the dispute to the court or arbitration, the Committee had recalled that a provision which permitted either party unilaterally to submit the dispute for compulsory arbitration effectively undermined the right of workers to call a strike. The Committee requested the Government to take the necessary measures to amend this provision so as to ensure that recourse to arbitration is limited only to situations where the right to strike can be restricted or banned, that is in: (1) essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population); (2) the public services only for public servants exercising authority in the name of the State; or (3) in the event of an acute national emergency. The Committee notes the Government's indication that recourse to the court of arbitration is not compulsory and an employee can declare a strike regardless of whether an appeal was filed or not. The Committee understands that, under section 48(5), the results of the arbitration (or court) procedure are compulsory and would therefore render meaningless the right to strike. ***The Committee***

therefore reiterates its previous request and asks the Government to indicate measures taken or envisaged to amend section 48(5) of the Code.

The Committee had also noted section 49(8) of the Code, which provided that a strike could not continue for more than 90 calendar days. The Committee notes that, in the Government's opinion, this provision is in conformity with the Convention, as the latter does not provide for the right to hold strikes of unlimited duration. With regard to the duration of the strike, the Committee considers that a legislation limiting duration of the strike to 90 days seriously undermines one of the essential means through which workers and their organizations may promote and defend their economic and social interests. ***The Committee considers that the right to strike should not be restricted though predetermined limitation on the duration imposed by the legislation and requests the Government to take the necessary measures to repeal this provision.*** The Government may wish to consider, however, establishing a system of negotiated minimum services when dealing with a strike in non-essential services, which due to its extent and duration endangers the normal living conditions of the population.

The Committee had further requested the Government to amend section 51(2) of the Code, which prohibited strikes in sectors where "work is impossible to suspend due to the technological mode of work". Instead of prohibition of strikes in such services, the Committee suggested establishing a system of minimum services. The Committee notes the Government's indication that section 51(2) sets the minimum services requirement. The Committee points out, however, that this provision refers to the prohibition of strikes, without any reference to the system of minimum services and conditions thereof. With regard to the minimum service, the Committee recalls that such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 161). ***The Committee therefore once again requests the Government to amend section 51(2) of the Code taking into account the above principle and to indicate measures taken or envisaged in this respect.***

Finally, the Committee had requested the Government to amend section 51(4) and (5) of the Code providing that a strike by employees informed about termination of their contract before the dispute arises is illegal and that, if the right to strike arises before the termination of the time-based contract, the strike is considered illegal after the expiration of the term of the contract. The Committee notes that the Government confirms that after the termination of the labour contract the strike is considered illegal and indicates that there is no need for an amendment of the Code in this regard. The Committee draws the Government's attention to the situations (mentioned above) when the right to strike can be restricted or prohibited. It notes furthermore that the prohibition imposed on workers in section 51(4) and (5) would run counter to the workers' right to go on sympathy and protest strikes, which, according to the Government's indication, are legal under the national legislation. ***The Committee therefore requests the Government to take the necessary measures in order to amend section 51(4) and (5) so as to bring it in line with the above principle and to indicate measures taken or envisaged in this respect.***

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

The Committee notes the comments made by the Georgian Trade Union Confederation (GTUC) in a communication dated 27 August 2008, the observations made thereon by the Georgian Employers' Association (GEA), as well as the Government's reply. The Committee also notes that the GTUC submitted allegations referring to the same matters to the Committee on Freedom of Association. It further notes the comments of the International Trade Union Confederation (ITUC) submitted in a communication dated 26 August 2009 referring to the same issues as well as to the matters previously raised by the Committee.

The Committee recalls that it had previously expressed its concern at the several provisions of the Labour Code adopted in 2006. In particular, the Committee considered that the Labour Code did not provide for an adequate protection against anti-union discrimination and meaningful promotion of collective bargaining. It notes in this respect, the discussion that took place in the Conference Committee on the Application of Standards in June 2008, which considered that a tripartite round table to address these issues in a context of full dialogue together with ILO technical assistance, could facilitate further progress on matters relating to the promotion of collective bargaining and the protection of the right to organize, both in law and in practice.

The Committee notes from the Government's report that a memorandum was signed between the Ministry of Health, Labour and Social Affairs (MoHLSA), the GTUC and the GEA with a view to institutionalizing social dialogue in the country. Since then, the social partners have been regularly holding sessions to discuss issues concerning the labour

legislation with an emphasis on the issues of compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98. The Committee further notes with *interest* that, in line with the conclusions of the Conference Committee, over the course of 2009, the ILO has been providing technical support to the tripartite constituents to advance the process of dialogue and the review of the labour legislation. The Committee further notes with *interest* the holding in October 2009 of an ILO tripartite round table in Tbilisi which discussed the current status of the national labour legislation, application of Conventions Nos 87 and 98 and promotion of tripartism in Georgia. The Committee also notes with *interest* Decree No. 335 of 12 November 2009 issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and recommendations of the Committee and to propose the necessary amendments. ***The Committee hopes that any proposed amendments will take into account its following comments and requests the Government to provide information on the developments in this regard.***

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. The Committee had previously noted that section 11(6) of the Law on trade unions and section 2(3) of the Labour Code prohibited, in very general terms, anti-union discrimination, and did not appear to constitute sufficient protection against anti-union discrimination at the time of recruitment of workers and at the time of termination of their employment. In particular, the Committee had noted that, pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant and considered that the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities. The Committee had also noted that, according to sections 37(d) and 38(3) of the Code, the employer had a right to terminate a contract at his/her initiative with an employee, provided that the employee was given one month's pay, unless otherwise envisaged by the contract. The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, as well as the absence of provisions regulating cases of anti-union dismissals, the Labour Code did not offer sufficient protection against anti-union dismissals. The Committee notes that the Government refers to the general prohibition of anti-union discrimination provided for in article 26 of the Constitution, section 11(6) of the Law on trade unions and section 2(3) of the Labour Code and considers that the legislation is in compliance with the Convention. The Government indicates nevertheless that the tripartite working group will review the legislation as necessary. With regard to the protection at the time of recruitment, the Committee is of the opinion that, since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti-union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-recruitment should be made available upon request. With regard to the termination of employment, the Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pay the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient under the terms of *Articles 1 and 3* of the Convention. ***The Committee therefore trusts that the necessary measures to revise sections 5(8), 37(d) and 38(3) of the Labour Code will soon be taken so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination taking into account the principles above. It requests the Government to provide information on the measures taken or envisaged in this respect.***

The Committee notes article 42 of the Code of Administrative Breaches and section 142 of the Criminal Code imposing penalties for violation of the labour legislation. ***The Committee requests the Government to indicate the form of compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc.***

Article 2. Protection of workers' organizations against acts of interference by employers. With regard to the Committee's previous request to provide for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, the Committee notes the Government's statement that section 42 of the Code of Administrative Violations punishes violations of labour legislation and labour protection rules by a penalty equivalent to a minimum of 100 times the labour remuneration and that the same violation committed within one year following the imposition of an administrative penalty is punishable by a penalty equivalent to 200 times the labour remuneration.

Article 4. Collective bargaining. The Committee had previously noted that, according to section 13 of the Labour Code, the employer (unilaterally) is authorized to specify the duration of a business week, the daily schedule, shifts, the duration of breaks, the time and place of remuneration payment, the duration of and the procedure for granting a leave and unpaid leave, the rules for complying with labour conditions, the type and the procedure for work-related incentives and responsibilities, the procedures for consideration of complaints/applications and other special rules subject to the specifics of the business of the organization. The Committee notes the Government's indication that an employer is authorized to introduce internal operation rules only if working conditions are not regulated by a labour agreement (either individual or collective) and that if working conditions are regulated by a labour agreement, such an agreement prevails over any other internal rules.

The Committee had previously noted that sections 41–43 of the Labour Code seemed to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers, including as few as two workers. The Committee notes that the Government points out that Convention No. 98

does not stipulate that collective agreements must prevail over individual agreements and confirms that, under the national legislation, agreements concluded with trade unions and agreements with non-unionized workers are treated equally. The Government emphasizes that, under the national legislation, the right to bargain collectively is not solely a trade union prerogative; other groupings of employees can also engage in negotiations with an employer. The Committee finds it difficult to reconcile the equal status given in the law to these two types of agreement with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. The Committee draws the Government's attention to the Collective Agreements Recommendation, 1951 (No. 91), which emphasizes the role of workers' organizations as one of the parties in collective bargaining. ***Considering that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, runs counter to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff. The Committee requests the Government to indicate any developments in this regard.***

The Committee notes the information provided by the Government according to which most of the Georgian state institutions and companies have collective agreements with trade unions. ***The Committee requests the Government to indicate the number of collective agreements concluded in the country within the next reporting period and to provide statistics in this regard in relation to the private sector.***

Germany

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 26 August 2009 on the application of the Convention.

Article 3 of the Convention. The Committee recalls that it has been requesting for a number of years the adoption of measures so as to recognize the right of public servants ("Beamte" including postal workers, railway employees and teachers among others) who are not exercising authority in the name of the State, to have recourse to strike action. In this respect, the Committee had noted in several of its previous comments that innovative developments took place with a view to devising draft legislation on the comprehensive modernization of the law governing civil servants, in collaboration with the trade unions concerned, in order to gain broad support for the considerable changes in conditions of employment involved in the new draft legislation. The Committee notes that the Government indicates in its report that there have been no changes since the previous report.

The Committee once again recalls that it has always considered that the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. While accepting that the right to strike may be restricted or even prohibited in the public service, the Committee has clearly established that such a limitation may be applied only in the case of public servants exercising authority in the name of the State. In the Committee's view, postal workers, railway employees and teachers among others are not included in this category and should therefore have the right to strike, although the maintenance of a minimum service may be foreseen in the event of strikes in these sectors.

In light of the foregoing, the Committee once again requests the Government to take the necessary measures to ensure that public servants who do not exercise authority in the name of the State can have recourse to strike action in defence of their economic, social and occupational interests. The Committee requests the Government to indicate in its next report any concrete measures adopted in this respect.

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

The Committee takes note of the comments by the International Trade Union Confederation (ITUC) dated 26 August 2009 on the application of the Convention.

Several of the Committee's previous comments concerned the procedures through which the conditions of employment of civil servants, including teachers, are determined. The Committee notes that the ITUC refers to the lack of further progress on the modernization of the civil service legislation under the present Government. The Committee notes that the Government, in its report, indicates that it is the responsibility of the Länder and not of the federal Government to employ teachers and to decide whether they should be hired as civil servants or under a collective agreement and that to compensate for civil servants' lack of strike rights and inability to enter into wage negotiations, the umbrella organizations

of the civil servants' unions take part in the initial preparation of the general regulations pertaining to civil servant law, at the federal level under section 118 of the federal law on civil servants (BBG), and in the Länder under section 53 of the law on the status of civil servants. The Committee also notes that the Government indicates that in the case of the recent reform laws (the law reforming the public service law (Dienstrechtsneuordnungsgesetz) and the law on the status of civil servants (Beamtenstatusgesetz)) the consultative procedure was respected and umbrella organizations were involved in the legislative process at an early stage.

The Committee once again recalls that it is contrary to the Convention to exclude from the right to collective bargaining those categories of public employees who are not engaged in the administration of the State. In this respect, the Committee considers that teachers carry out different duties from officials engaged in the administration of the State, and therefore of the "BUND" and should enjoy the guarantees provided for under *Article 4 of the Convention*. The Committee recalls that negotiations need not necessarily lead to legally binding instruments so long as account is taken in good faith of the results of the negotiations in question.

In the light of the above comments, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated to study, together with the trade union organizations concerned, ways in which the current system could be developed so as to ensure a proper application of the Convention.

Ghana

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

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 26 August 2009, particularly concerning the persistent refusal of some employers to the unionization of their employees in export processing zones, a current dispute concerning unionization in the export processing zones pending before the National Labour Commission and instances of anti-union discrimination. *The Committee requests the Government to respond to the comments of the ITUC.*

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

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

Greece

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

Article 4 of the Convention. The Committee notes the observations dated 20 February 2009 from the Greek Federation of Bank Employee Unions (OTOE) on the application of the Convention. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association relating to Case No. 2502. The Committee notes that its attention has been drawn by the Committee on Freedom of Association and the OTOE to two legislative aspects:

Intervention by the authorities concerning the provisions of collective agreements relating to supplementary pension funds. The Committee notes that the OTOE's observations relate to Act No. 3371/2005, which permits the unilateral denunciation of collective agreements concerning the supplementary pension funds of bank employees and provides that the private funds in question established under collective agreements will be automatically transferred to a single public fund. The Committee notes the 2007 conclusions of the Committee on Freedom of Association, according to which "state bodies should refrain from intervening to alter the content of freely-concluded collective agreements. Giving by law a special incentive encouraging one of the parties to these agreements to denounce or cancel collective agreements by which pension funds were set up constitutes interference with the free and voluntary nature of collective bargaining. ... Nothing in Convention No. 98 enables the Government to step in and unilaterally determine these issues, much less to unilaterally determine that the assets of a private pension fund, established by collective agreement, can be automatically transferred to a public pension scheme. The establishment of the funds through collective bargaining as well as trade union participation in the administration of these funds constituted a trade union activity with which the Government unduly interfered". The Committee further notes that a number of court decisions have been issued concerning the application of Act No. 3371/2005, and these have reiterated that the unilateral denunciation of collective agreements was null and void. The Committee observes that, in the light of the above, it has been asking the Government for a number of years to hold full consultations on the future of the supplementary pension funds of bank employees and of their assets so that the related issues are resolved by mutual agreement of the parties to the collective agreements by which the supplementary pension funds were set up (the banks and the representatives of the bank employees), and to amend Act No. 3371/2005 in the light of any agreement reached.

Exclusion of retirement-related matters from the scope of collective bargaining. The Committee notes that Act No. 1876/1990 on free collective bargaining and other provisions states, in section 2(3), that retirement-related matters are excluded from the scope of collective agreements. The Committee notes the conclusions of the Committee on Freedom of Association in Case No. 2502, which emphasize that supplementary pension schemes can legitimately be considered as benefits that may be the subject of collective bargaining, and asks the Government to take all the necessary measures as soon as possible to amend section 2(3) of Act No. 1876/1990 so as to ensure that supplementary pension schemes are not excluded from collective bargaining. The Committee fully endorses this recommendation.

The Committee notes with *interest* the recent communication from the Government dated 6 November 2009 indicating that, owing to a change of majority following the legislative elections of October 2009, its position now coincides with that of the OTOE and new consultations are planned with the OTOE and the Hellenic Bank Association with a view to finding an acceptable solution for all parties regarding the problems posed by Act No. 3371/2005 and Act No. 1876/1990. ***The Committee encourages the Government to make every possible effort to settle this dispute, which goes back to 2005, and hopes that it will soon be able to report on progress made with regard to the requested legislative amendments. The Committee requests the Government to indicate any new developments in this respect.***

Observations from the ITUC. The Committee notes the communication from the ITUC dated 26 August 2009 denouncing the violent assault on trade union leader Constantina Kuneva, general secretary of the Cleaning Industry Union of the Athens Region (PEKOP). ***Noting the ITUC's allegation that this assault was directly linked to her trade union activities, the Committee requests the Government to provide information on any investigation made into the assault on the PEKOP general secretary and the results thereof.***

Guatemala

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

The Committee notes the Government's report, the discussion in the Conference Committee on the Application of Standards in 2009 and the ten cases that are before the Committee on Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2700, 2708 and 2709). In its previous observation, the Committee noted the report of the high-level mission which visited the country in April 2008 and the tripartite agreement signed during the mission with a view to improving the application of the Convention. The Committee notes the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009, as well as a final mission to provide assistance to the Tripartite Committee for the Formulation of the Road Map on the measures requested by the Committee on the

Application of Standards (this mission took place from 16 to 20 November 2009). The Committee notes that in the end there was no consensus between the social partners and the Road Map was prepared solely by the Government.

The Committee also notes the detailed comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2008 and by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence Workers' Rights (MSICG) in defence of the rights of workers in a communication dated 28 August 2009 which relate to issues already raised by the Committee, as well as serious acts of violence against trade union members and leaders, obstacles to the process of registering trade union organizations, difficulties in the exercise of the right of assembly of trade unions and other alleged violations of the Convention. *The Committee hopes that in the context of the tripartite agreement concluded during the high-level mission all of the matters raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSITRAGUA) and the MSICG will be examined and addressed in a tripartite context by the Government and the social partners in the framework of the Tripartite Commission on International Labour Affairs, as well as the Legal Reform Subcommittee and the mechanism for rapid intervention in cases.*

Acts of violence and impunity against trade unionists

The Committee recalls that for several years it has been noting in its observations acts of violence against trade unionists and impunity in this respect, and that it had asked the Government to indicate developments in this respect.

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

The Committee notes that both the ITUC and the MSICG in their comments place emphasis on grave acts of violence against trade union leaders and members during the period 2008–09 and report a climate of fear and intimidation with a view to undermining existing trade unions and preventing the establishment of new ones. Both trade union organizations also emphasize the deficiencies in the labour inspectorate and the crisis of the judicial system.

The Committee notes that in its statements to the Conference Committee and its report the Government indicates that: (1) the State of Guatemala expresses special interest in guaranteeing full respect for the human rights of trade unionists, and of all Guatemalan nationals in general, as well as reiterating the Government's commitment to combating impunity through the improvement of the judicial system and the labour administration system within the executive authority; (2) the Tripartite Commission on International Labour Affairs met the Public Prosecutor and the Attorney-General with a view to requesting the establishment of a public prosecution service for crimes against journalists and trade unionists, with support being expressed for this request by each of the representatives of all sides; it had also met the Council of the Office of the Attorney-General, together with the Public Prosecutor, to discuss the subject of violence not only against trade unionists, but also against the lawyers representing trade unionists and against workers in general; (3) as a strategy of inter-institutional coordination and with a view to supporting the conduct of investigations, in November 2008 two meetings had been held with representatives of the Office of the Attorney-General, the Ministry of the Economy, the Ministry of Government, the Ministry of Foreign Affairs and the Supreme Court of Justice. The meetings had concluded that, in view of the existence of the Multi-institutional Commission for Industrial Relations in Guatemala, established in 2003, by Government Decision No. 430-2003, it was adequate to reactivate the Multi-institutional Commission to follow up cases of violence against trade unionists and other matters relating to industrial relations in the country, and accordingly to collaborate with the Office of the Attorney-General, and particularly with the Office of the Prosecutor General for the investigation and resolution of the cases; (4) during 2009, the Multi-institutional Commission for Industrial Relations in Guatemala had met regularly, holding four meetings between 1 January and 30 July 2009; (5) progress has been made in the criminal investigations of certain murders; for example, on 10 January 2009, a person was apprehended who had been charged with committing the murder of the trade union leader, Pedro Zamora, and on 15 April 2009 the public prosecutor lodged criminal charges with the judiciary, with the requirement to hold a trial; during the hearing on 4 June 2009, the magistrate found that there was sufficient evidence against the trade union member to conclude the preparatory stage and begin court proceedings; in the upcoming months, the accused will be tried in the criminal courts; and (6) there is no criminalization or stigmatization of trade union activity. The Government attaches a copy of the records of the meetings of the National Tripartite Commission. In a recent additional report, the Government indicates that the accused was not convicted by the court of the murder of the trade union leader Pedro Zamora and that the Office of the Attorney-General will appeal against the ruling.

The Committee refers to the conclusions of the Committee on the Application of Standards, in which it noted with concern numerous and serious acts of violence against trade unionists, as well as the inefficiency of the criminal proceedings related to these violent acts, giving rise to a grave situation of impunity and the excessive delays in legal proceedings. It also noted the allegations concerning the lack of independence of the judiciary. The Committee on the Application of Standards noted the high-level mission which visited the country in 2009, which had emphasized that, while additional resources had been allocated to the investigatory mechanisms to combat impunity, further measures and

resources were clearly necessary to that effect. In this connection, it observed with deep concern that the situation in relation to violence and impunity appeared to be worsening and it recalled with urgency the importance of ensuring that workers are able to carry out their trade union activities in a climate free from violence, threats and fear. The Committee on the Application of Standards highlighted the need to make meaningful progress in sentencing in relation to crimes of violence against trade unionists and in ensuring that, not only the direct authors of the crime, but also the instigators were punished. The Committee on the Application of Standards observed in this respect the need for the continued strengthening of and specific training for those responsible for investigating violence against trade unionists, as well as an improved collaboration of the various bodies mandated in this regard. The Committee on the Application of Standards hoped that concerted efforts in this regard would finally permit meaningful progress to be made in bringing an end to impunity.

Further noting with concern the important allegations of an anti-union climate in the country and the stigmatization of trade unions, the Committee on the Application of Standards recalled the intrinsic link between freedom of association and democracy. It further noted that, beyond the question of impunity, the conclusions of the high-level mission focused on the need for concerted action in relation to the effectiveness of the judicial system, the effective respect for freedom of association by all parties and the effective functioning of the National Tripartite Commission. In particular, the slowness and lack of independence of the judiciary has given rise to significant challenges to the development of the trade union movement. The Committee of Experts shares the opinion of the high-level mission of 2009 concerning the importance of adopting the necessary measures to ensure that awareness is raised to an adequate level concerning the fundamental role of trade unions in the social and economic development of society and their close links with the consolidation of democracy. For this reason, it is important for measures to be taken to actively prevent any stigmatization of trade unions and the trade union movement.

The Committee on the Application of Standards observed that, despite the seriousness of the problems, there had been no significant progress in the application of the Convention, in legislation or in practice. It urged the Government to redouble its efforts with respect to all the above matters and to adopt a complete, concrete and innovative strategy for the full implementation of the Convention, including through the necessary legal reforms, the strengthening of the programme for the protection of trade unionists and witnesses, and of the measures to combat impunity and the provision of the financial and human resources necessary for the labour inspectorate and the investigative bodies, such as the Office of the Public Prosecutor. The Committee on the Application of Standards expected, with the assistance and necessary technical cooperation of the Office, that the Government and the social partners would be in a position to agree upon a road map with clearly determined time frames for the necessary action in respect of all the above points. The implementation of this road map and any progress made should be reviewed periodically by the ILO. More tangibly, the Committee on the Application of Standards requested the Government to provide a detailed report to the Committee of Experts containing information on the tangible progress made in legislative reforms, the measures taken to combat impunity and the creation of a conducive environment for trade union movement and it expressed the firm hope that it would be in a position next year to note substantial improvements in the application of the Convention.

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

The Committee on Freedom of Association regretted the very limited information provided by the Government on a very small number of allegations and concluded that these replies by the Government were an illustration of the excessive slowness of the procedures outlined by the complainant organizations and the resulting climate of impunity.

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

In view of all of the above, the Committee concludes that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and members and to combat impunity and that the conclusion of the Committee on the Application of Standards continues to be globally valid concerning the lack of significant progress

despite the repeated ILO missions and the very clear and firm recommendations of the ILO supervisory bodies. In the first place, the Committee emphasizes that the Government has only replied to a very small number of allegations of violence submitted to the Committee on Freedom of Association in Case No. 2609, despite their extreme gravity. Secondly, the Road Map on all the measures requested by the Committee on the Application of Standards in June 2009 was only prepared in the third week of November 2009, days before the meeting of the Committee of Experts. Thirdly, the Government emphasizes in its report the recent reactivation of the Multi-institutional Commission (which until recently dealt with issues of anti-union violence), the request for a special unit of the public prosecution service dedicated particularly to trade unionists (without indicating the decision that was adopted), although very little progress has been made in a very low number of cases of violence against trade unionists.

The Committee is bound to note that the situation of violence against trade unionists, the shortcomings in the operation of the criminal justice system and the situation of impunity have been further aggravated. The high-level mission of February 2009 noted that in recent years, despite the higher level of violence committed against trade unionists (according to information from Government officials), there have not been effective prosecutions or convictions. The high-level mission received testimony of the general lack of independence of the judicial authorities and Government bodies in relation to criminal cases. The Government indicated to the high-level mission that the situation of violence was generalized and denied the existence of a state policy against the trade union movement.

The Committee notes that the high-level mission of February 2009 determined that a significant increase is required in the capacity and budget of the Office of the Public Prosecutor of the Nation, with a view to increasing the number of prosecutors and investigators. The mission proposed that additional resources should be allocated to existing programmes for the protection of trade unionists (there are currently 44 trade unionists benefiting from protection measures) and witnesses, and that these programmes should be appropriately coordinated. The high-level mission considered that measures need to be taken to actively combat any stigmatization of trade unions and the trade union movement implied by the association of trade union activities with criminal acts. The high-level mission indicates that the trade union membership rate and the number of collective agreements is very low.

The Committee notes the Road Map formulated by the Government after holding consultations in the National Tripartite Commission, in which it was emphasized that consensus was not reached between workers' and employers' organizations. The Road Map and the Government's introduction are summarized below:

Introduction and background

In June 2009, when the 98th Session of the International Labour Conference was held, the Ministry of Labour and Social Insurance (MTPS) of Guatemala undertook to prepare a road map to address the observations of the Committee of Experts on the Application of Conventions and Recommendations of the ILO.

On 2 July 2009, the MTPS requested technical assistance from the ILO for the preparation of a time-bound road map for the adoption of the necessary measures to achieve effective compliance with ILO Convention No. 87 in Guatemala.

In a response to this request, the first outline of the road map was received from the International Labour Standards Department of the ILO, which was submitted for consideration by the Tripartite Commission on International Labour Affairs in Guatemala in the context of five meetings. It was only examined in three sessions, without the road map being formulated and approved because, although the representatives of workers and employers expressed their viewpoints, they did not reach consensus. They were also convened to a meeting on 19 November at which the sole item on the agenda was the road map.

In view of this situation, the High Office of the Ministry of Labour and Social Insurance of Guatemala took the decision to formulate the road map through which the State of Guatemala undertakes to implement the activities set out therein.

Strategic Objective I: Provide an effective response to all the cases submitted to the ILO Committee on Freedom of Association

The State of Guatemala, in the same way as many countries in the region, has historically been singled out on many occasions concerning the violation of the right to organize and freedom of association, which are protected by ILO Conventions Nos 87 and 98.

In view of this situation, the current Government of the Republic of Guatemala considers it a priority to address the observations, recommendations and complaints relating to freedom of association which have been referred to the ILO supervisory bodies, particularly those relating to the legal status of persons who due to the exercise of their right to organize are subject to persecution, violence or intimidation.

We are aware of the need for greater attention to be paid to the follow-up investigation and conclusion of cases of violence against trade unionists, and we therefore consider it necessary to begin with affirmative action involving an effective and periodic report to the Committee on Freedom of Association (CFA), including measures of inter-institutional coordination with a view to the exchange of pertinent and relevant information, thereby ensuring that it is brought to the knowledge of the ILO supervisory bodies.

Accordingly, we propose the strengthening of the prosecution unit of the Directorate of International Affairs, through the assignment of qualified personnel devoted exclusively to this subject, with the necessary resources to carry out their activities and provide an immediate response to the specific situation of each of the cases under investigation.

It is also our wish to formulate an annual schedule of meetings between the Ministry of Labour (International Labour Affairs Unit) and the Office of the Attorney-General, with a view to establishing a permanent framework for action between the two institutions.

The Directorate of International Labour Affairs will also undertake an assessment of the cases which have been concluded to bring them to the knowledge of the CFA, as well as of specific cases of violence against trade unionists, with a view to the establishment of a mechanism for their appropriate follow up in the relevant procedural bodies and to provide relevant and regular responses to the CFA of the ILO.

Strategic Objective II: Strengthening inter-institutional coordination machinery

Based on experience, we consider it necessary to maintain constant and permanent communication in a flexible and effective manner with Government institutions that are closely involved in labour matters. For this purpose, the Multi-institutional Labour Commission for Labour Matters in Guatemala is being reactivated and a list will be drawn up of the bodies which are not yet included in the above Commission, but which are closely related to the subject matter.

Through this new system, the intention is to improve coordination between this Ministry and the related Government institutions, as a basis for addressing labour disputes appropriately and the strengthening of industrial relations in the country.

By way of illustration, it should be noted that recent separate meetings have been held with the Advocate-General of the Nation, the Public Prosecutor and the Attorney-General, the President of the Supreme Court of Justice, accompanied by the four magistrates of the Chamber for the Protection of Constitutional Rights, whose remit includes labour courts, and a magistrate from the Civil Chamber, officials who on 13 October 2009 took office for a period of five years and the Minister of Government. All of these officials were informed of the intention to address the observations, recommendations and complaints submitted against the State of Guatemala in labour matters, and they offered full cooperation.

Strategic Objective III: Addressing the recommendations of the CEACR for legislative reforms

A Lawyers' Commission of the MTPS has been appointed with a view to analysing the feasibility of the recommendations for legislative reforms proposed by the CEACR. The opinion of the Lawyers' Commission was communicated to the former ILO technical assistance mission.

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

In addition to the above, an analysis has also been undertaken of the manner in which the Penal Code penalizes the right to strike of workers and, taking into account the CEACR's recommendations, there is now a study to be submitted to the state bodies for decision.

The strategy that will be applied to achieve the expected objectives has also been planned.

Attached is a matrix containing the Road Map to address the observations and recommendations of the ILO supervisory bodies with regard to Conventions Nos 87 and 98 on the right to organize, freedom of association and collective bargaining.

The Committee observes that the measures outlined in the Road Map are either to be implemented on a constant basis or are subject to time limits, which mainly expire on 31 December 2009, or before that date, except for the submission of draft legal reforms to the state bodies (the time limit for which is set at 28 February 2010) and certain aspects of the measures for the coordination of state bodies in relation to combating violence.

The mission which provided assistance for the formulation of the Road Map emphasizes in its report with regard to the issue of anti-trade union violence: (1) the commitment of the Office of the Attorney-General to reinforce measures for the investigation of the complaints received, and in general of any complaint relating to punishable offences against trade unions, and to submit regularly to the Ministry of Labour and Social Insurance the available information concerning such complaints, so that it is able to reply to the supervisory bodies and particularly the Committee on Freedom of Association; the public prosecution service indicates difficulties relating to the lack of cooperation of those lodging complaints; (2) the offer of cooperation from the Ministry of Government, both for the protection of persons under threat and in support of the action of the labour inspectorate; (3) the offer of cooperation of the new magistrates in the Supreme Court of Justice to alleviate the expenditure and efforts of the Ministry (inspectors) particularly in procedures to penalize offences; (4) the new meeting of the Multi-institutional Commission established by the Ministry to strengthen the links between the officials represented on the Commission. The meeting was attended by the new magistrate in the Supreme Court of Justice who is responsible for labour matters, the training of judges and the modernization of labour procedures; and (5) the prosecutors provided the following figures for cases concerning crimes against trade unionists: 31 in 2007, 32 in 2008 and 48 in 2009. The Ministry of Government indicated that a series of trade unionists are currently receiving personal or zoned police protection and indicated its readiness to provide support through the police for action by inspectors, when so requested.

With regard to the problem of impunity, the report of the mission indicates that the problem of impunity in Guatemala is seen as a worrying national problem that is more practical than legislative in its nature. The press frequently reports murders, particularly of bus drivers, without those who committed them being arrested and brought to trial. This is due, on the one hand, to the precarious nature of the system of investigation and, on the other, the situation of the judiciary. The International Commission against Impunity in Guatemala (CICIG) indicated in its report that "Currently in Guatemala the conditions do not favour the existence of independent and impartial judges". Nevertheless, steps have recently been taken which could be significant: (a) the resignation of the Prosecutor-General of the Republic and the Attorney-General, at the request of the President of the Republic, and the appointment of a new Prosecutor-General and Attorney-General, who is a career official in the public prosecution service, on 30 July 2009, after first consulting the CICIG; and (b) the renewal of the magistrates of the Supreme Court of Justice on 13 October 2009, following a rigorous selection process, on which, among other bodies, views were expressed by the Commissioner of the International Commission against Impunity in Guatemala (CICIG).

The Committee requests the Government to: (1) ensure the protection of trade unionists who are under threat of death; (2) convey to the public prosecutors and the Supreme Court of Justice its deep concern at the slowness and ineffectiveness of the judicial system and its recommendation concerning the need to elucidate murders and crimes committed against trade unionists with a view to penalizing those responsible; (3) allocate sufficient resources for these

objectives, and consequently increase human and material resources, ensure coordination between the various state bodies who may be called upon to intervene in the judicial system and train investigators; and (4) give priority to these matters in Government policy. The Committee invites the Government to have recourse to ILO technical assistance to resolve the grave problem of criminal impunity with regard to crimes against trade unionists.

The Committee requests the Government to provide regular information on the attainment of the objectives of the Road Map and the administrative, judicial and legal reforms set out therein. The Committee trusts that the objectives and measures envisaged in the Road Map will result within a reasonable period of time in crucial improvements with regard to the serious problems raised.

Finally, the Committee once again expresses its *deep concern* at the acts of violence against trade union leaders and members and recalls that trade union rights can only be exercised in a climate that is free of violence. *The Committee expresses the firm hope that the Government will continue to take measures to guarantee full respect for the human rights of trade unionists and will continue providing protection measures to all trade unionists who so request. The Committee also requests the Government to take the necessary measures without delay to conduct the necessary investigations with a view to identifying those responsible for acts of violence against trade union leaders and members, so that they are prosecuted and punished in accordance with the law. The Committee requests the Government to keep it informed of any developments in this respect. The Committee nevertheless expresses its concern that the information provided by the Government only exceptionally reports cases in which those responsible have been identified and punished, and emphasizes the need to considerably reinforce the criminal justice system.*

Legislative problems

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

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

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

The Committee has received the report of the first technical assistance mission (November 2008) and of a second technical assistance mission (January 2009), following up the high-level mission (April 2008), and of a technical assistance mission carried out in November 2009 to prepare the Road Map of measures to give effect to the Convention

called for by the Conference Committee on the Application of Standards. It observes that the Road Map includes deadlines for the submission of draft legislation covering the legislative reforms requested by the Committee of Experts. It recalls in this respect that a series of proposals to address the legislative problems raised were prepared by the National Tripartite Commission along with the ILO technical assistance missions in the first quarter of 2009.

The Committee requests the Government to provide information on this matter and hopes to be able to note progress in the near future. The Committee firmly hopes that with the technical assistance that it is receiving, the Government will be able to provide information in its next report offering a positive assessment with regard to the various points mentioned.

Other matters

Export processing sector (maquilas). For many years, the Committee has been noting the comments made by trade union organizations on significant problems of application of the Convention in relation to trade union rights in export processing zones (*maquilas*). In its 2008 observation, the Committee noted the Government's indications that: (1) the General Labour Inspectorate of the Ministry of Labour and Social Insurance was addressing complaints made in connection with the export processing sector, as well as developing routine inspections through the Export Processing Inspection Unit; (2) in 2007, 19 enterprises in the sector were closed and ten were closed in 2008; (3) in 2008, a procedure of administrative conciliation allowed the payment of benefits to workers affected by the closures in the case of ten export processing enterprises, and the workers who decided not to make use of the conciliation procedure and opted instead to take legal action received assistance free of charge from the Office of the Labour Ombudsman; (4) there are ten trade unions in the sector, with a total membership of 258 workers; (5) in 2007, ten complaints were dealt with relating to violations of freedom of association rights and in six cases a settlement was reached through conciliation, and in 2008, 17 complaints were dealt with relating to violations of Convention No. 87, and 16 are being processed; and (6) the training activities will continue on the rights established in Conventions Nos 87 and 98 for the export processing sector, for which the Government is relying upon technical support from the ILO.

The Committee notes that the Government confines itself in its report to indicating that, during the last half of 2008 and up to now (December 2009) 61 trade unions have been registered, together with 29 collective accords, but that it does not provide information on training activities in the field of trade union rights.

The Committee notes the recent comments of the ITUC according to which it is impossible to exercise the right to organize in export processing zones in view of the determined opposition of the employers. Only three unions have been established in the 200 export processing zones that exist, and the labour authorities are incapable of exercising control over the failure to comply with and the violations of the legislation in this sector.

The MSICG considers that the fact that it is impossible to establish organizations in export processing zones is a result of anti-union practices.

The Committee notes that, in its conclusions, the high-level mission of 2008 indicated that: "according to the Ministry of Labour and Social Insurance, there are seven collective accords in the export processing sector, but only two of them date from 2007. The remainder date from 2003 and before. With regard to trade union membership, according to the administrative authorities, there are six unions with 562 members in export processing zones, in a context of around 200,000 workers. In the view of the executive committee of the trade union movement, there are only two unions in this sector. Whatever the correct figure, there is clearly only a minimum level of trade union activity and collective bargaining in the export processing sector, thereby constituting a problem in the application of Conventions Nos 87 and 98". ***The Committee requests the Government to provide information on the exercise of trade union rights in practice in export processing zones (number of trade unions, number of Worker members, number of collective agreements and their coverage, complaints of violations of trade union rights, decisions adopted by the authorities and the number of inspections).***

Under these conditions, the Committee hopes that the Government will continue benefiting from technical assistance from the Office, so that the Convention is given full effect in the export processing sector, and that it will continue providing information on this matter. The Committee requests the Government to refer to the National Tripartite Commission problems which arise in relation to the exercise of trade union rights in the export processing sector and to provide information on any developments.

National Tripartite Commission. The Committee has received the reports on the work of the National Tripartite Commission between August 2008 and July 2009. The Committee notes that, according to technical assistance reports, this Commission is a valuable tool, although there are currently problems relating to the recognition by all concerned of the workers' representatives due to a division in UNSITRAGUA. Assistance needs to be provided to the Tripartite Commission for the preparation of the documents to be discussed and the management of meetings to facilitate the adoption of decisions or firm conclusions. ***The Committee endorses the opinion expressed in the technical assistance report and invites the Government to request technical assistance on this matter, as well as for the works of the Legal Reform Subcommittee, which has prepared the documents setting out the reforms requested by the Committee of Experts, and the functioning of the mechanisms for rapid intervention in cases of violations of trade union rights. The Committee requests the Government to continue providing information on the work of the National Tripartite Commission on International Labour Affairs, and that of the Legal Reform Subcommittee and the mechanism for***

rapid intervention in cases. The Committee expresses the firm hope that in the near future it will be able to note that significant progress has been made in the application of the Convention.

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

The Committee notes the Government's report, the discussion in the Conference Committee on the Application of Standards in 2009 and the ten cases that are before the Committee of Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2700, 2708 and 2709). In its previous observation, the Committee noted the report of the high-level mission which visited the country in April 2008 and the tripartite agreement signed during the mission with a view to improving the application of the Convention. The Committee notes the reports of the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009, as well as a final mission to provide assistance to the Tripartite Committee for the Formulation of the Road Map on the Measures Requested by the Committee of the Application of Standards (this mission took place from 16 to 20 November 2009). The Committee also notes the detailed comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2008 and by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) in defence of the rights of workers in a communication dated 28 August 2009 which relate to issues already raised by the Committee, as well as further anti-union dismissals, the formulation of "blacklists", acts of interference, violations of the right to collective bargaining and other alleged violations of the Convention. *The Committee hopes that, in the context of the tripartite agreement concluded during the high-level mission, all of the issues raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSITRAGUA) and the MSICG will be examined and addressed in a tripartite context by the Government and the social partners in the framework of the Tripartite Commission on International Labour Affairs, as well as the Legal Reform Subcommittee and the mechanism for rapid intervention in cases.*

The Committee recalls that for many years it has been referring to the following problems relating to restrictions on the exercise of trade union rights in practice:

- the excessive delays in procedures for the reinstatement of trade unions in accordance with rulings by judicial bodies and the utilization of *amparo* procedures (for the protection of constitutional rights); this is a general problem and the Committee has received information concerning an average of three years between the preliminary hearing and the trial, which may last for between six and seven years;
- the failure to comply with orders for the reinstatement of dismissed trade unionists;
- the slowness and ineffectiveness of procedures to impose penalties for breaches of labour legislation;
- the need to promote collective bargaining, especially in export processing zones;
- the need for the draft Code of Labour Procedures to be subject to in-depth consultation with the most representative organizations of workers and employers; and
- the Bill on Civil Service Reform (the Committee noted the Government's indication that the Bill had been delayed, but that in July 2008 an intersectoral dialogue forum was established with a view to obtaining a bill that is adapted to the specific needs of the sectors concerned).

The Committee notes that the communications of the ITUC and the MSICG confirm the persistence of these problems. The Committee notes the Government's indication that the subjects raised by the Committee have been discussed by the National Tripartite Commission for several years and that tripartite consensus has been achieved on some of them.

The Committee notes the Government's indication in its report: (1) of its will to undertake and reinforce affirmative action to seek effective machinery for the protection of the interests and rights of active subjects of industrial relations in Guatemala; (2) that the Tripartite Commission has undertaken an analysis of the cases brought against the State of Guatemala in the Committee on Freedom of Association and has agreed to seek technical assistance with a view to reducing the list of cases; and (3) that the Tripartite Commission has examined the draft texts of legal reforms based on the recommendations of the ILO supervisory bodies, denunciations of cases, etc.

Furthermore, in relation to these matters, the Committee noted previously that, under the auspices of the high-level mission in 2008, the Tripartite Commission concluded an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98, with the agreement calling for an examination to be carried out of the dysfunctions of the current labour relations system (excessive delays and procedural abuses, lack of effective application of the law and of penalties, etc.), and in particular of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members, as set forth in Conventions Nos 87 and 98, in the light of the technical considerations and substantive and procedural comments of the Committee of Experts. In this respect, the Government indicates that the Ministry of Labour and Social Insurance appointed a commission of lawyers under the Ministry of Labour with a view to formulating proposals for legislative reforms to the Labour Code, the Penal Code and the Act regulating the right to strike of State employees. The results of the work of this commission of lawyers have been forwarded to the members of the Tripartite Commission on International Labour Affairs for analysis and discussion.

The Committee has received the report of the first technical assistance mission (November 2008) following up the high-level mission (April 2008) and of a second technical assistance mission (January 2009), to which are attached the proposed legislative reforms that are before the National Tripartite Commission. The Committee firmly hopes that, with the technical assistance that it is receiving, the Government will be in a position to provide information in its next report on progress in relation to the various points referred to above.

Finally, the Committee notes the report of the high-level mission which visited Guatemala in February 2009, following the discussion in the Conference Committee on the Application of Standards in June 2008 of the application of Convention No. 87. The Committee welcomes the fact that the Government extended the terms of reference of the mission to problems relating to the application of Convention No. 98.

The Committee notes that in its report the high-level mission of 2009 reached the following conclusions:

Effectiveness of the judicial system

The issue of the effectiveness and finality of judicial procedures and compliance with court rulings constitutes the central issue of the frustration related to the effective protection of freedom of association, which affects all parties. A broad range of aspects needs to be addressed appropriately and adequately without delay. This includes the abuse of *amparo* proceedings and appeals (the revision of *amparo* proceedings is currently under examination), failure to comply with court rulings without fines or judicial penalties being applied and the incapacity of the courts to enforce the implementation of court rulings.

Effective implementation of freedom of association

Under these circumstances, the mission is bound to note the very low level of membership and of collective agreements and it notes the concerns expressed by workers' organizations concerning the existence of difficulties in practice for the establishment of trade union organizations at the enterprise level and greater obstacles in export processing zones. All the social partners raised the question of the need to improve labour inspection, including through an undertaking to increase its budget significantly so as to allow the recruitment of new labour inspectors and the payment of appropriate wages, as well as the need for capacity-building and other training activities.

Futhermore, there is a general consensus on the need to provide information to all the social partners in relation to collective bargaining in which the participants have an equivalent level of decision-making power with a view to promoting the effective recognition of this right.

The Committee expresses its **concern** at the very high number of allegations of anti-union dismissals and acts in violation of the right to collective bargaining made by the ITUC and the MSICG. The Committee appreciates the information provided by the Government concerning the establishment of eight further labour courts in the city of Guatemala, thereby increasing their number by 100 per cent.

Recalling that all of the problems raised are very serious, the Committee requests the Government, in consultation with the most representative organizations of workers and employers: to undertake the necessary procedural and substantive reforms to resolve cases of anti-union discrimination and the slowness of the labour courts (including more effective and rapid proceedings and more dissuasive penalties); to promote collective bargaining in view of the worrying figures for the collective accords that are in force (according to the Government, 58 collective accords were concluded between 2008 and 2009, as in Guatemala collective bargaining takes place at the level of the enterprise or government institution); and the adoption of measures to improve labour inspection and to enable the courts to enforce rulings without delay. ***The Committee requests the Government to provide information in this respect and hopes to be able to note significant progress in the near future.***

The Committee notes the Government's indication that 64 new unions and 33 new collective labour accords have been registered. ***The Committee requests the Government to continue providing information on the number of unions and of collective accords, the number of members and the complaints made in 2008 and 2009 to the labour inspection services concerning violations of trade union rights.***

Finally, the Committee notes the Road Map formulated by the Government to improve the application of Conventions Nos 87 and 98, the content of which is covered by the observation on Convention No. 87, and which includes objectives for legislative reforms and improvements in judicial procedures.

In view of the delicate situation relating to the application of the Convention, the Committee expresses the firm hope that the Government and the authorities in general will include compliance with the Convention among their highest priorities.

Guinea

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

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

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

- the need for measures to set up an independent body that has the trust of the parties and is able to rule promptly on difficulties encountered in defining the minimum service where the parties are unable to agree as to the minimum service in transport and communications (which are not deemed essential in the strict sense of the term); and

- the need for measures to ensure that compulsory arbitration (established in sections 342, 350 and 351 of the Labour Code) is restricted to cases where the two parties agree to request it, in essential services in the strict sense of the term, or in the event of acute national crisis.

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

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

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

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

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

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

The Committee takes note of the observations made by the International Trade Union Confederation (ITUC) concerning in particular any anti-union dismissals.

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

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

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

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

Guinea-Bissau

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

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) referring to the issues examined by the Committee.

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

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

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

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

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

Guyana

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

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

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

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

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

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

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

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

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

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

Haiti

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

The Committee notes the observations of the International Trade Union Confederation (ITUC), dated 29 August 2008 and 26 August 2009, concerning matters already raised by the Committee in its previous observation, in particular the difficulties in exercising trade union rights in the context of an economic and social crisis, ineffective dispute resolution mechanisms and difficulties in exercising the right to strike. In general, the Committee recalls that, while the State has a duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of life, the development of free and independent organizations and negotiation with all those involved in social dialogue is at the same time indispensable to enable a government to confront its social and economic problems and resolve them in the best interests of the workers and the nation. ***The Committee requests the Government to provide its comments on the matters raised by the ITUC.***

Amendment of the legislation. The Committee recalls that it has been asking the Government for many years to amend the national legislation to bring it into conformity with the requirements of the Convention through:

- the amendment of section 34 of the Decree of 4 November 1983 which gives the Government broad powers of supervision over trade unions;
- the amendment of sections 185, 190, 199, 200 and 206 of the Labour Code, which allow for compulsory arbitration at the request of only one party to a labour dispute;
- the amendment of sections 233 and 239 of the Labour Code so as to remove the impediments to the right of association of minors and to allow foreign workers to have access to trade union office, at least after a reasonable period of residence in the country; and
- the repeal or amendment of section 236 of the Penal Code, under which government consent is required for the establishment of an association of over 20 members. In this regard, the Committee previously recalled that, under *Article 2 of the Convention*, workers and employers, without distinction whatsoever, shall have the right to establish organizations of their own choosing without previous authorization. Consequently, any legislation which requires prior approval at the discretion of the authorities of the statutes and by-laws of representative organizations of workers or employers is incompatible with the provisions of the Convention.

The Committee notes that the Government's report mentions the establishment of a committee to consider a reform of the Labour Code with a view to amending the legal framework. The Government also indicates that the revision of the Labour Code will take into account the Committee's comments on the various matters raised and that, to that end, it is already benefiting from technical assistance from the Office. Finally, the Government indicates that the right of association of minors is in fact now recognized since the ratification by Haiti of the international Convention on the Rights of the Child and will be incorporated into law and that section 236 of the Penal Code is not in fact applied but the Secretariat of State responsible for judicial reform will amend this section of the Penal Code in the context of modernizing the legal texts. The Committee notes the Government's statements concerning the legislative amendments currently being made. ***While it is aware of the difficulties that the country is currently facing, the Committee hopes that the Government's next report will indicate tangible progress in the revision of the national legislation to bring it into full conformity with the Convention on all the points raised. The Committee hopes that the Government will continue to benefit from the technical assistance provided by the Office in this regard and requests it to send a copy of any new text adopted.***

The Committee previously requested the Government to take all the necessary measures to ensure that domestic workers and rural workers explicitly benefit from the right to organize. In its report, the Government indicates that workers in the rural sector benefit from the same trade union rights as those in the commercial sector and industry under section 383 of the Labour Code. With regard to domestic workers, a law on the improvement of the living conditions of this category of workers has already been approved by parliament and will be promulgated soon. ***The Committee notes this information and requests the Government to send a copy of the new law concerning domestic workers once promulgated and to indicate the provisions which recognize the right of these workers to exercise trade union rights in accordance with the Convention.***

Finally, the Committee repeats its request to the Government to provide a copy of the Decree of 17 July 2005 amending the 1982 Act issuing the conditions of service in the public service.

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

Articles 1, 2 and 4 of the Convention. In its previous comments, the Committee asked the Government to indicate any developments concerning: (i) the adoption of a specific provision establishing protection against anti-union discrimination in hiring practices; (ii) the adoption of provisions generally affording adequate protection for workers against acts of anti-union discrimination (on the basis of union membership or activity), accompanied by effective and

expeditious procedures and sufficiently dissuasive penalties; (iii) the revision of section 34 of the Decree of 4 November 1983 empowering the Social Organizations Branch of the Department of Labour and Social Welfare to intervene in the drafting of collective agreements, without specifying the nature of such intervention or the cases concerned. ***The Committee trusts that these issues will be taken into account in the context of the work of the “think-tank” for the reform of the Labour Code relating to a new legal framework and the judicial reform mentioned by the Government, and trusts that the Government will refer in its next report to real progress made in the adoption of national legislation which is in full conformity with the Convention.***

Application of the Convention in practice. The Committee notes the observations from the International Trade Union Confederation (ITUC) dated 29 August 2008 and 26 August 2009, which refer to matters already raised by the Committee in its previous observation, particularly acts of discrimination against trade unionists and interference by certain enterprises in trade union activities – acts which have not been penalized – and reiterate the necessity of carrying out legislative reforms. The Committee also notes the observations from the ITUC concerning the weakness of the labour inspectorate and judicial system with regard to violations of trade union rights. The Committee notes that the Government confirms this weakness in stating that the administrative examination of cases may take several weeks owing to the large number of cases and the lack of resources within the administration. However, the Government declares that no formal complaints have been lodged with the labour inspectorate with regard to any violation of union rights. ***The Committee requests the Government to supply information on the violations of trade union rights referred to by the ITUC in its communication of 2008 and to examine with the social partners the measures to be taken with a view to the adoption of rapid and effective mechanisms for the protection of trade union rights.***

The Committee previously asked the Government to supply information on the number of collective agreements in force for rural workers, workers in the informal economy, self-employed workers and domestic workers, and also the coverage provided by these agreements. The Committee notes the Government’s reply that no collective agreements exist in the abovementioned sectors. ***The Committee requests the Government to examine, in conjunction with the social partners concerned, ways of promoting collective bargaining for rural workers, self-employed workers, domestic workers and workers in the informal economy. The Committee requests the Government to supply information in this respect.***

The Committee is aware of the difficulties faced by the country and trusts that the Government will continue to avail itself of technical assistance from the Office with regard to all the matters raised.

Honduras

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

The Committee notes the Government’s reply to the comments sent by the International Trade Union Confederation (ITUC) dated 28 August 2007 concerning the drawing up of a draft Act to reform the Code of Criminal Procedure, which establishes harsher penalties for actions on public thoroughfares (blockages of roads, bridges and streets, for example), which may affect the activities of trade unions, and concerning the detention of trade union members in the banking sector when they wished to participate in a wage claim. The Committee notes the Government’s statement that no reforms are under way to introduce tougher penalties for illicit meetings or demonstrations and that section 331 of the Penal Code concerning “street actions”, incorporated in the legislation by means of Decree No. 59-97 of 8 May 1997, remains in force. As regards the alleged detention of union members of the Banking Association for participating in a pay claim, the Government has no knowledge of the existence of that trade union and therefore considers it unlikely that the complaint referred to in the comment was brought before the Honduran courts. The Committee also notes the comments from the Honduran National Business Council (COHEP) of 22 May 2008 on the application of the Convention. The COHEP also refers to the comments of the ITUC of 2007 and in particular the Committee notes its indication that it had no knowledge of the detention of union members belonging to the banking sector and gives the assurance that the Honduran Association of Banking Institutions (AHIBA) is unaware of and rejects such allegations.

Finally, the Committee notes the comments from the ITUC dated 26 August 2009 referring to pending legislative issues and also to the murder of the general secretary and another official of the Workers’ Confederation of Honduras (CTH) on 24 April 2008, the murder of an official of the National Peasant Farmers’ Association of Honduras (ANACH) in May 2008, armed attacks against the president and vice-president of the AFL Workers’ Union of Honduras (SITRAFLH) and the raiding of the headquarters of the Single Workers’ Confederation of Honduras (CUTH) in September 2008. The Committee recalls that freedom of association can only be exercised in a situation in which fundamental human rights are respected and fully guaranteed, particularly with regard to human life and safety, and where there have been attacks on physical or psychological integrity, an independent judicial inquiry should be conducted without delay, as this is a particularly suitable method for fully determining the facts, attributing responsibility, penalizing the perpetrators and preventing the repetition of such actions. ***The Committee requests the Government to send its observations in this respect.***

The Committee also notes the comments from COHEP dated 6 October 2009. ***The Committee requests the Government to send its observations in this respect.***

The Committee recalls that it has been referring for a number of years to the need to reform various sections of the Labour Code in order to bring them into conformity with the Convention. The Committee's comments refer to:

- the exclusion from the scope of the Labour Code, and consequently from the rights and guarantees of the Convention, of workers in agricultural and stock-raising enterprises which do not permanently employ more than ten workers (section 2(1));
- the prohibition of more than one trade union in a single enterprise, institution or establishment (section 472 of the Labour Code);
- the requirement of more than 30 workers to establish a trade union (section 475 of the Labour Code);
- the requirement that the officers of a trade union, federation or confederation must be of Honduran nationality (sections 510(a) and 541(a) of the Labour Code), be engaged in the corresponding activity (sections 510(c) and 541(c) of the Labour Code) and be able to read and write (sections 510(d) and 541(d) of the Labour Code);
- the following restrictions on the right to strike:
 - the ban on strikes being called by federations and confederations (section 537 of the Labour Code). The Committee however notes the Government's indication that in practice the CUTH, the General Federation of Workers (CGT) and the CTH have repeatedly called for collective suspension of work;
 - the requirement of a two-thirds majority of the votes of the total membership of the trade union organization in order to call a strike (sections 495 and 563 of the Labour Code);
 - the power of the Ministry of Labour and Social Security to end disputes in oil production, refining, transport and distribution services (section 555(2) of the Labour Code);
 - the need for Government authorization or a six-month period of notice for any suspension or stoppage of work in public services that do not depend directly or indirectly on the State (section 558 of the Labour Code);
 - the submission to compulsory arbitration, without the possibility of calling a strike for as long as the arbitration award is in force (two years), of collective disputes in public services that are not essential in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (sections 554(2) and (7), 820 and 826 of the Labour Code).

The Committee recalls that in its previous observations it noted the drawing up of a draft Act to reform the Labour Code, which incorporated various amendments requested by the Committee. The Committee notes the Government's statement that it has been impossible to hold discussions on the reform of the Labour Code because of the strong opposition of the three major workers' federations operating in the country. The Committee further notes the statement by COHEP that, although a preliminary draft reform of the Labour Code was drawn up in 1995 and was the product of social dialogue, it was not adopted and various preliminary drafts were drawn up without agreement being reached in the stricter tripartite context and are due to be discussed in the National Congress.

The Committee reminds the Government that it is responsible for ensuring the application of freely ratified international labour Conventions relating to freedom of association. ***The Committee requests the Government to take the necessary steps to bring the Labour Code into conformity with the Convention and trusts that all the issues highlighted by the Committee will be taken into account. The Committee requests the Government to provide information in its next report on all measures taken in this respect and reminds it that it may seek technical assistance from the Office.***

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

Articles 1 and 2 of the Convention. Protection against acts of discrimination and interference. The Committee recalls that its comments have referred for many years to:

- the lack of adequate protection against acts of anti-union discrimination, since the penalties provided for in section 469 of the Labour Code for persons who interfere with the right to freedom of association, ranging from 200 to 10,000 lempiras (HNL) (200 lempiras being roughly equivalent to US\$12), were deemed inadequate. The Committee notes the Government's statement that section 321 of Decree No. 191-96 of 31 October 1996 establishes penalties for cases of discrimination. The Committee requests the Government to indicate specific cases in which this provision has been used to impose penalties for acts of anti-union discrimination; and
- the lack of adequate and full protection against any acts of interference, and of sufficiently effective and dissuasive sanctions for such acts. The Committee notes the comments from the Honduran National Business Council (COHEP) of 22 May 2008, according to which the Secretariat of State decided, by means of a decision of 2 July 2002, to prohibit any opposition by employers to the recognition and registration of the legal personality of workers' organizations, or from workers with regard to employers' organizations, in order to guarantee adequate protection against acts of interference.

The Committee notes that the Government, in reply to the comments from the ITUC of 28 August 2005 concerning the dismissal of numerous trade union officials and members following the founding of a trade union, indicates that the mass dismissal of the members of a union executive committee is a rare and isolated measure and has not been the subject

of complaints to the competent institutions. The Government adds that there have been no legislative amendments in connection with the application of the Convention which relate to anti-union discrimination and interference. The Government points out that it has been impossible to hold discussions on the reform of the Labour Code because of the strong opposition of the three major workers' federations operating in the country. The Government adds that the Directorate of Labour of the Secretariat of Labour and Social Security has held various training workshops in the major cities of the country for leaders of workers' organizations, aimed at informing and educating them with regard to the legal framework for collective bargaining. This body also undertakes activities to promote and disseminate the rights contained in the Convention through the publication of a "Guide to the exercise of freedom of association and collective bargaining", and also flyers and leaflets on the exercise of those rights. The Committee recalls that the Government has the responsibility to ensure the application of freely ratified international labour Conventions relating to freedom of association. ***The Committee requests the Government to take the necessary steps to include provisions in the national legislation for adequate and full protection against any acts of anti-union discrimination or interference, establishing sufficiently effective and dissuasive penalties for such acts.***

The Committee requests the Government to send its comments on the observation from the ITUC dated 26 August 2009 concerning alleged anti-union practices in export processing zones, delays in the administration of justice in cases of anti-union practices (the Government indicates the possibility of a summary judgement in cases of unfair dismissals but the Committee considers that more information is needed), failure to comply with court orders for the reinstatement of trade unionists (according to the Government, reinstatement is only requested by the worker in isolated cases in practice) and the creation of parallel trade unions by employers (the Government merely states that these are not specific allegations). The Committee requests the Government to hold tripartite discussions on this matter and keep it informed in this respect.

Article 4. Promotion of collective bargaining. The Committee also notes the new comments from the ITUC dated 26 August 2009 which refer to the application of the Convention and, in particular, the drawing up of a draft Act which could limit collective bargaining only to unions which represent more than 50 per cent of the total number of employees in the enterprise, the setting up of parallel organizations by employers with which they undertake collective bargaining, and numerous anti-union dismissals in various enterprises in the export processing (*maquila*), cement and bakery industries. ***The Committee requests the Government to send its observations in this respect.***

Article 6. Right of public servants not engaged in the administration of the State to bargain collectively. The Committee notes the Government's reply to the comments from the ITUC dated 28 August 2007 (many of them similar to those sent in previous years), alleging that public employees are forbidden to sign collective labour agreements. The Government points out that public officials have legally imposed limits on their duties (section 534 of the Labour Code), including the right to submit "respectful statements" containing requests of interest to all members in general. Section 536 states that unions of public employees may not submit lists of claims or sign collective agreements, but other official workers' unions have the same powers as any others to deal with claims on equal terms. The Government refers to a number of state enterprises and municipalities with high population density which have signed collective agreements and points out that official workers do have the right to collective bargaining. The Committee recalls that a system in which public employees may only submit to the authorities "respectful statements" which will not be the subject of any negotiation, particularly with regard to conditions of employment, is not in conformity with the Convention. The Committee recalls that, even though *Article 6* of the Convention allows public servants engaged in the administration of the State to be excluded from its scope of application, other categories of workers must be able to enjoy the guarantees provided for by the Convention, and therefore be able to undertake collective bargaining with respect to their conditions of employment, including pay. ***The Committee requests the Government to take the necessary legislative measures to guarantee the full application of the Convention.***

The Committee reminds the Government that the problems referred to above have persisted for many years and that it can seek technical assistance from the Office.

Finally, the Committee requests the Government to send its observations on the comments made by the COHEP dated 6 October 2009 (including information on protection against anti-union dismissals in the public sector and the corresponding legislation).

Iceland

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

Article 4 of the Convention. Collective Bargaining. The Committee recalls that several of its previous comments concerned the issue of compulsory arbitration which has been repeatedly imposed through legislative intervention (Acts Nos 10/1998 and 34/2001) into the collective bargaining process for the determination of the terms and conditions of employment of fishermen. In its previous comments, the Committee noted that this was incompatible with the principle of free and voluntary collective bargaining set out in *Article 4* of the Convention and requested the Government: (i) to avoid having recourse to legislative intervention to impose on the parties a solution which should be the result of free and voluntary collective bargaining; and (ii) noting the Government's indications that it would consult the social partners on

actions to be taken, to take concrete steps so as to re-examine thoroughly its current machinery and procedures. *The Committee requests the Government to indicate in its next report any measures taken or contemplated in this regard.*

The Committee previously requested the Government to provide information on the renegotiation of the collective agreements which come up for review in 2007 and 2008, including in the fishing sector. The Committee again recalls that the Conference Committee had expressed the hope in June 2004 that the Government would carry out, in full consultation with the social partners concerned, a review of the implementation in practice in the fishing sector of the mechanisms and procedures in the area of collective bargaining in order to improve those mechanisms. The Committee notes that the Government indicates in its report that the collective agreements originally reached in the fishing sector in October 2004 were renewed in December 2008 and will be in effect until 1 January 2011. *The Committee once again requests the Government to continue to provide information on any progress made in adopting measures, in consultation with the social partners concerned, with a view to improving the current machinery and procedures for collective bargaining so as to promote free and voluntary collective bargaining and ensure that the introduction of compulsory arbitration is avoided in the future.*

The Committee notes the information provided by the Government on collective bargaining in practice in 2007 and 2008 and on the meetings held in 2008 by the State Conciliation and Mediation Service to facilitate collective bargaining.

Indonesia

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009 with regard to arrests and violence by the police, dismissals and acts of retaliation against strike actions. *The Committee requests the Government to provide its observations thereon.*

Trade union rights and civil liberties. In its previous comments, concerning allegations of excessive violence and arrests in relation to demonstrations and police involvement in strike situations, including the interrogation of trade union leaders pursuant to an old colonial law prohibiting vague and unspecified “unpleasant acts” against employers, the Committee requested the Government to continue to provide information on measures taken, including specific instructions given to the police so as to ensure that the danger of excessive violence in trying to control demonstrations is avoided, that arrests are made only where serious violence or other criminal acts have been committed, and that the police are called in a strike situation only where there is a genuine and imminent threat to public order.

In this regard, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association in relation to Case No. 2585 (see 353rd Report, March 2009, paragraphs 120–123) concerning allegations of human rights abuses and notes that the Committee on Freedom of Association trusted that the Government would: (i) issue appropriate instructions to prevent the danger of trade unionists being arrested by the police for normal trade union activities; (ii) repeal or amend sections 160 and 335 of the Criminal Code on “instigation” and “unpleasant acts” so as to ensure that these provisions cannot be used abusively as a pretext for the arbitrary arrest and detention of trade unionists; and (iii) continue to take all the necessary measures to educate the police in relation to its action in industrial relations contexts.

The Committee notes the Government’s statement that the police role in strikes has been established in Kapolri Regulation No. 1/2005. *Recalling that legitimate trade union activities should not be used as a pretext for arbitrary arrest or detention, the Committee requests the Government to provide the information requested in its previous observation and to take the necessary measures to repeal or amend sections 160 and 335 of the Criminal Code.*

Right to organize of civil servants. In its previous comments, the Committee requested the Government to take the necessary steps to guarantee the exercise of the right to organize to civil servants, and to indicate the manner in which civil servants organize in practice, including statistics on the number of civil servants’ organizations at various levels. The Committee notes the Government’s indication that it has not specifically regulated the right to organize for civil servants but that their right to organize and express opinions is covered by the Corps of Indonesian Civil Servants (KORPRI), which is a neutral organization that does not take sides for a certain political party. *Recalling the conclusions of the Committee of Freedom of Association in Case No. 1431 (see 265th Report, May 1989, paragraphs 104–137) that “KORPRI does not meet the requirements of the principle that all workers should have the right to form and join organizations of their own choosing to defend their occupations’ interests”, the Committee expresses the hope that the Government will adopt an Act guaranteeing the exercise of the right to organize to civil servants, pursuant to section 4 of Act No. 21 of 2000, which proclaims that civil servants shall enjoy freedom of association and that the implementation of this right shall be regulated in a separate act, so as to bring the legislation into full conformity with the Convention and requests the Government to indicate progress made in this regard.*

Right to organize of employers. The Committee had requested that the Government provide a copy of Act No. 1 of 1987, as well as the internal regulation of the Indonesian Chamber of Commerce and Industry (KADIN), and specify whether other employers’ organizations could be established independently of the KADIN. The Committee notes Act No. 1/1987 transmitted by the Government and its indication that there is no stipulation in regulation proscribing

employers from establishing organizations other than the KADIN. *The Committee will examine Act No. 1/1987 once it is translated and requests the Government to provide information on any other employers' organizations that exist in addition to the KADIN.*

Conditions for the exercise of the right to strike. In its previous comments, the Committee requested the Government to take the necessary measures to amend section 4 of Ministerial Decree No. KEP.232/MEN/2003 so that a finding as to whether negotiations have failed, which is a condition for the lawful staging of strikes, can be made either by an independent body or be left to the unilateral determination of the parties to the dispute. The Committee notes the Government's comments that section 4 of Ministerial Decree No. KEP.232/MEN/2003 has not been amended because it is not an obstacle to the execution of strikes, as is illustrated by the many strikes that have taken place. The Government explains that the purpose of the Ministerial Decree is not to prohibit strike actions, but to regulate the procedure for strikes according to section 140 of Act No. 13/2003. The Committee notes the Government's statement that trade unions and workers themselves could determine when strikes would start and end and that, thus, strikes will be carried out according to their expectations.

Noting that the Government did not comment in detail on the legislative conditions for the calling of a strike, the Committee once again recalls that the conditions stipulated in the law for the exercise of the right to strike should not be such that the exercise of this right becomes very difficult or even impossible in practice. *The Committee once again requests the Government to take steps to ensure that the legislation is in conformity with the Convention by repealing or amending the various conditions included in the strike procedure set out in Ministerial Decree No. KEP.232/MEN/2003.*

Exhaustion of mediation/conciliation procedures. The Committee had requested the Government to take the necessary measures to amend the legislation to ensure that mediation/conciliation proceedings, that currently took more than 60 days, did not operate as a precondition for the lawful exercise of the right to strike. The Committee notes the Government's information that it has not amended sections 3(2), 4(4), 15 and 25 of the Industrial Relations Dispute Settlement Act No. 2 of 2004. *Recalling that a requirement to exhaust procedures that extends beyond 60 working days (three months), as a precondition for a lawful strike, would render the exercise of the right to strike very difficult or even impossible in practice, the Committee once again requests the Government to indicate measures taken or contemplated to amend sections 3(2), 4(4), 15 and 25 of the Industrial Relations Dispute Settlement Act No. 2 of 2004 in a way that: (i) reduces the time period accorded to mediation/conciliation proceedings in cases where the exhaustion of mediation/conciliation constitutes a condition for the lawful exercise of the right to strike; or (ii) ensures that the exhaustion of mediation/conciliation is not a precondition for the lawful exercise of the right to strike.*

Objectives of strikes. In its previous comments, the Committee requested the Government to take the necessary steps so as to allow trade union federations and confederations to engage in industrial action linked to questions of general social and economic policy. The Committee notes the comments of the Government that strikes can be conducted as long as they are related to employment matters as regulated by rules and regulations concerning employment. The Committee notes once again that this appears to exclude the possibility of staging strikes on general social and economic policy, and recalls that organizations responsible for defending workers' socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed to major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living. *The Committee requests the Government to indicate in its next report any measures taken or contemplated to ensure that trade union federations and confederations may engage in industrial action linked to questions of general social and economic policy.*

Restrictions on the right to strike in the railway service. In its previous comments, the Committee requested the Government to take the necessary measures so as to ensure that railway service workers may fully exercise the right to strike without penalty. The Committee notes the Government's comment that section 139 of Manpower Act No. 13 is not only related to railway workers but also to workers in hospitals, fire brigades, watergate controllers, air traffic control and flare men, as strikes of these workers would endanger human safety. *Recalling once again that railway services generally cannot be considered as an essential service, the Committee requests the Government to indicate steps taken or contemplated to ensure that the only railway workers encompassed by section 139 of Manpower Act No. 13, and so with a limited right to strike, are railway intersection workers.*

Sanctions for strike action. The Committee requested the Government to take the necessary measures to ensure that sanctions for illegal strike action were not disproportionate to the seriousness of the offence. The Committee notes the Government's comment that section 185 of the Manpower Act does not regulate criminal conviction for violation of section 139 of the Manpower Act but applies only to specified sections. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. *The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.*

The Committee requested the Government to take the necessary measures to ensure that striking workers were not considered to resign by virtue of not having responded to back-to-work orders from employers, prior to a finding by an independent body that the strike in question is illegal. The Committee notes the information provided by the Government that the implementation of Ministerial Decree No. KEP.232/MEN/2003 relating to back-to-work orders allows for recourse to the industrial cooperation court, which avoids any possible arbitrariness on the part of employers. ***Recalling that the practice in the Ministerial Decree results in the situation that workers run the risk of dismissal while the legality of a strike is not settled, the Committee once again requests the Government to amend section 6(2) and (3) of Ministerial Decree No. KEP.232/MEN/2003 to ensure that employers can only issue back-to-work orders to workers after an independent body has determined that the strike is illegal.***

Dissolution and suspension of organizations by administrative authority. In its previous comments, the Committee had requested the Government to take the necessary steps so as to provide for means other than loss or suspension of trade union rights for delays in notification of changes in the union's constitution or by-laws, or failure to report overseas financial assistance. The Committee notes the Government's indication that it has no plans to repeal sections 21 and 31 of the Trade Union/Labour Union Act (Law No. 21 of 2000) in the context of complexities in drafting and amending employment legislation. ***Recalling that the sanction of suspension for failure to report changes in a union's constitution or by-laws (pursuant to sections 21 and 42 of the Act) is clearly disproportionate and that the result of sections 31(1) and 42 is tantamount to requiring previous authorization for the receipt of overseas funds, the Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to repeal the reference to sections 21 and 31 in section 42 of the Trade Union/Labour Union Act.***

The Committee had requested the Government to take the necessary steps to ensure that administrative dissolution or suspension of trade unions do not take effect until a final decision has been handed down by the Administrative Court in case of appeal. The Committee notes the information provided by the Government that, if trade unions, federations or confederations do not fulfil the minimal requirements which are regulated in sections 5(2), 6(2) and 7(2) of Law No. 21 of 2000, they will not have the right to be recorded by the governmental institution responsible for manpower. The Committee further notes the Government's statement that, by not fulfilling the minimal requirements, there is no base to initiate a case to the State Administrative Court (PTUN). The Committee once again recalls that measures of dissolution and suspension of trade unions by administrative authority involve serious risk of interference in the very existence of organizations and should therefore be accompanied by all the necessary guarantees, in particular due judicial safeguards, to avoid the risk of arbitrary action. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated so as to ensure that organizations affected by measures of dissolution or suspension by the administrative authority have a right of appeal to an independent and impartial judicial body, and that such administrative decisions do not take effect until that body issues a final decision.***

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

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

The Committee notes the information contained in the Government's report and ***regrets*** to note that it has provided no reply to the comments made by the International Trade Union Confederation (ITUC) in a communication dated 27 August 2007. The Committee notes comments made by the ITUC in a communication dated 26 August 2009.

Articles 1 and 2 of the Convention. ***Protection against acts of anti-union discrimination and employer interference.*** The Committee's previous comments concerned the need to ensure effective and rapid protection against acts of anti-union discrimination and employer interference in practice, having noted a stark contrast between laws which appear to conform to the Convention and a suggested failure to provide protection against anti-union discrimination and interference in practice. In particular, the Committee requested the Government to indicate concrete measures taken, after discussions with workers' and employers' organizations, in this regard; and to provide data on the number of complaints of anti-union discrimination filed with the labour inspectorate and the courts, and the steps taken to investigate these complaints and impose remedies where appropriate, as well as the average duration of proceedings.

The Committee notes the Government's comments that protection against discrimination is regulated by Act No. 21 of 2000 concerning trade unions and that alleged violations were always handled by consultation and law enforcement, with most cases solved in bipartite consultations. The Committee further notes that the Government indicates that the time taken to process the law (investigations) is regulated by the law on criminal procedure.

The Committee ***regrets*** that the Government has not provided detailed information on complaints of anti-union discrimination filed with the labour inspectorate and courts. It observes once again that a lack of findings of anti-union discrimination by the labour inspectorate and the courts, combined with the conclusions and recommendations of the Committee on Freedom of Association in a series of cases (Cases Nos 2236, 2336, 2441, 2451, 2472 and 2494), cause a certain concern. In this regard, the Committee further notes that the ITUC in its comments of 2007 and 2009 refers to cases of anti-union discrimination. ***The Committee once again requests the Government to indicate in its next report concrete measures taken, after discussions with the most representative workers' and employers' organizations, to ensure effective and rapid protection against acts of anti-union discrimination and employer interference in practice. It***

also requests the Government to provide data on the number of complaints of anti-union discrimination filed with the labour inspectorate and the courts, and the steps taken to investigate these complaints and impose remedies where appropriate, as well as the average duration of proceedings. The Committee invites the Government to make full use of ILO technical assistance in this regard, as well as training for the authorities competent to deal with cases of anti-union discrimination and employer interference.

Article 2. Protection against acts of interference. The Committee's previous comments concerned the need to amend section 122 of the Manpower Act so as to discontinue the presence of the employer during a voting procedure held in order to determine which trade union shall have the right to represent the workers in an enterprise. The Committee notes that the Government once again indicates that it has not amended section 122 of the Manpower Act and that it considers that employers and the Government are present only as witnesses during voting and have no effect on the voting by trade unions and workers. ***Recalling the need to ensure adequate protection against acts of interference in practice, the Committee once again requests the Government to indicate in its next report the steps taken to amend section 122 of the Manpower Act so as to suppress the presence of the employer during voting procedures.***

Article 4. Promotion of collective bargaining. In its previous comments, the Committee had requested the Government to amend sections 5, 14 and 25 of Act No. 2/2004 concerning Industrial Relations Dispute Settlement, which enable either of the parties to an industrial dispute to file a legal petition to the Industrial Relations Court for final settlement of the dispute if conciliation or mediation failed. The Committee notes the information provided by the Government that in order to strengthen sections 5, 14 and 25 of Act No. 2/2004, it published Minister of Manpower and Transmigration Regulation No. 31/MEN/XII/2008 concerning guidance of industrial relations dispute settlement through bipartite consultation. According to the Government, this Regulation clarifies that bipartite consultation is consultation between workers/labour unions/labour organizations with employers to settle industrial relations disputes in a company. The Government further states that, therefore, in cases of industrial relations disputes, bipartite consultation must be conducted before mediation, conciliation and arbitration. The Committee notes the Government's information that Act No. 2/2004 only defines the existence of voluntary arbitration, rather than compulsory arbitration, as arbitration can only be conducted if it is agreed by the parties to the dispute.

The Committee observes, however, that Act No. 2 refers both to voluntary arbitration and, in sections 5, 14 and 25, to compulsory arbitration by allowing one of the parties to a dispute to file a petition to the Industrial Relations Court. Noting that the ability of one or other of the parties to a dispute to refer the dispute to the Court constitutes compulsory arbitration, the Committee recalls that compulsory arbitration at the initiative of one party to the dispute cannot be considered to promote voluntary collective bargaining. ***The Committee once again requests the Government to indicate in its next report the measures taken or contemplated to amend sections 5, 14 and 25 of Act No. 2/2004 concerning industrial relations dispute settlement so as to ensure that compulsory arbitration may be imposed only where it is agreed upon by both parties to the dispute.***

Requirements for the exercise of collective bargaining. The Committee notes that the comments submitted by the ITUC indicate that, under section 119 of the Manpower Act, in order to negotiate a collective agreement, a union must have membership equal to more than 50 per cent of the total workforce in the enterprise or receive more than 50 per cent support in a vote of all the enterprise's workers on its demands. The Committee notes that unions not attaining 50 per cent support in such a vote could only engage in collective bargaining after a period of six months is passed since the vote. ***The Committee considers that these provisions render the exercise of collective bargaining difficult for these unions and requests the Government to repeal the requirement for a delay of six months before which minority unions may bargain collectively.***

The Committee further notes that the ITUC indicates, without specifying the legislative provision, that collective agreements must be concluded within 30 days after the beginning of negotiations or must be submitted to the Manpower Ministry for mediation, conciliation or arbitration. ***The Committee requests the Government to provide its comments in response.***

Federations and confederations. In its previous comments, the Committee had requested the Government to indicate whether federations and confederations had the right to collective bargaining. The Committee notes the Government's indication that section 25(1) of Act No. 21/2000 states that trade unions, federations and confederations with a record number have the right to: negotiate a collective labour agreement with the management; represent workers in industrial dispute settlements; represent workers in manpower institutions; establish an institution or carry out activities related to efforts to improve workers' welfare; and carry out other manpower or employment-related activities that are in conformity with prevailing law. It further notes that section 27 of Act No. 21 regulates the obligations of trade unions, federations and confederations. The Committee notes that the Government indicates that, as a result, there is no rule or regulation prohibiting federations and confederations from engaging in collective bargaining. ***The Committee requests the Government to provide in its next report data concerning the number and type of current collective agreements that were signed by federations or confederations of trade unions.***

Export processing zones (EPZs). In its previous observation, the Committee had requested the Government, pursuant to allegations of violent intimidation and assault of union organizers, and dismissals of union activists in the EPZs, to provide information thereon as well as on the number of collective agreements in force in the EPZs and the percentage of workers covered. The Committee notes the collective labour agreement between a pharmaceuticals

enterprise and what appears to be an enterprise-level trade union transmitted by the Government, and notes with *regret* that the Government has not provided further information concerning allegations of intimidation and assault of union organizers, dismissals of union activists, the number of collective agreements in force in EPZs and the percentage of workers covered. *The Committee once again requests the Government to indicate in its next report the measures taken to collect statistical information on collective bargaining in EPZs and to provide data concerning the number of collective agreements and workers covered. It further requests the Government to provide specific information on the number of complaints of anti-union discrimination and employer interference in EPZs and the relevant investigation/remediation measures.*

Iraq

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, which primarily refer to matters previously raised by the Committee.

Violence against trade unionists. Previously the Committee, noting the ITUC's 2008 comments on the persistence of serious violations of freedom of association, had requested the Government to provide information on the ITUC's allegations of arrests, detentions and acts of violence committed against trade unionists. The Committee takes note of the Government's statement that it has never sanctioned or committed arrests and acts of violence against trade unionists, and that it was cooperating with the representatives of trade unions in order to submit detailed information respecting this matter. *Further noting that in its most recent comments the ITUC refers to further acts of violence, the Committee once again expresses the hope that it will be possible in the near future for trade union rights and the right to collective bargaining to be exercised normally and in observance of fundamental rights, and in a climate free from violence, duress, fear and any kind of threat. It requests the Government to provide information with respect to the ITUC's allegations concerning these serious matters.*

Articles 1, 3 and 4 of the Convention. The Committee had previously noted that, according to the Government, a draft Labour Code had been referred to the Consultative Council (*Majlis Al-Shura*) so that Parliament could examine and adopt the said legislation. It further noted that the guarantees laid down in the draft Labour Code for protection against acts of anti-union discrimination applied to trade union founders and chairpersons and to trade union officers but not to trade union members; nor did the draft establish adequate guarantees against discrimination at the time of recruitment. The Committee also noted that, although it covered anti-union dismissals, the draft did not address other adverse measures affecting trade union membership or activities.

The Committee had pointed out that protection against acts of anti-union discrimination must apply to trade union members as well as union officers, and must cover not only dismissal but any other measure amounting to anti-union discrimination (transfer, demotion and other measures that have adverse effects). Furthermore, the protection provided for by the Convention applied upon recruitment, in the course of employment and at the time of separation. The Committee also recalled that general provisions of the law prohibiting acts of anti-union discrimination are not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice; protection against acts of anti-union discrimination should therefore be ensured by various means adapted to national law and practice that prevent or effectively redress such acts, in particular through sufficiently dissuasive sanctions. The Committee had accordingly requested the Government to take the necessary steps to amend the draft Labour Code so as to ensure adequate protection for members of trade unions and trade union officers against acts of anti-union discrimination, in accordance with the principles noted above.

Previously the Committee had noted that section 142 of the draft Labour Code establishes a duty to bargain in good faith when a request to open collective negotiations has been submitted by a registered union representing no less than 50 per cent of the workers employed at the establishment or enterprise, or where such a request has been submitted jointly by several registered unions representing no less than 50 per cent of the workers to whom the collective agreement is to apply. The Committee pointed out that problems may arise where it is established by law that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a union that fails to secure this absolute majority is thus denied the possibility of bargaining. It noted that if no union – or group of unions, as provided for in section 142 – covers more than 50 per cent of the workers, collective bargaining rights should not be denied to the unions in the unit concerned, at least on behalf of their own members, and had requested the Government to take the necessary steps to amend section 142 of the draft Labour Code accordingly.

In respect of the matters noted above, the Committee notes with *interest* the Government's statement that its comments concerning adequate protection against acts of anti-union discrimination are addressed in the draft Labour Code's chapter concerning trade union organizations, that section 142 of the draft Code has been amended to bring it into conformity with the Convention, and that a new section 143 has been included to address the Committee's comments on minimum membership requirements for the acquisition of bargaining agent status.

Article 4. Promotion of collective bargaining. The Committee had previously referred to the absence, in Act No. 52 of 1987 on trade union organizations, of any provisions to promote collective bargaining and thus give effect to *Article 4* of the Convention. The Government indicates in this regard that the draft Labour Code repeals Act No. 52 of 1987 on trade union organizations. The Government further states that section 147 of the draft Labour Code defines a collective labour contract as an agreement between the trade union, on behalf of the workers of the occupations and industries it represents, and the employers concerned. Additionally, such a contract has to be established within one occupation, one industry or one project or for similar, interlinked or common projects in order to regulate reciprocal legal and contractual obligations between the parties concerned. ***Noting this information, the Committee requests the Government to confirm whether, under the draft Labour Code, collective bargaining at the enterprise level is also recognized. The Committee further invites the Government to take appropriate measures to promote collective bargaining, through publications, seminars and other activities designed to increase awareness of its utility.***

Articles 1, 4 and 6. The Committee had been noting for many years that Act No. 150 of 1987 on public servants, which the Government was planning to repeal, contains no provisions affording the guarantees established in the Convention to public servants and public sector employees engaged in the administration of the State, and had further observed that the draft Labour Code excludes employees of the public service from its scope. The Committee had previously noted that the Government, in consultation with the social partners and experts from the Office, was drafting a recommendation with a view to including in the new Labour Code provisions on the trade union rights of public sector workers, which would give them the rights provided for in *Articles 1, 3 and 6* of the Convention. In this regard, the Committee notes with *interest* the Government's indication that the draft Labour Code repeals Act No. 150 of 1987 on public servants, so that public servants will be covered by its provisions. ***The Committee expresses the hope that public servants will enjoy all the rights and guarantees enshrined in the Convention and requests the Government to indicate in its next report the progress made with respect to the draft Labour Code's adoption.***

Trade union monopoly and interference in trade union activities. The Committee had noted that, according to a statement made by the Government representative to the 2008 Conference Committee on the Application of Standards, Act No. 52 of 1987 established a de facto monopoly of the Confederation of Iraqi Workers' Unions by forbidding the establishment of other unions or federations. The Government representative also indicated that the Act was in force only on paper, in that since April 2003 other unions have been set up in several sectors notwithstanding the lack of a proper legal framework. The Committee noted that the Conference Committee's discussions also addressed the need to repeal Decision No. 8750 of 8 August 2005, the provisions of which had been used by the Government to freeze the trade union's bank assets. It considered that texts which have not yet been formally repealed, such as Decision No. 8750, can generate uncertainty in law and hinder the development of collective bargaining within the meaning of the Convention and of other trade union activities. The Committee trusted that the Government would shortly indicate that Act No. 52 of 1987 and Decision No. 8750 of 2005 had been formally repealed. In this regard, the Committee notes the Government's indication that the draft Labour Code repeals Act No. 52 of 1987, and that the repeal of Decision No. 8750 will be considered once workers' elections have been held and the financial liability for keeping the assets of the Confederation defined. ***In these circumstances, the Committee expresses the hope that the Government will shortly indicate the repeal of Decision No. 8750 of 2005, so as to ensure trade union multiplicity, and requests the Government to indicate in its next report any developments in this regard.***

Jamaica

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

The Committee notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) which refer to matters already raised by the Committee, as well as allegations concerning acts of anti-union discrimination. These allegations are examined under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Article 3 of the Convention. *The right of organizations freely to organize their activities and to formulate their programmes.* The Committee recalls that in its previous observations it referred to the extensive power of the minister to refer an industrial dispute to arbitration (sections 9, 10, and 11(A) of the Labour Relations and Industrial Disputes Act). The Committee notes that the Government indicates in its report that the amendments to the Labour Relations and Industrial Disputes Act only permit the minister to exercise the powers vested in his office to require compulsory arbitration in specific essential circumstances and only after all efforts to come to an amicable settlement through dialogue and negotiations have failed. The Committee further notes that the Government indicates that the Labour Relations and Industrial Disputes Act and its corresponding regulations are constantly under review by the ministry and that the ministry will examine concerns raised with a view to making any amendments necessary to make it more compliant with the Convention. ***In these circumstances, the Committee hopes that sections 9, 10 and 11(A) of the Act will be amended, taking into account that compulsory arbitration to end a collective labour dispute is acceptable only at the request of both parties or in instances where a strike may be restricted or even banned, i.e. in the event of a dispute in the public service involving public servants exercising authority in the name of the State, or in essential services in the strict sense***

of the term, namely services the interruption of which could endanger the life, personal safety or health of the whole or part of the population. The Committee requests the Government to indicate any developments in this regard.

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

The Committee notes the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) on the application of the Convention. The Committee notes the Government's report does not contain observations in relation to the ITUC's 2007 comments. *The Committee therefore again requests the Government to send its observations in relation to the ITUC's comments of 2008 on acts of anti-union discrimination and the refusal to recognize a trade union, and also on the fact that there are no trade unions in the export processing zones. It also requests the Government to investigate these allegations, to ensure in the export processing zones the trade union rights provided for in the Convention and to provide information on any measures taken in this regard.*

Article 4 of the Convention. The Committee recalls that several of its previous comments referred to the following matters:

- the denial of the right to negotiate collectively in the case of workers in a bargaining unit when these workers do not amount to more than 40 per cent of the workers in the unit or when, if the former condition is satisfied, a single union that is engaged in the procedure of obtaining recognition does not obtain 50 per cent of the votes of the workers in a ballot that the minister has caused to be taken (section 5(5) of Act No. 14 of 1975 and section 3(1)(d) of its regulations); and
- the need to take measures to amend the legislation so that a ballot is made possible when one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions, and therefore invokes its most representative status in the unit in order to be considered as a bargaining agent.

The Committee notes that the Government indicates that the Ministry of Labour and Social Security indicates that notwithstanding these apparent stumbling blocks, the current provisions are necessary to maintain industrial harmony in the local context. The Committee, however, recalls once again that by ratifying the Convention, the State undertook to promote collective bargaining and that this implied granting collective bargaining rights to the most representative trade union or (jointly) trade unions. *The Committee therefore hopes that the Government will take the necessary measures in the very near future to amend its legislation, lowering the percentage mentioned and allowing a ballot in cases of disputes concerning representativeness, so as to bring it into full conformity with the Convention as soon as possible. The Committee requests the Government to indicate in its next report any measures taken or contemplated in this regard.*

Japan

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

The Committee notes the comments of the Japanese Trade Union Confederation (JTUC-RENGO) dated 22 October 2008 and 5 October 2009 and the International Trade Union Confederation (ITUC) dated 26 August 2009 on the application of the Convention and in relation to the restrictions on check-off procedures in Osaka city. The Committee notes the 2008 observations of the Conference Committee on the Application of Standards.

Denial of the right to organize of firefighting personnel and prison officers. The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel.

The Committee notes that the Government indicates in its report that it has revised the Order of the Organization and Operation of the Fire Defence Personnel Committee to include the establishment of a system of liaison facilitation. The Government also indicates in its report that it has made efforts to operate the Fire Defence Personnel Committee system appropriately by: announcing the operational conditions of the Fire Defence Personnel Committee in the previous year and the points of concern on the operational conditions through the notification to all fire defence headquarters at the beginning of the fiscal year; distributing brochures on the Fire Defence Personnel Committee system to all fire defence personnel across the country; and explaining the purpose of the Fire Defence Personnel Committee system points and the warning points of its operation at the nationwide training meetings of fire chiefs. While the JTUC-RENGO has indicated in its comments that the Fire Defence Personnel Committee system has played an important role in improving the working conditions and environment of firefighters, it recalls that the main concern of ensuring the right to organize to firefighters has yet to be granted.

The Committee notes from the Government's report that as of 31 March 2009 the Fire Defence Personnel Committee meetings were held in 804 fire defence headquarters out of 806 across the country. In addition, 748 headquarters made available to all fire defence personnel the summary of their deliberation including a Committee's opinion to the fire chief. The number of the opinions submitted through the liaison facilitators rose to 4,131 (82.5 per cent) in the fiscal year 2008, from 2,833 (52.9 per cent) in the fiscal year 2005 when the system was introduced. In addition, the

number of headquarters notifying the result and the reasons of a deliberation to the personnel and the liaison facilities who submitted the opinion rose from 393 (48.4 per cent) in the fiscal year 2005 to 604 (75.1 per cent) in the fiscal year 2008.

The Committee notes that the JTUC–RENGO also indicates that there has been no progress on the issue of granting the right to organize to prison staff. The Committee recalls that the functions exercised by prison staff should not justify their exclusion from the right to organize and further refers to the examination of the Committee on Freedom of Association with regard to this matter (Cases Nos 2177 and 2183, 329th Report).

The Committee recalls the importance it attaches to the right of all workers, including firefighters and prison officers, to form and join organizations of their own choosing. ***The Committee once again requests the Government to indicate in its next report the additional legislative measures taken or contemplated in order to ensure the right to organize to these categories of workers and in the meantime to permit their de facto organization without penalty.***

Prohibition of the right to strike of public servants. The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2177 and 2183 (354th Report, paragraph 992) to the effect that public sector employees, like their private sector counterparts, should enjoy the right to strike, with the possible exceptions of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. Moreover, public employees who may be deprived of this right should be afforded appropriate compensatory guarantees.

The Committee recalls that it has expressed concern in the past at the lack of progress in this regard. The Committee notes that the Government indicates in its report that public employees benefit from the National Personnel Authority recommendation system and other compensatory measures, in compensation for restrictions on the right to strike and that the Supreme Court has maintained throughout its judgements that the prohibition of acts of dispute by public employees is constitutional. ***The Committee once again asks the Government to indicate in its next report the measures taken or envisaged to ensure that the right to strike is guaranteed to public servants who are not exercising authority in the name of the State and to workers who are not working in essential services in the strict sense of the term, and that the others (e.g. hospital workers) benefit from sufficient compensatory guarantees in order to safeguard their interests namely, adequate, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, are binding and fully and promptly implemented.***

Reform of the civil service. The Committee notes that in Cases Nos 2177 and 2183 the Committee on Freedom of Association requested that the Government continue to take steps to ensure without delay the promotion of full social dialogue aimed at effectively addressing the measures necessary for the implementation of the freedom of association principles embodied by Conventions Nos 87 and 98. The Committee previously noted the establishment of a “Special Examination Committee” consisting of 17 members including three representatives from trade unions, in addition to representatives from private enterprises, academia and the mass media. The Committee notes that the Government indicates that after having held 15 meetings and having deliberated in four simulation group meetings, the Special Examination Committee completed the final report in October 2007. The report states that as main points of the reform the following: (1) establishment of autonomy in employee/employer relations by giving a certain range of non-industrial public service employees the right to conclude collective agreements and abolishing the system in which the third party institutions recommend labour conditions of public service employees; (2) establishment of a governmental employers’ organization; and (3) enhancement of accountability to the public. The Committee also notes the Progress Schedule for Civil Service Reform. In addition, in the process of establishing the Progress Schedule, the Japanese Government held a number of meetings with JTUC–RENGO and RENGO–PSLC at various levels formally and informally between November 2008 and the end of March 2009.

The Committee takes note of this information and wishes to stress once again that the reform process which will establish the legislative framework of industrial relations in the public sector for many years to come is a particularly appropriate opportunity to hold full, frank and meaningful consultations with all interested parties on all the issues which create difficulties with the application of the Convention and whose legal and practical problems have been raised by workers’ organizations over the years. ***The Committee trusts that the Government will vigorously pursue these consultations within the framework of the labour–employer relations system examining the committee or other appropriate bodies, in order to find mutually acceptable solutions to all the issues raised and to bring the law and practice into full conformity with the provisions of the Convention and asks it to provide information on the progress made in its next report.***

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

The Committee notes the comments of the Japanese Trade Union Confederation (JTUC–RENGO) dated 22 October 2008 and 5 October 2009 and the International Trade Union Confederation (ITUC) dated 26 August 2009, on the application of the Convention. ***The Committee requests the Government to provide its observations on the most recent comments made by the JTUC–RENGO and the ITUC.***

Article 1 of the Convention. The Committee had previously noted the long-standing dispute and court proceedings arising out of the privatization of the Japanese National Railways (JNR) which were taken over by the Japan Railway

Companies (JR); they concern in particular, the decision of the JR not to rehire workers belonging to certain organizations which opposed the privatization plan. The Committee additionally noted that the last major pending issue concerned outstanding claims for the reinstatement of the 1,047 Kokuro workers. The Committee notes that the Government indicates in its report that this issue is still being dealt with in the framework of the relevant recommendations of the Committee on Freedom of Association and that the Government will continue to inform the Committee of any progress made in this regard. ***The Committee requests the Government to communicate any determination of the abovementioned issue in its next report and, in particular, the results of any appeals from the remaining workers or any other developments.***

Article 4. Collective bargaining rights of public service employees not engaged in the administration of the State in the context of the civil service reform. Several of the Committee's previous comments concerned the need for measures to ensure the promotion of collective bargaining for public employees who are not engaged in the administration of the State in the framework of ongoing consultations on the reform of the civil service. The Committee notes that the JTUC-RENGO states that the Headquarters for Promoting Civil Service Reform was established pursuant to the Basic Law on Reform of National Public Officers' Systems (Civil Service Reform Law) and, in order to develop an autonomous labour management relation system for public employees, the Labour Employer Relations System Examining Committee was set up and began its examination process. A working group was established in the committee and began discussions in April 2009 in order to work out a system for granting the right to conclude collective agreements, but it is still unclear whether that group's conclusions will be in line with the ILO recommendations.

The Committee notes that the Government indicates that in some local governments, there are cases where there is no choice but to implement the revision of salaries in accordance with the recommendations of Personnel Commissions in view of the current social and economic circumstances, critical fiscal conditions and progress of administrative and fiscal reform. In addition, the Government indicates that the Supreme Court has ruled that, even if a revision of remuneration has not been made in accordance with the Personnel Commission, it should not be immediately interpreted as the Personnel Commission not playing its proper compensatory functions if it is due to the really unavoidable reasons of the Prefecture's fiscal conditions. The Committee also notes that the Government held a number of meetings with JTUC-RENGO and RENGOPSLC at various levels formally and informally between November 2008 and March 2009.

Additionally, in 2008 the Government held a total of 35 official meetings with employees' organizations concerning issues including remunerations. Four of these meetings were with the Minister of Internal Affairs and Communications and based on the resulting findings, the Amendment Bill of the Law Concerning the Remuneration of Regular Service Employees was submitted to the Diet to revise the remunerations exactly as recommended by the National Personnel Authority.

Taking note of this information, the Committee once again recalls from previous comments that the capacity of public employees who are not engaged in the administration of the State to participate in the determination of wages remains substantially limited and once again requests the Government to examine measures in the context of the current dialogue over the civil service reform, aimed at giving a primary role to collective bargaining so that workers and their organizations may be able to participate fully and meaningfully in designing the overall bargaining framework. The Committee firmly hopes that the Government will be in a position to report on concrete progress made in this respect in its next report.

Jordan

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ***(ratification: 1968)***

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, which refer to matters previously raised by the Committee.

Scope of the Convention. In its previous comments the Committee had referred to the exclusion of migrant workers, domestic workers and certain classes of agricultural worker from the provisions of the Labour Code, and had noted with interest the Government's statement that it had formulated amendments to the Jordanian Labour Code so as to include migrant workers, domestic workers, and all categories of agricultural workers within the scope of the Labour Code's provisions, and that the draft amendments had been referred to the Council of Ministers in order to initiate the process of adoption. In this respect, the Committee notes that according to the Government the draft amendments to the Labour Code were still undergoing constitutional procedures for approval, and that pending their adoption the Government had undertaken such measures as increasing the number of labour inspectors in export processing zones and aiding in the establishment of migrant worker trade union committees.

Article 2 of the Convention. Protection against acts of interference. The Committee recalls that it had previously requested the Government to take the necessary measures in order to adopt legislative provisions providing for rapid appeal procedures and sufficiently dissuasive sanctions against acts of interference. The Government indicates, in this regard, that this matter has been taken into consideration in the draft amendments to the Labour Code.

Noting this information, the Committee once again expresses the hope that the amendments to the Labour Code will, upon adoption: (1) ensure the guarantees of the Convention to the categories of worker mentioned above; and (2) make express provision for rapid appeal procedures, together with sufficiently dissuasive sanctions, against all acts of interference by workers' and employers' organizations by each other in their establishment, functioning or administration. It requests the Government to provide a copy of the amendments as soon as they are adopted.

Workers' Representatives Convention, 1971 (No. 135) (ratification: 1979)

In its previous comments, the Committee had noted that the only facility granted by law to workers' representatives was paid leave of 14 days to attend courses and requested the Government to take the necessary steps to ensure that trade union representatives are granted facilities enabling them to carry out their trade union duties rapidly and efficiently. The Committee had also noted that the Ministry of Labour was endeavouring to encourage workers' and employers' organizations to include most of the provisions of the Convention in their collective agreements. The Committee further noted the Government's indication that its comments would be taken into account when a legislative modification was adopted. It requested the Government to keep it informed of any measures adopted in that regard, and recalled that the Workers' Representatives Recommendation, 1971 (No. 143), lists examples of such facilities: time off from work to attend trade union meetings, congresses, etc.; access to all workplaces in the undertaking, where necessary; access to the management of the undertaking, as may be necessary; distribution to workers of publications and other written documents of the union; access to such material facilities and information as may be necessary to carry out their duties, etc.

The Committee notes with *interest* that, according to the Government, the measures requested in its previous observation have been incorporated into the draft amendments to the Labour Code, which would be transmitted to the Committee following their adoption. *In these circumstances the Committee expresses the hope that the amendments to the Labour Code would ensure for trade union representatives, facilities enabling them to carry out their trade union duties rapidly and efficiently and requests the Government to provide information on developments respecting the amendments' adoption.*

Liberia

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 29 August 2009. *The Committee requests the Government to provide its observations thereon.*

The Committee had previously taken note of the labour law reform process, being facilitated by the ILO, under which consultations with stakeholders were to be held until December 2008. The recommendations emanating from these consultations were to be analysed and reviewed at the January 2009 National Labour Conference, with a view to drafting a final revision of the law. In this connection, the Committee had expressed the hope that this reform process will take into full consideration the matters the Committee has been commenting upon for many years, which concern the need for:

- legislation guaranteeing to workers adequate protection against anti-union discrimination at the time of recruitment and during the employment relationship, accompanied by sufficiently effective and dissuasive sanctions;
- legislation guaranteeing to workers' organizations adequate protection against acts of interference by employers and their organizations, including sufficiently effective and dissuasive sanctions; and
- legislation guaranteeing the right to collective bargaining to employees in state-owned enterprises and public servants who are not public officials engaged in the administration of the State.

The Committee notes that according to the Government, the Decent Work Bill will fully protect the workers and their organizations against anti-union discrimination both at the time of recruitment and during employment relationship as well as against acts of interference by the employers and their organizations. It will further ensure the right to collective bargaining of state-owned enterprise employees. *The Committee once again expresses the firm hope that the Decent Work Bill will give full effect to the Convention in line with its comments above, including that concerning the right to collective bargaining of public servants not engaged in the administration of the State, and requests the Government to provide a copy of the latter following its adoption.*

Malawi

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

The Committee notes the Government's reply to the International Trade Union Confederation's (ITUC) communication dated 26 August 2009, which refers to matters previously raised.

The Committee had previously noted the ITUC's allegation concerning the exclusion of the informal sector from the guarantees of the Convention. In this respect, the Government states that the ITUC's allegation is incorrect. The

Government further indicates that there is even an organization entitled the Malawi Union for the Informal Sector, which was registered in June 2004. The Committee notes the Government's information.

Mali

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1995)

Article 1 of the Convention. Scope of application. In its previous comments the Committee noted that the exceptions from the scope of the General Civil Service Regulations, 2002, were too broad and asked the Government to indicate which of the rights and guarantees established in the Convention apply to certain categories of public employees. It also asked the Government to clarify whether, in respect of personnel of designated public bodies governed by their own regulations, those regulations establish the guarantees provided for by the Convention. The Committee observes that the Government's report does not contain any information in this respect. ***The Committee again requests the Government to indicate the various existing regulations which govern the personnel of public bodies, to clarify whether, under these regulations, such personnel enjoy the guarantees established in the Convention, and to send a copy of them.***

Articles 4 and 5. Protection against anti-union discrimination and interference. In its previous comments, the Committee noted that the General Civil Service Regulations contain no specific provisions on protection against anti-union discrimination and interference. It therefore asked the Government to take the necessary steps to ensure that the legislation includes explicit provisions to protect workers against acts of anti-union discrimination at the time of recruitment and in the course of employment and against acts of interference by the public authorities, together with rapid and effective remedies and sufficiently dissuasive sanctions. The Committee notes with **regret** the Government's indication that no measures are contemplated in this respect. ***The Committee therefore requests the Government once again to take steps to ensure that the legislation includes explicit provisions providing adequate protection against anti-union discrimination for public employees and against all acts of interference by the public authorities in the formation, functioning and administration of public employees' organizations.***

Article 7. Procedures for determining terms and conditions of employment. With regard to joint administrative committees and their role as dispute settlement bodies, the Committee previously observed that, under Decree No. 5-164 of 6 April 2005 establishing arrangements for the implementation of the General Civil Service Regulations, the competence of the joint committees is confined to individual issues and it was not established that public employees' organizations may participate in the determination of their terms and conditions of employment through negotiation or other methods. The Committee notices that the legislation permits the exercise of the right to strike but does not establish negotiating procedures or other methods for determining the terms and conditions of employment in the public service, since the Higher Civil Service Council referred to by the Government is a consultative body under the terms of Decree No. 5-164. ***Since Mali has also ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Committee again requests the Government to take the necessary steps to ensure that the legislation gives full effect to Article 7 of the Convention and at least recognizes the right to collective bargaining of public servants not engaged in the administration of the State.***

Article 8. Dispute settlement. With regard to dispute settlement, the Committee notes the Government's indication in its last report that the legislation does not establish any provisions on the settlement of disputes connected with the determination of terms and conditions of employment between the public authorities and the representative organizations of public employees, but in practice there is a Committee on Social Dialogue which exists within the Cabinet of the Prime Minister and the Ministry of Labour, the Public Service and State Reform, which intervenes as a mediator whenever notice of strike action is given by the public employees' representative organizations. ***The Committee requests the Government to send a copy of the text establishing the powers, composition and functioning of the Committee on Social Dialogue referred to in its report and to provide information on any progress made in the adoption of provisions laying down procedures for the settlement of disputes, other than those taking the form of a strike, arising from negotiations between the public authorities and public employees' representative organizations in the determination of terms and conditions of employment.***

Malta

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

The Committee notes with **regret** that no observation was provided by the Government on the comments submitted by the International Confederation of Free Trade Unions (ICFTU) in 2006, presently known as the International Trade Union Confederation (ITUC), particularly on account of some allegations reference to death threats against leaders of the General Workers Union (GWU). In this respect, the Committee recalls the Government that death threats against trade unionists create an environment of fear and have inevitable repercussions on the exercise of trade union activities, and that it should carry out inquiries into allegations of this kind.

Article 3 of the Convention. Right of organizations to freely organize their activities and to formulate their programmes. In its previous comments, the Committee had requested the Government to clarify whether, under the terms of sections 74 of the Employment and Industrial Relations Act 2002 (EIRA), compulsory arbitration before the Industrial Tribunal could still be imposed over disputes of interest. The Committee had also requested information on the number of strikes and the incidents of recourse to the Minister's power to refer disputes to the Industrial Tribunal at the request of only one party. The Committee notes the Government's explanation to the effect that, where a trade dispute exists or is apprehended, the parties to the dispute may agree to refer the dispute to the Director of Industrial and Employment Relations or to a conciliator chosen by the parties themselves or by the Director; thus the mechanism is purely voluntary. It is only where the parties choose to resort to conciliation, and the conciliator reports a deadlock, that the Director refers the matter to the Minister for eventual referral to the Industrial Tribunal. Furthermore, the Government indicates that in 2007, five strikes were resolved through mediation and not through recourse to the Industrial Tribunal.

While noting this information, the Committee observes, nevertheless, that under section 74(1) and (3) of the Employment and Industrial Relations Act, where conciliation fails, any of the parties to the dispute may notify the Minister who in turn may refer the dispute to the Tribunal for settlement.

Further noting the information given by the Government that the Employment and Industrial Relations Act 2002 will be under review for possible amendment, the Committee requests the Government to ensure that due consideration is given, within this exercise, to amending section 74(1) and (3) of that law so that arbitration may not be imposed unless both parties agree. The Committee requests the Government to indicate any developments in this regard.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1965)

Article 1 of the Convention. The Committee recalls that it had previously requested the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals by public officers, port workers and public transport workers given that those categories are excluded from the jurisdiction of the industrial tribunal pursuant to section 75(1) of the Employment and Industrial Relations Act 2002 (EIRA). The Committee notes from the Government's report that public officers have the right to appeal to the Public Service Commission, an independent body (the members are appointed by the President of Malta acting on the advice of the Prime Minister given after a consultation with the Leader of the Opposition and they cannot be removed except for inability or misbehaviour causes) established under section 109 of the Constitution of Malta. The Committee also notes from the Government's report that the Public Service Commission's primary role is to ensure that disciplinary action taken against public officers is fair, prompt and effective. ***The Committee requests the Government to indicate, with regard to cases of anti-union dismissal, whether the Public Service Commission is empowered to grant such compensatory relief – including reinstatement and back pay awards – as to constitute sufficiently dissuasive sanctions against acts of anti-union discrimination. The Committee also once again requests the Government to indicate the procedures applicable for the examination of allegations of anti-union dismissals of port workers and public transport workers.***

Articles 2 and 3. Protection against acts of interference. The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts given that the EIRA does not expressly protect employers' and workers' organizations from acts of interference by one another, in each other's affairs. ***Noting with regret that no observation is provided on this matter in the Government's report, the Committee once again requests the Government to indicate in its next report, the measures taken or contemplated so as to introduce in the legislation an explicit prohibition of acts of interference, as well as sufficiently dissuasive sanctions against such acts.***

Article 4. Collective bargaining. The Committee recalls that it had previously requested the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act, so as to ensure that this provision: (i) does not render automatically null and void any provisions in existing collective agreements which grant workers the right to recover public holidays falling on a Saturday or Sunday; and (ii) does not preclude voluntary negotiations in the future over the issue of granting workers the right to recover national or public holidays which fall on a Saturday or Sunday on the basis of a collective agreement (see 342nd Report of the Committee on Freedom of Association, Case No. 2447, paragraph 752). ***The Committee, noting with regret that no information is provided in this respect, once again requests the Government to indicate the measures taken or contemplated with a view to amending section 6 of the National Holidays and Other Public Holidays Act.***

Myanmar

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1955)

The Committee notes the discussion that took place at the Conference Committee on the Application of Standards in June 2009. It also notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2268 and 2591 (354th Report, approved by the Governing Body at its 305th Session, June 2009,

paragraphs 154–168), and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 26 August 2009 which refer to grave matters noted by the Committee in its previous comments.

The Committee recalls the ITUC's previous reference to the arrest, heavy-handed interrogation and long prison sentences imposed on six workers (Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min). The six workers were sentenced on 7 September 2007 to 20 years' imprisonment for sedition and Thurein Aung, Wai Lin, Kyaw Win, and Myo Min were sentenced to an additional five years in prison for association with the Federation of Trade Unions of Burma (FTUB) under section 17(1) of the Unlawful Associations Act and to three years for illegally crossing a border, as a result of which their jail time amounted to 28 years in total. The Committee notes that in its 2009 comments the ITUC indicates that the six workers appealed their convictions to the divisional court, which dismissed them, prompting them to file their appeals to the Supreme Court – which reviewed the cases on 4 April 2008 and let the original court rulings stand.

The Committee recalls the previous allegations concerning Burma Railway Union leader U Tin Hla. According to the ITUC, U Tin Hla had been arrested along with his entire family on 20 November 2007, and – while his family was later released – was charged and sentenced to seven years in prison under section 19(a) of the Penal Code for possession of explosives which were, in fact, electric wires and tools in his toolbox. The ITUC had indicated that U Tin Hla's crime was apparently his very active efforts to organize workers from the railways and other sectors to support the popular uprising of the Buddhist monks and people in late September 2007. In its 2009 comments, the ITUC adds that U Tin Hla remains in prison, suffering from tuberculosis and diabetes.

In respect of Su Su Nway, who allegedly had been arrested for her actions in supporting workers' participation in the September 2007 uprising, the Committee notes that in its 2009 comments the ITUC states that in November 2008 Su Su Nway was convicted of encouraging assembly of persons disturbing state tranquillity, obstructing the work of officials, and issuing communications that interfere with Myanmar's relations with other nations. She was sentenced to 12 years and 6 months in prison. The ITUC also indicates that at the end of 2008 three workers – Khin Maung Cho (aka. Pho Toke), Nyo Win, and Kan Myint – employed at the A21 Soap Factory in Hlaing Thayar Industrial Zone, were sentenced to long jail terms for involvement with exiled groups, sedition and other charges. Khin Maung Cho was sentenced to 19 years, while Kan Myint received ten years in jail and Nyo Win was given a five-year sentence.

The Committee recalls that the ITUC had previously referred to numerous other grave violations of the Convention, including:

- the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 12 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code);
- the killing of Saw Mya Than, FTUB member and official of the Kawthoolei Education Workers' Union (KEWU), who was allegedly murdered by the army in retaliation for a rebel attack, and in respect of whose murder the Committee on Freedom of Association had requested the Government to institute an independent inquiry in the framework of Case No. 2268;
- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she was believed to be incarcerated in Insein prison but there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising;
- the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Tharyar section of Pegu city. While in detention, several male members of the family were tortured while being interrogated. On 3 and 4 September 2006, the authorities released four of the family members. But three of Thein Win's siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in jail under sections 17(1) and (2) of the Unlawful Associations Act. Tin Oo suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health;
- the arrest in March 2006 of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-SPDC demonstrations. All five were sentenced to long prison terms and four were serving those terms in Insein prison (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years);
- the intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory;

- the arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers' Union (KHWU); she was supposedly held in Toungoo;
- the arrest, torture and killing of Saw Thoo Di, aka. Saw Ther Paw, a Karen Agricultural Workers' Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006;
- the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration; and
- the arrest, torture, and sentencing by a special court established in prison of ten FTUB activists to prison sentences, from three to 25 years, for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

As concerns the six workers arrested for allegedly participating in a May Day 2007 event, the Committee notes that the statement of the Government representative to the Conference Committee repeats the Government's previous indication that they had not been arrested for holding a May Day event, but for breach of existing laws and for their involvement in unlawful activities and attempted terrorist acts in the country. There was solid evidence that those persons had been receiving instructions, training and financial assistance from the FTUB, a terrorist group in exile and unlawful association which masterminded bombings and terrorist acts to incite public unrest in the country. The Government representative further stated that any request to release them immediately constituted an infringement upon national sovereignty and was contradictory to the basic principles of public international law and *Article 8 of the Convention*, which stipulates that the law of the land should be respected.

With respect to U Tin Hla, the Committee notes that the statement of the Government representative to the Conference Committee reiterates the Government's previous indication that U Tin Hla was neither a leader nor a member of a labour union, but had worked as a supervisor for Myanmar Railways, which had no union. He had been caught by the police when committing the crime of possessing ammunition and had been subsequently charged and sentenced. As regards the ITUC's other allegations of the murder, detention, torture, arrest and sentencing of trade unionists, the Government states that the persons referred to were not arrested and convicted for having engaged in trade union activity but for having incited hatred of and contempt for the Government.

The Committee can only *deplore* the fact that the Government in its report largely confines itself to its previous observations – referring to the FTUB as a terrorist organization and indicating peremptorily that the numerous persons referred to were convicted for breaches of existing laws and inciting hatred of the Government – while failing to provide any evidence of measures taken to implement the Committee's previous requests. Once again, the Committee *deeply regrets* the dismissive tone of the Government's reply and the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues raised by ITUC. The Committee once again strongly condemns the view expressed by the Government that comments made by workers' organizations under article 23 of the ILO Constitution and recommendations made by the ILO supervisory bodies to remedy violations of the fundamental rights of workers constitute interference in internal affairs, emphasizing in this regard that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified including Convention No. 87.

The Committee once again stresses that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, recalling that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar, the Committee once again recalls that while trade unions are expected under *Article 8 of the Convention* to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". The authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again most *strongly deplores* the serious alleged acts of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day activities. *The Committee once again urges the Government to provide information on measures adopted and instructions issued without delay so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities immediately and to ensure that no*

worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of their own choosing. Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.

The Committee recalls the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; "workers' committees" organized by the authorities; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma (SUB) which is affiliated to the FTUB and the International Transport Workers' Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing important restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (1) Order No. 6/88 of 30 September 1988 provides that the "organizations shall apply for permission to form to the Ministry of Home and Religious Affairs" (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (2) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (3) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (4) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (5) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; and (6) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

Recalling that it had previously requested a detailed report on the measures taken to address the above-noted legislative matters, the Committee **deeply regrets** that the Government limits itself to repeating previously submitted information on the adoption of the Constitution and upcoming legal reforms. The Government reiterates that several sections of the Constitution would give effect to the provisions of the Convention (paragraph 96 of Chapter IV, paragraphs 353, 354 and 355 of Chapter VIII, and Schedule One, Union Legislative List, in Chapter XV) and repeats that, once the Constitution comes into force, pursuant to its provisions, national legislation would be reviewed and new laws drafted, including the Trade Union Law, and that they would be in line with Convention No. 87. In respect of the legislation, the Committee also notes that according to the Government the FTUB had been declared a terrorist organization by the Ministry of Home Affairs in Declaration No. 1/2006, and was also an unlawful association under the Unlawful Associations Act, 1908.

With regard to the Government's indications, the Committee further notes that in its conclusions the Conference Committee, wishing to highlight the intrinsic link between freedom of association and democracy, observed with regret that the Government had undertaken a road map for the latter without ensuring the basic requisites for the former. The Conference Committee also called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice were fully brought into line with the Convention.

Finally, the Committee recalls its previous observation that there was currently no legal basis for the respect for, and realization of, freedom of association in Myanmar and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". In this respect the Committee had noted with deep regret that the drafting of article 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice. Recalling the particularly serious and urgent issues that it has been raising for nearly 20 years now, the Committee must once again **deplore** the Government's persistent failure to take any measures to remedy the legislative situation which constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of the Convention. Furthermore, the Committee once again **deeply regrets** the exclusion from any meaningful consultation of the social partners and civil society as a whole, which would be a necessary foundation for the establishment of a legislative framework on the particularly serious and urgent issues raised in relation to the application of the Convention.

In these circumstances, the Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken, with the full and genuine participation of all sectors of society regardless of their political views, to enact legislation guaranteeing to all workers and employers the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It further urges the Government in the strongest terms to immediately repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act, and Declaration No. 1/2006 of the Ministry of Home Affairs, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee once again requests the Government to communicate any steps taken towards the adoption of draft laws, orders or instructions to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention.

The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87. *Noting the indication in the Government's report that an extension of the ILO presence to cover the matters related to the Convention was under consideration, the Committee expresses the firm hope that the Government will be in a position to accept such an extension in the very near future.*

Namibia

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1995)

The Committee notes that according to the Government the Labour Act. No. 11 of 2007 entered into force on 1 November 2008.

Article 6 of the Convention. Rights of prison staff. The Committee had previously noted that section 2(2)(d) of the Labour Act excludes members of the Namibian prison service from the Labour Act's provisions, unless the Prisons Service Act provides otherwise, and had also noted that the Prisons Service Act does not provide for the extension of the new Labour Act's guarantees to the Namibian prison service. *Noting that the Government provides no information respecting this matter, the Committee once again expresses the hope that the necessary legislative amendments to guarantee, to the prisons services, the rights provided under the Convention will be adopted in the near future and once again requests the Government to indicate, in its next report, any developments in this regard.*

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

Netherlands

Aruba

Workers' Representatives Convention, 1971 (No. 135)

Article 2 of the Convention. In its previous comments the Committee had requested the Government to indicate the measures taken to formalize some facilities concerning the access of the trade union leaders to the workplace of the employer and the distribution of union materials in the private sector. The Committee notes the Government's indication that no measures have been taken to seek advice of the Department of Labour for the formalization of these facilities. *Recalling that according to Article 2 of the Convention facilities in the undertakings shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently, the Committee requests the Government to take measures in this respect.*

Articles 1 and 2. The Committee further notes the declaration of the Government according to which the labour legislation review is still under way. *The Committee expresses the hope that the future legislation will be in accordance with the provisions of the Convention concerning the protection of workers' representatives (which now is let to the collective agreements) and the facilities to be afforded to them to enable them to carry out their functions properly and efficiently.*

Nicaragua

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

The Committee notes the Government's reply to the comments from the International Trade Union Confederation (ITUC) dated 29 August 2008 concerning the application of the Convention. The Committee also notes the new comments from the ITUC dated 26 August 2009, claiming that enterprises recruit workers for short periods or by the day, which

prevents them from joining trade unions, and there are problems concerning the exercise of trade union rights in the *maquila* (export processing) industry. ***The Committee requests the Government to send its observations in this respect.*** Furthermore, in view of the Government's indication that it is unaware of the comments made by the International Confederation of Free Trade Unions (ICFTU) – presently known as the ITUC – in 2005 and 2006 concerning the criminal proceedings against seven trade union officials, obstacles to the registration of a trade union executive committee and the declaration by the administrative authority that a work stoppage in the education sector was illegal, the Committee notes that the Office has sent these comments once more to the Government. ***The Committee requests the Government to carry out an investigation and provide its response in this respect.***

Article 3 of the Convention. Right of workers' organizations to organize their activities and formulate their programmes in full freedom. The Committee recalls that it has been referring for a number of years to the need for measures to be taken to amend sections 389 and 390 of the Labour Code, which provide for compulsory arbitration of a dispute where 30 days have elapsed since the calling of a strike. The Committee notes the Government's reply, in which it requests clarification regarding the legal basis of the Committee's claims that these provisions need to be amended. In this respect, the Committee recalls that the right to strike is one of the essential means at the disposal of workers and their organizations to promote and defend their economic and social interests. This right is based on the recognized right of workers' and employers' organizations to organize their activities and formulate their programmes for the purpose of furthering and defending the interests of their members (*Articles 3, 8 and 10 of the Convention*). The Committee has also pointed out that the right to strike is an intrinsic corollary of the right to association protected by the Convention. Furthermore, the Committee has considered that arbitration imposed by the authorities on their own initiative is difficult to reconcile with the principle of the voluntary nature of negotiation (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 145, 179 and 258). Accordingly, in so far as compulsory arbitration obstructs the exercise of the right to strike, such arbitration violates the right of trade unions to organize their activities in full freedom and could only be justified in the context of the public service, or essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population), or in the case of an acute national crisis. ***The Committee requests the Government once again to supply information in its next report on the measures taken or contemplated to amend these sections as indicated.***

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

The Committee notes the Government's reply to the comments made by the International Trade Union Confederation (ITUC) dated 29 August 2008 referring to the imposition of compulsory arbitration and anti-union dismissals in export processing zones (EPZs) and various enterprises. The Committee notes the Government's indication that compulsory arbitration in EPZs is provided for in the Foreign Investment Promotion Act and that it refers to commercial and not labour matters. ***The Committee requests the Government to undertake an investigation into the comment alleging anti-union dismissals in EPZs and various enterprises. The Committee also requests the Government to send its observations on the ITUC comments dated 26 August 2009 which also refer to this matter.***

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee duly notes that section 316 of the Penal Code, as amended in 2008, reinforces protection against acts of anti-union discrimination by providing that any termination of an employment relationship or modification thereof to the detriment of the worker by way of reprisal for the exercise of a labour right recognized in the Constitution, international instruments, laws, regulations or collective agreements shall be liable to a fine ranging from 90 to 300 days.

Article 2. Protection against acts of interference. In its previous comments the Committee referred to the need for the legislation to provide sanctions that are a sufficiently effective deterrent against acts of interference by employers or their organizations in trade union affairs. In this respect, the Committee notes with *satisfaction* the Government's indication that section 316 of the Penal Code, as amended in 2008, imposes a fine ranging from 90 to 300 days on any employer, manager or administrator who finances or promotes organizations intended to restrict or impede the full freedom and autonomy of trade unions which are established in the Political Constitution of the Republic of Nicaragua, international instruments, laws, regulations or collective agreements.

Article 4. Promotion of collective bargaining. The Committee previously requested the Government to take steps to encourage collective bargaining in EPZs and to keep it informed of any measures taken in this respect. The Committee notes the Government's statement that in the first half of 2008 a total of 20 collective agreements were signed in the EPZs, covering a total of 54,054 workers.

Nigeria

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

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

The Committee recalls that in its previous observation, it had noted the Trade Union (Amendment) Act (2005) and draws the attention of the Government to the following points.

Article 2 of the Convention. Legislatively imposed trade union monopoly. In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee noted that there is no such amendment in the language of the Trade Union (Amendment) Act. The Committee reiterates that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45). ***It therefore urges the Government to amend section 3(2) of the principal Trade Union Act so as to ensure that workers have the right to form and join organizations of their own choosing even if another organization already exists.***

Organizing in export processing zones (EPZs). The Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity is still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the export processing zones. The Committee notes the ITUC's comments, according to which section 13(1) of the Nigeria Export Processing Zones Authority Decree (1992) makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZs. ***The Committee therefore once again requests the Government to take the necessary measures in the near future to ensure that EPZ workers are guaranteed the right to form and join organizations of their own choosing, as provided by the Convention, and to transmit a copy of any new laws adopted in this respect. It further requests the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations have reasonable access to EPZs in order to appraise the workers in the zones of the potential advantages of unionization.***

Organizing in various government departments and services. In its previous comments, the Committee requested the Government to amend section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The Committee notes that this section was not amended by the Trade Union (Amendment) Act. The Committee had noted that according to the Government's statement, the Collective Labour Relations Bill, pending before the lower chamber of Parliament will address this issue. The Committee recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments of the armed forces. Furthermore, the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey, op. cit., paragraphs 55 and 56). ***The Committee therefore requests the Government to take the necessary measures to amend section 11 of the Trade Union Act, which is still in force, and indicate the progress made towards the adoption of the Collective Labour Relations Bill and send a copy of the legislation, once it is adopted.***

Minimum membership requirement. The Committee had previously expressed its concern over section 3(1) of the Trade Union Act requiring 50 workers to form a trade union. The Committee considers that even though this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises. ***In these circumstances, the Committee is therefore bound to reiterate that this number is too high and requests the Government to take the necessary measures to reduce the minimum membership requirement, particularly in respect of enterprise trade unions, and thus ensure the right of workers to form organizations of their own choosing.***

Article 3. The right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. Export processing zones (EPZs). The Committee recalls that it had previously requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to freely organize their administration and activities and to formulate their programmes without interference by the public authorities, including through the exercise of industrial action. ***Noting the Government's indication that the EPZ authority is not opposed to trade union activities and that the Federal Ministry of Labour and Productivity is still in discussion on this issue, the Committee reiterates its previous request and expects that the necessary measures will be taken without delay so as to ensure that workers in EPZs enjoy the rights under the Convention.***

Administration of organizations. The Committee recalls that, in its previous comments, it had requested the Government to amend sections 39 and 40 of the Trade Union Act in order to limit the broad powers of the registrar to supervise the union accounts at any time and to ensure that such a power was limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. The Committee notes that these sections were not amended under the new legislation and that the Government refers to the Collective Labour Relations Bill. ***The Committee trusts that the new legislation to which the Government refers will address this matter.***

Right to strike. Compulsory arbitration. The Committee had noted that section 30, as amended by subsection (6)(d) of the Trade Union (Amendment) Act, continues to rely on the Trade Disputes Act to restrict strike action through the imposition of a compulsory arbitration procedure leading to a final award. The Committee has already pointed out on several occasions that such a restriction, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes. Furthermore, the Committee notes the ITUC's comments, according to which section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) impedes trade unions from handling the resolution of disputes between employers and employees by granting this responsibility to the authorities managing these zones. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). ***The Committee therefore once again requests the Government to take the necessary measures to amend section 7 of Decree No. 7 of 1976, amending the Trade Disputes Act in order to limit the possibility of imposing compulsory arbitration to only essential services in the strict sense of the term, public servants exercising authority in the name of the State or in the case of acute national crisis. Also, the Committee requests the Government to amend section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) in order to guarantee the autonomy of the bargaining partners without giving the right to the authorities to impose compulsory arbitration.***

Majority required to declare a strike. The Committee had noted that section 6 of the Trade Union (Amendment) Act amends section 30 of the principal Act by inserting subsection (6)(e), which requires the observance of a simple majority of all registered trade union members for the calling of a strike. The Committee considers that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (see General Survey, op. cit., paragraph 170). ***It therefore requests the Government to take the necessary measures to amend the new section 30(6)(e) accordingly, so as to bring it into conformity with the Convention.***

Restrictions relating to essential services. The Committee had noted with concern that section 6 of the new Act relies on the definition of “essential services” provided for in the Trade Disputes Act (1990) to restrict participation in a strike. Specifically, the Trade Disputes Act defines “essential services” in an overly broad manner so as to include, among others, services for or in connection with: the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, the postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Committee recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). ***It once again requests the Government to take the necessary measures to amend the Trade Disputes Act’s definition of “essential services”.***

The Committee reminds the Government that in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to the third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey, op. cit., paragraph 160).

Restrictions relating to the objectives of a strike. The Committee had noted with concern section 30 of the Trade Union Act as amended by section 6(d) of the new Act, limiting legal strikes to disputes constituting a dispute of rights, defined as “a labour dispute arising from the negotiation, application, interpretation or implementation of a contract of employment or collective agreement under the Act or any other enactment of law governing matters relating to terms and conditions of employment”, as well as to a dispute arising from a collective and fundamental breach of employment or collective agreement on the part of the employee, trade union or employer. The Committee considers that the legislation appears to exclude any possibility of a legitimate strike action to protest against the Government’s social and economic policy affecting workers’ interests. The Committee recalls that organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and the standard of living (see General Survey, op. cit., paragraph 165). ***Therefore, it requests the Government to take the necessary measures to amend section 6 of the new Act so as to ensure that workers enjoy the full right to strike and, in particular, to ensure that workers’ organizations may have recourse to protest strikes aimed at criticizing the Government’s economic and social policies without sanctions.***

Other restrictions. The Committee had noted that section 42(1)(B) of the Trade Union Act, as amended, requires that “no trade union or registered federation of trade unions or any member thereof shall in the course of any action compel any person who is not a member of its union to join and strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike”. The Committee observes that this section appears to provide for two prohibitions: firstly, with regard to compelling non-union members to participate in a strike action and, secondly, the prohibition to obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike. The Committee recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace should not be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers. As to the second prohibition, the broad wording of this section could potentially outlaw any gathering or strike picket. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitation on the means of action open to trade union organizations. In addition, given that aircraft-related services, with the exception of air traffic controllers, are not in themselves considered to be essential services in the strict sense of the term, a strike of workers in that sector or related services should not be the subject of an overall ban, as could be implied from the wording of this section. ***The Committee therefore requests the Government to take the necessary measures to amend section 42(1)(B) so as to bring it into conformity with the Convention and the above principles, so as to ensure that any restrictions placed on strike actions aimed at guaranteeing the maintenance of public order are not such as to render any such action relatively impossible or ban it for certain workers beyond those in essential services in the strict sense of the term.***

Sanctions against strikes. The Committee had noted that section 30 of the Trade Union Act, as amended by section 6(d) of the new Act, makes strikers liable to the possibility of both paying a fine and being imprisoned up to six months, which might lead to a penalty which is disproportionate to the seriousness of the violation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.***

Article 4. Dissolution by administrative authority. In its previous comments, the Committee had requested the Government to amend section 7(9) of the Trade Union Act by repealing the broad authority of the Minister to cancel the registration of workers’ and employers’ organizations, as the possibility of administrative dissolution under this provision involved a serious risk of interference by the public authority in the very existence of organizations. The Committee had noted the Government’s statement that this matter will be addressed in the Collective Labour Relations Bill. ***Noting that section 7(9) of the principal Act is still in force, the Committee requests the Government to take the necessary measures to amend it and to provide a copy of the new legislative Act once it is adopted.***

Articles 5 and 6. The right of organizations to establish federations and confederations and to affiliate with international organizations and the application of the provisions of Articles 2, 3 and 4 of the Convention to federations and confederations of employers’ and workers’ organizations. The Committee had noted that section 8(a)(1)(b) and (g) of the new Act requires federations to consist of 12 or more trade unions in order to be registered. ***In this respect, the Committee requests the***

Government to provide information on the practical application of this requirement and, in particular, the level at which federations are established.

The Committee expresses the firm hope that appropriate measures will be taken in the very near future to make necessary amendments to the laws referred to above in order to bring them into full conformity with the Convention. It requests the Government to indicate the measures taken or envisaged in this respect.

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in 2009. The Committee recalls that the 2008 ITUC comments concerned violations of the right to strike, arrest and detention of strikers, police repression during demonstrations and the refusal to recognize a trade union. ***The Committee requests the Government to submit its observations on all comments submitted by the ITUC.***

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

The Committee notes the comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009. The ITUC states that in the private sector collective bargaining rights are restricted by the requirement of government approval: collective agreements on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Councils Act. The ITUC also refers to acts of anti-union discrimination, including threats of dismissal made to trade unionists in several companies in the banking sector. ***The Committee requests the Government to provide its observations respecting these matters.***

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 29 August 2008, concerning refusals to negotiate with trade unions, acts of interference by employers, anti-union practices against workers' representatives, including dismissals. ***The Committee requests the Government to submit its observations thereon and to reply to the matters raised by the Committee's previous comment.***

Bill on collective labour relations. The Committee notes the Government's statement, according to which the National Assembly has not yet passed the bill on collective labour relations. The Committee recalls that ILO technical assistance has been provided to the authorities and hopes that the future legislation will be in full conformity with the requirements of the Convention. ***The Committee requests the Government to send the new law once adopted.***

Comments made by the Organization of African Trade Union Unity (OATUU) and the International Confederation of Free Trade Unions (ICFTU) on the application of the Convention. The Committee notes the comments made by the OATUU in a communication dated 20 August 2004, as well as the ICFTU, in communications dated 31 August 2005 and 10 August 2006. The comments concern in particular the fact that: (1) certain categories of worker are denied the right to organize (such as employees of the Customs and Excise Department, the Immigration Department, the Nigerian Security Printing and Mining Company Limited, the prison service and the Central Bank of Nigeria) and therefore are deprived of the right to collective bargaining; (2) only unskilled workers are protected by the Labour Act against anti-union discrimination by their employer; (3) every agreement on wages must be registered with the Ministry of Labour, which decides whether the agreement becomes binding according to the Wages Board and Industrial Council Acts according to the Trade Dispute Act (it is an offence for an employer to grant a general or percentage increase in wages without the approval of the Minister); (4) section 4(e) of the 1992 Decree on Export Processing Zones states that "employer-employee" disputes are not matters to be handled by trade unions but rather by the authorities managing these zones; and (5) section 3(1) of the same Decree makes it very difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the export processing zones (EPZs). ***The Committee requests the Government to send its reply on these comments.***

Concerning the abovementioned point (1), the Committee observes that the Committee on Freedom of Association has underlined that the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of Article 9 of Convention No. 87 (see 343rd Report of the Committee on Freedom of Association, paragraph 1027). ***The Committee requests the Government to amend section 11 of the Trade Union Act (1973) so that these categories of workers are granted the right to organize and to bargain collectively, as well as for all public employees not engaged in the administration of the State.***

The Committee underlines the seriousness of the matters previously raised and requests the Government to take measures as a matter of urgency to ensure full respect for the rights enshrined in the Convention.

Pakistan

Right of Association (Agriculture) Convention, 1921 (No. 11) (ratification: 1923)

The Committee notes with ***regret*** that it has not received the Government's report. The Committee is therefore bound to repeat parts of its previous observation, which are set out below:

The Committee previously noted the comments submitted by the Pakistan Workers' Federation (PWF) in a communication dated 21 September 2008 to the effect that agricultural workers are excluded from the application of the provisions of the Industrial Relations Ordinance (IRO) 2002 and that they have no right to freedom of association.

In its last observation, the Committee observed that small agricultural holdings which do not run an establishment or farmers working on their own or with their family appeared to be excluded from the IRO 2002 and therefore from the provisions

on freedom of association. The Committee noted that the Industrial Relations Act, amending the IRO 2002, was adopted in November 2008 and that it will be an interim law which will lapse on 30 April 2010. During this period, a tripartite conference will be held to draft a new legislation in consultation with all stakeholders.

Furthermore, the Committee noted that while no trade union of agriculture was registered, there were numerous agricultural workers' associations in place in the country to safeguard their interests.

The Committee again requests the Government to indicate whether these associations enjoy bargaining rights under Pakistani legislation. The Committee requests the Government to keep it informed of any progress made on the work of the tripartite conference referred to by the Government in the drawing up of new legislation on labour relations. The Committee trusts that the new legislation will ensure specifically that those engaged in agriculture, who appear to be excluded from the provisions on freedom of association of the IRO 2002, enjoy the same rights of association and combination as industrial workers. It also requests information on the number of trade unions and associations of agricultural workers.

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

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

The Committee notes the comments made by the Pakistan Workers' Federation (PWF) and the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice in communications dated 2 and 26 August 2009 respectively. The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2096, 2399, 2520 (see 353rd Report) and 2229 (see 354th Report), dealing with the same issues.

The Committee recalls that for several years it has been commenting on important restrictions to the right to organize of certain categories of workers and to the right of trade unions to formulate their programmes, elect their officers and carry out their activities without interference by the public authorities. At its 2008 session, the Committee took note of the Industrial Relations Act (IRA), adopted in November 2008, which amended the Industrial Relations Ordinance (IRO) 2002. It further noted that the IRA was an interim law due to lapse on 30 April 2010. The Committee noted that during this period, a tripartite conference would be held to draft new legislation in consultation with all stakeholders.

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009. It further notes that the Conference Committee expressed the firm hope that new legislation would be adopted in the very near future with the full consultation of the social partners concerned and that it would guarantee the right of all workers, without distinction whatsoever, to form and join organization to defend their social and occupational interests and to organize their activities and elect their officers freely and without interference.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee recalls that in its previous comments it had requested the Government to ensure full freedom of association at the Karachi Electric Supply Company (KESC) and the Pakistan International Airlines Corporation (PIAC). The Committee notes with *interest* the Government's statement that trade union activities were restored at both undertakings. With regard to the PIAC, the Government indicated that Chief Executive Order No. 6 was repealed by Parliament.

The Committee notes that the IRA excludes the following categories of workers from its scope of application:

- workers employed in services or installations exclusively connected with or incidental to the armed forces of Pakistan, including the Ordnance Factory maintained by the federal Government (section 1(3)(a));
- workers employed in the administration of the State (section 1(3)(b));
- members of the security staff of the PIAC (section 1(3)(b));
- workers employed by the Pakistan Security Printing Corporation or the Security Papers Limited (section 1(3)(d));
- workers employed by an establishment or institution for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis (section 1(3)(e));
- members of the watch and ward, security or fire service staff of an oil refinery, an airport or a seaport (section 1(3)(f));
- members of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas (section 1(3)(g));
- agricultural workers (section 1(3) read together with 2(ix) and (xiv)); and
- workers of charitable organizations (section 1(3) read together with 2(ix) and (xiv)).

The Committee requests the Government to take the necessary measures in order to ensure that the new legislation guarantees the abovementioned categories of employees the right to form and join organizations to defend their own social and occupational interests. The Committee further requests the Government to indicate whether self-employed workers enjoy the rights afforded by the Convention.

With regard to the right to organize in export processing zones (EPZs), the Committee notes the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009 had been finalized in

consultation with the stakeholders and will be submitted to the Cabinet for approval. ***The Committee hopes that the Rules will guarantee freedom of association rights to workers in EPZs and requests the Government to provide a copy thereof as soon as they are adopted.***

The Committee notes that according to section 6(2) of the IRA, only trade unions of workers engaged or employed in the same industry may be registered. In the view of the Committee, such restrictions may be applied to first-level organizations, on condition that these organizations are free to establish inter-professional organizations, and to join federations and confederations in the form and manner deemed most appropriate by the workers or employers concerned (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 84). ***The Committee requests the Government to take the necessary measures to ensure that under the new legislation, trade unions affiliating workers of different professions and/or enterprises could be established.***

The Committee further notes section 30(3) of the IRA according to which, after the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such unit. The Committee recalls that the right to establish and join unions implies the free determination of the structure and composition of unions. ***The Committee therefore requests the Government to take the necessary measures in order to ensure that under the new legislation, workers can themselves determine the composition of their unions.***

The Committee had previously requested the Government to lower the requirement of the minimum trade union membership set at 25 per cent of workers employed at the respective establishment or industry. The Committee notes that under the IRA, this requirement is lowered to 20 per cent (section 6(2)(b)). ***Considering that this minimum membership requirement is still too high, the Committee requests the Government to ensure that it is further reduced to a reasonable level.***

The Committee notes that under the IRA, the right to represent workers in any proceedings, the right to check-off facilities and the right to call a strike are granted only to collective bargaining agents, i.e. the most representative trade unions (sections 24(13)(b) and (c), 32, 41, 42 and 68(1)). The Committee considers that workers' freedom of choice would be jeopardized if the distinction between most representative and minority unions results, in law or in practice, in the granting of privileges extending beyond that of priority in representation for such purposes as collective bargaining or consultation by the Government or for the purpose of nominating delegations to international bodies. In other words, this distinction should not have the effect of unduly influencing the choice of organization by workers and of depriving those trade unions that are not recognized as being amongst the most representative of the essential means for defending the occupational interests of their members. ***The Committee therefore requests the Government to take the necessary measures so as to ensure that under the new legislation, the abovementioned rights are extended to all trade unions.***

Article 3. Right to elect representatives freely. In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting, as candidates, persons who have been previously employed in the banking company. The Committee notes the Government's statement that a bill to repeal section 27-B of the Banking Companies Ordinance of 1962 was submitted to the Senate. ***The Committee expresses the firm hope that the Government will repeal these restrictions in the near future and requests the Government to indicate any measures taken or contemplated in this respect.***

The Committee notes that the IRA contains several sections concerning disqualification from being an officer of a trade union. First, under section 7, a person who has been convicted of an offence under section 78 shall be disqualified from being elected as, or from being, an officer of a trade union. According to section 78, whoever contravenes, or fails to comply with, any provisions of the IRA, shall, if no other penalty is provided, be punishable with a fine which may extend to 5,000 rupees. The Committee recalls in this respect that conviction for an act, the nature of which is not such as to be prejudicial to the performance of trade union duties, should not constitute grounds for disqualification from trade union office (see General Survey, op. cit., paragraph 120).

Second, under section 64(7), the labour court has the power to disqualify a trade union office bearer from holding any trade union office for the unexpired term of his or her office and for the term immediately following, for violation of its order to stop a strike. The Committee considers that such a sanction imposed for involvement in a strike should only be possible where the strike prohibition in question is in conformity with the principle of freedom of association and in any case, should not be imposed if the action in question is peaceful.

Third, the same sanction is also provided for in section 72(4) and (5) of the IRA for committing an unfair labour practice under section 18(1)(a)–(c) and (e). The Committee notes that the provisions of section 18 list a wide range of actions, which include acts by a worker to persuade other workers to join or refrain from joining a trade union during working hours; induce any person to refrain from becoming members or officers of a trade union by conferring or offering to confer any advantage for such person; commence, continue, instigate or incite others to take part on, or expend or supply money or otherwise act in furtherance or support of, an illegal strike or a work slowdown, etc. The Committee recalls that legislation which establishes excessively broad ineligibility criteria by means of a long list, including acts,

which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention (see General Survey, op. cit., paragraph 120).

In light of the above, the Committee requests the Government to take the necessary measures to ensure that the new legislation takes into account the principles above and effectively guarantees the right of organizations to elect their representatives in full freedom.

Right of workers' organizations to organize their administration and to formulate their programmes. The Committee notes that section 15(d) of the IRA confers on the registrar the power to inspect the accounts and records of a registered trade union, or investigate or hold such inquiry into the affairs of a trade union as he or she deemed fit. The Committee considers that problems of compatibility with the Convention arise when the administrative authority has the power to audit the trade union's accounts, to inspect their accounts and records and demand information at any time (see General Survey, op. cit., paragraph 126). ***The Committee requests the Government to take the necessary measures in order to ensure that the supervision of internal administration of organizations is limited to the obligation of submitting periodic financial reports or if there are serious grounds for believing that the actions of an organization are contrary to its rules or the law, which itself should not infringe the principles of freedom of association.***

The Committee notes that, according to section 68(2) and (3) of the IRA, "no party to an industrial dispute should be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act" and that representation is possible in the proceedings before the labour court, or arbitrator, only with the permission of the court or the arbitrator, as the case may be. ***Considering that legislation which prevents workers' and/or employers' organizations from using the services of experts such as lawyers and agents to represent them in administrative or judicial proceedings is not in conformity with Article 3 of the Convention, the Committee requests the Government to take the necessary measures to ensure that under the new legislation, these organizations are allowed to be represented by lawyers in administrative or judicial proceedings should they so desire.***

Right to strike. The Committee notes that under section 18(1)(e) of the IRA, a work slowdown appears to be an unfair labour practice punishable by a fine which may extend up to 20,000 rupees and, in case of an office bearer, by disqualifying him or her from holding any office in any trade union during the term immediately following his or her term, in addition to any other punishment which the court might award (section 72(4) and (5)). The Committee recalls that any work stoppage, however brief and limited, may generally be considered as a strike. It is of the opinion that restrictions as to the forms of strike action can only be justified if the action ceases to be peaceful and that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association (see General Survey, op. cit., paragraphs 173 and 177). ***The Committee requests the Government to take the necessary measures in order to ensure that under the new legislation, a peaceful work slowdown is not considered to be a prohibited unfair labour practice and that no sanction could be imposed for participating in such an action.***

The Committee notes that, according to section 48(3) of the IRA, where a strike lasts for more than 30 days, the federal or provincial government may, by an order, prohibit such a strike, provided that a strike can also be prohibited at any time before the expiry of 30 days if the Government, "is satisfied that the continuance of such strike is causing serious hardship to the community or is prejudicial to the national interests". Under section 48(4), following prohibition of the strike, the dispute is referred to the National Industrial Relations Commission (NIRC) or the labour court for adjudication. The Committee further notes that under section 49 of the IRA, the federal or provincial government can prohibit a strike related to an industrial dispute of national importance (subsection (1)(a)) or in respect of any public utility services (subsection (1)(b)) at any time before or after its commencement, and refer the dispute to the NIRC or the labour court for adjudication. A strike carried out in contravention of an order made under this section is deemed illegal by virtue of section 63(1)(c). The Committee notes that Schedule I setting out the list of public utility services includes services such as oil production, postal services, railways, airways and ports. The Committee recalls that a prohibition of strikes can only be justified: (1) in the public services only for public servants exercising authority in the name of the State; (2) in the event of an acute national emergency; or (3) in the essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee considers that the wording of sections 48(3) and 49 (1)(a) is too broad and vague to be limited to such cases and that the abovementioned services listed in Schedule I cannot be considered essential in the strict sense of the term. ***The Committee requests the Government to take the necessary measures in order to ensure that any restriction or prohibition of the right to strike is in conformity with the principles above.***

The Committee recalls that for a number of years, it had been requesting the Government to amend the Essential Services Act, which included services beyond those which can be considered essential in the strict sense of the term and sanctioned persons acting in violation of the Act with imprisonment for up to one year. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. ***The Committee once again asks the Government to amend this Act so as to bring it into conformity with the***

abovementioned principle and that its scope is limited to essential services in the strict sense of the term. It requests the Government to indicate any progress in this respect.

The Committee notes that section 48(2) of the IRA authorizes a “party raising a dispute”, either before or after the commencement of a strike, to apply to the labour court for adjudication of the dispute. During this time, the labour court (or tribunal) can prohibit the continuation of the existing strike action (section 62). The Committee recalls that a provision, which permits either party to unilaterally request the settlement of a dispute through compulsory arbitration leading to a final award, effectively undermines the right to strike by making it possible to prohibit virtually all strikes or to end them quickly. Such system seriously limits the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and to formulate their programmes and is not compatible with Article 3 of the Convention (see General Survey, op. cit., paragraph 153). **The Committee therefore requests the Government to take the necessary measures in order to ensure that under the new legislation, referral of the dispute to the courts is possible only in cases where the exercise of the strike can be restricted or even prohibited (see above) or at the request of both parties to the dispute.**

The Committee notes that section 64(7) of the IRA provides for the following sanctions for contravening a labour court’s order to call off a strike: dismissal of the striking workers; cancellation of the registration of a trade union; debarring of trade union officers from holding office in that or any other trade union for the unexpired term of their offices and for the term immediately following. The Committee recalls in this respect that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, existence of heavy and disproportionate sanctions for strike action may create more problems than they resolve. Since the application of disproportionate sanctions does not favour the development of harmonious and stable industrial relations, the sanctions should not be disproportionate to the seriousness of the violation (see General Survey, op. cit., paragraphs 177 and 178). **Consequently, the Committee requests the Government to take the necessary measures in order to ensure that under the new legislation, sanctions for strike action could only be imposed where the prohibition of the strike is in conformity with the Convention and that, even in those cases, the sanctions imposed are not disproportionate to the seriousness of the violation.**

Furthermore, the Committee once again asks the Government to indicate whether Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act by penalizing the creation of civil commotion, including illegal strikes or slowdowns, with up to seven years’ imprisonment, is still in force.

Article 4. The Committee notes that the registration of a trade union shall be cancelled if the labour court so directs, following a complaint made by the registrar that the trade union has contravened any of the provisions of the Act or its constitution (section 12(1) of the IRA). The Committee also notes that under section 64(7) of the IRA, the registration of a trade union can be cancelled for contravening a labour court’s order to call off a strike. The Committee recalls that the cancellation of registration of an organization and its dissolution is a measure which should occur only in extremely serious cases. The Committee considers that the cancellation of trade union registration, in view of the serious and far-reaching consequences which dissolution of a union involves for the representation of workers’ interests, would be disproportionate even if the prohibitions in question were in conformity with the principles of freedom of association. While noting that under the IRA, the registration can be cancelled only upon an order by the judicial authorities, the Committee emphasizes that judges should be able to deal with the substance of a case to enable them to decide whether or not the measure of dissolution would not be in violation of the rights accorded to occupational organizations by Convention No. 87. Furthermore, the Committee notes that under section 12(2) of the IRA, if a person who is disqualified under section 7 (a person who has been convicted of an offence under section 78 or heinous offence under the Pakistan Penal Code) is elected as an officer of a registered trade union, the registration of such a union shall be cancelled if the labour court so directs. The Committee considers that, although the conviction for an act, the nature of which calls into question the integrity of the person concerned may represent grounds for disqualification for trade union office, that should not constitute a reason for cancellation of trade union registration, which is tantamount to dissolution of the union. To deprive workers of their trade union organization because of illegal activities previously carried out by one of its leaders is, in the Committee’s opinion, a disproportionate sanction which violates the rights of workers to organize under Article 2 of the Convention. **The Committee requests the Government to take the necessary measures in order to ensure that the new legislation takes into account the principles above.**

The Committee expresses the firm hope that new legislation would be adopted in the very near future with the full consultation of the social partners concerned and will take into account its comments above. The Committee requests the Government to provide it with a copy of the new legislation once it is adopted.

The Committee reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

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

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009. The Committee further notes the comments made by the Pakistan Workers’ Federation (PWF) and the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice in

communications dated 2 and 26 August 2009 respectively. The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Cases Nos 2096, 2399, 2520 (see 353rd Report) and 2229 (see 354th Report), dealing with the same issues.

The Committee recalls that for several years it has been commenting on serious discrepancies between national legislation and the Convention. At its 2008 session, the Committee took note of the Industrial Relations Act (IRA), adopted in November 2008, which amended the Industrial Relations Ordinance (IRO) 2002. It further noted that the IRA was an interim law due to lapse on 30 April 2010. During this period, a tripartite conference would be held to draft a new legislation in consultation with all stakeholders. ***The Committee expresses the firm hope that the new legislation will take into account the comments set forth.***

Scope of application of the Convention. The Committee notes that the IRA excludes the following categories of workers from its scope of application:

- workers employed in services or installations exclusively connected with or incidental to the armed forces of Pakistan, including the Ordnance Factory maintained by the federal Government (section 1(3)(a));
- members of the security staff of the Pakistan International Airlines Corporation (PIAC) (section 1(3)(b));
- workers employed by the Pakistan Security Printing Corporation or the Security Papers Limited (section 1(3)(d));
- workers employed by an establishment or institution for the treatment or care of sick, infirm, destitute and mentally unfit persons excluding those run on a commercial basis (section 1(3)(e));
- members of the watch and ward, security or fire service staff of an oil refinery, an airport or a seaport (section 1(3)(f));
- members of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas (section 1(3)(g));
- agricultural workers (section 1(3) read together with 2(ix) and (xiv)); and
- workers of charitable organizations (section 1(3) read together with 2(ix) and (xiv)).

The Committee requests the Government to take the necessary measures in order to ensure that the new legislation guarantees the abovementioned categories of employees the rights enshrined in the Convention.

The Committee notes that persons employed in the administration of the State are excluded from the scope of application of the IRA by virtue of its section 1(3)(b). ***The Committee requests the Government to indicate whether the new industrial relations legislation will grant to this category of workers collective bargaining rights.***

The Committee recalls that it had previously requested the Government to guarantee the right to organize of workers employed in EPZs, PIAC and in the Karachi Electric Supply Company (KESC). The Committee notes the Government's indication that trade unions are free to operate at the KESC and that trade union activities have been restored and a collective bargaining agent was determined through a referendum at the PIAC. With regard to the latter undertaking, the Government indicated that Chief Executive Order No. 6 was repealed. The Committee further notes the Government's statement that the Export Processing Zones (EPZs) (Employment and Service Conditions) Rules, 2009 had been finalized in consultation with the stakeholders and will be submitted to the Cabinet for approval. ***The Committee hopes that the Rules will guarantee the right to organize to workers in EPZs and requests the Government to provide a copy thereof as soon as they are adopted.***

Article 1 of the Convention. (a) Sanctions for trade union activities. The Committee had previously requested the Government to repeal section 27-B of the Banking Companies Ordinance of 1962, which imposed sanctions of imprisonment and/or fines for carrying out trade union activities during office hours. The Committee notes the bill to amend the Banking Companies Ordinance which would repeal section 27-B and the Government's indication that the bill has been moved to the Senate. ***The Committee expresses the firm hope that section 27-B of the Banking Companies Ordinance will be repealed in the near future and requests the Government to provide information in this respect.***

(b) Lack of sufficient legislative protection for certain categories of workers dismissed for their trade union membership or activities. The Committee had previously noted the statement of the All Pakistan Federation of Trade Unions (APFTU), according to which the newly imposed section 2-A of the Services Tribunal Act had debarred workers engaged in autonomous bodies and corporations such as the Pakistan Water and Power Development Authority (WAPDA), railway, telecommunication, gas, banks, the Pakistan Agricultural Storage and Supply Corporation (PASSCO), etc., from seeking redress for their grievances from the labour courts, labour appellate tribunals and the National Industrial Relations Commission (NIRC) in the case of unfair labour practices committed by the employer. In this respect, the Committee requested the Government to indicate the measures taken to reform section 2-A of the Services Tribunal Act. The Committee notes the Government's indication that a Bill for amendment of this provision has been moved to the Senate. ***The Committee expresses the firm hope that section 2-A of the Services Tribunals Act will be repealed in the near future so as to ensure that appropriate means of redress are available to workers concerned. It requests the Government to provide information in this respect.***

Article 2. Protection against acts of interference. The Committee had previously requested the Government to indicate the specific provisions of the legislation which prohibited and penalized acts of interference by employers and

their organizations in internal affairs of workers' organizations. The Committee notes with *interest* section 17 of the IRA which lists actions constituting unfair labour practices on the part of employer (such as participation in the promotion, formation and activities of a trade union, inducing any person to refrain from becoming or ceasing to be a member or officer of a trade union, by conferring or offering any advantage, etc.) and section 72(10) of the IRA punishing such acts by fine of up to 30,000 rupees.

Article 4. Collective bargaining. The Committee notes that it results from section 24(1) of the IRA that if the trade union is the only trade union at the enterprise and does not have at least one third of the employees as its members, no collective bargaining is possible at a given establishment. The Committee recalls that it had previously requested the Government to amend similar section which existed under the IRO 2002. ***The Committee therefore once again requests the Government to take the necessary measures in order to ensure that if there is no union representing the required percentage to be designated as a collective bargaining agent, collective bargaining rights are granted to the existing unions, at least on behalf of their own members.***

The Committee notes sections 31(1) and (2)(b) and 34(1) of the IRA according to which the NIRC may determine or modify a collective bargaining unit on an application made by a workers' organization or reference made by the federal Government. ***The Committee requests the Government to take the necessary measures to ensure that under the new industrial relations legislation, the choice of collective bargaining unit can be made only by the social partners themselves, since they are in the best position to decide the most appropriate bargaining level.***

The Committee notes with *regret* the Government's statement that while trade unions are free to operate at the KESC, a referendum to determine a collective bargaining agent cannot be held as the management of the KESC filed a writ petition before the High Court appealing the decision of the NIRC granting voting right to contract employees. ***The Committee requests the Government to take all necessary measures to ensure that the KESC workers and the trade union existing at the enterprise enjoy the rights afforded by the Convention in practice. It requests the Government to provide information on the situation with regard to the determination of a collective bargaining agent.***

Panama

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1958)

The Committee notes the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) referring to matters already examined by the Committee; to the murder of a leader of the Single Union of Construction and Allied Industries Workers (SUNTRACS); the denial of the right to strike by the Panama Canal Authority; and the referral of all collective disputes in the export processing zones to compulsory arbitration. The Committee also notes the comments of 23 July by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) referring to matters examined by the Committee. The Committee recalls that freedom of association can be exercised only in a climate that is free of violence in which fundamental human rights are respected and fully guaranteed, particularly the right to life and personal safety, and points out that the murder of a trade union leader requires that a judicial investigation be held in order fully to ascertain the facts, punish those responsible and prevent any recurrence. ***The Committee urges the Government to carry out an investigation thereon and to send its observations on this matter.***

Lastly, the Committee notes the comments of 29 May 2009 by the National Council of Private Enterprise of Panama (CONEP) on the application of the Convention. ***The Committee requests the Government to send its observations in response.***

The Committee likewise notes the discussions that took place in the Conference Committee on the Application of Standards in 2009 on the application of this Convention. It notes that a Government representative reported on: (1) the adoption of various executive decrees regulating certain provisions of the Labour Code (for example, Legislative Decree No. 26 on the determination of minimum services in the event of strike; and Executive Decree No. 27 adopting measures to maintain the independence and autonomy of workers' organizations); and (2) the submission to the National Assembly of two bills, one to reduce the minimum number of workers required to form a union, and the other to guarantee fully the right to organize in export processing zones. The Committee notes that the Government representative also stated that the Government is not able to impose legislative reforms when there is disagreement between the social partners, as to do so would be contrary to tripartism. Furthermore, the Committee notes that the Conference Committee regretted that it was unable to note significant progress in the requested amendment of the legislation and considered that the Government ought to seek technical assistance from the ILO in evaluating the scope of the new provisions referred to by the Government and to complete the reforms so as to ensure full consistency with the Convention.

The Committee recalls that, for many years, it has been commenting on the following matters, which raise problems of consistency with the Convention.

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations.

- sections 174 and 178, last paragraph, of Act No. 9 of 1994 ("establishing and regulating administrative careers" – the "Administrative Careers Act"), (as amended by Act No. 24 of 2 July 2007), establishing, respectively, that there

may not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province. The Committee recalls that according to *Article 2* of the Convention, the legislation should envisage the possibility of workers being allowed to establish more than one organization if they so wish. ***The Committee requests the Government to take the necessary steps to amend sections 174 and 178 of the Administrative Careers Act as indicated above;***

- requirement of too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at enterprise level, by virtue of section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), and the requirement of a large number (40) of public servants to establish an organization of public servants under section 177 of the Administrative Careers Act. The Committee notes in this connection the information from the Government to the effect that the National Assembly has before it a bill to amend section 344 of the Labour Code by reducing from 40 to 20 the minimum number of workers or professionals needed to form a union. The Committee observes, however, that the abovementioned Decree does not amend the requirement of ten members in order to establish an organization of employers. ***In these circumstances, the Committee hopes that the bill to amend section 344 of the Labour Code will be adopted in the near future and that it will reduce not only the minimum membership required to establish workers' organizations but also the minimum membership required to establish employers' organizations. The Committee also asks the Government to take the necessary steps to amend section 177 of the Administrative Careers Act so as to reduce the minimum membership required for the establishment of organizations of public servants to a reasonable level. It asks the Government to indicate in its next report on any developments in this regard;***
- denial to public servants of the right to establish unions. In its previous comments, the Committee requested the Government to send its observations on the comments by FENASEP indicating that under the Administrative Careers Act, non-career public servants as well as those holding appointments governed by the Constitution and those who are elected and serving may not freely establish organizations of their choosing. The Committee notes that in its comments of 2009, FENASEP states that it is not deemed to be a workers' organization and so may not participate in the National Council of Organized Workers (CONATO). ***The Committee requests the Government to send its observations in response.***

Article 3. Right of organizations to elect their representatives in full freedom. Requirement to be of Panamanian nationality in order to serve on the executive board of a trade union (article 64 of the Constitution). The Committee pointed out in earlier comments that provisions on nationality that are too stringent could deprive some workers of the right to elect their representatives in full freedom; for example, migrant workers could be adversely affected in sectors in which they account for a significant share of the membership. In the Committee's view, the national legislation should allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 118). ***The Committee accordingly asks the Government to take the necessary steps to have the legislation amended to take account of the aforementioned principle.***

Right of organizations to organize their administration. Deduction of ordinary and extraordinary dues from the salaries of public servants who are not affiliated to the association of public servants and benefit from the improvements in conditions of work achieved in a collective agreement. In its previous comments, the Committee noted that section 180A of Act No. 24 of 2 July 2007 amending Administrative Careers Act No. 9, provides that public servants who are not affiliated to the association of public servants and enjoy the improvements obtained in conditions of work by a collective agreement, shall have the ordinary and extraordinary trade union dues agreed by the association deducted from their wages for as long as the agreement is in force. In the Committee's view, to require by law that non-affiliated public servants shall pay ordinary dues to the association which obtained improvements in labour conditions raises problems of consistency with the Convention to the extent that such a requirement may influence the right of public servants freely to choose the association to which they wish to be affiliated. ***In these circumstances, the Committee requests the Government to take the necessary steps to have section 180A of Act No. 24 of 2 July 2007 amended so as to abolish the requirement for public servants who are not affiliated to associations to pay ordinary trade union dues, with the possibility of providing instead for the payment of a lesser amount than the ordinary trade union contribution for the benefits derived from collective bargaining.***

Right of organizations to organize their activities and formulate their programmes without interference.

- denial of the right to strike in export processing zones (Act No. 25). In this connection the Committee notes that the Government informed the Conference Committee on the Application of Standards that a bill had been submitted to amend section 49B of Act No. 25 so as to allow workers or their social organizations to exercise the right to strike once conciliation is over. ***The Committee hopes that the bill will be adopted in the near future and asks the Government to report on progress in the enactment process;***
- denial of the right to strike in enterprises of less than two years' standing pursuant to Act No. 8 of 1981. CONATO pointed out previously that since section 12 of the abovementioned Act establishes that no enterprise shall be compelled to conclude a collective agreement during the first two years of operations and since the general

legislation allows strikes only in pursuance of collective bargaining or in other limited cases, the right to strike is in practice prohibited during the first two years of the enterprise's operations. ***The Committee requests the Government to take the necessary steps to ensure that workers and their organizations in the enterprises in question have the right to strike;***

- denial of the right to strike of public servants. The Government indicated previously that the Constitution allows special restrictions in cases determined by law. The Committee recalls that the banning of strikes in the public service should be restricted to public servants exercising authority in the name of the State (see General Survey, op. cit., paragraph 158). ***The Committee requests the Government to take the necessary steps to guarantee the right to strike of public servants who do not exercise authority in the name of the State;***
- ban on federations and confederations from calling strikes and on strikes against the Government's economic and social policy, and unlawfulness of strikes that are unrelated to an enterprise collective agreement. The Committee points out that federations and confederations should have the right to strike and that organizations responsible for defending workers' socio-economic and occupational interests should, as a rule, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see General Survey, op. cit., paragraph 165). ***The Committee requests the Government to take steps to have the legislation amended so as to align it with the abovementioned principles and so as not to restrict the right to strike to strikes related to a collective agreement;***
- authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in private transport enterprises (sections 452 and 486 of the Labour Code) which do not provide a service that is essential in the strict sense of the term. ***The Committee requests the Government to take the necessary steps to amend the legislation to provide that compulsory arbitration shall be possible in the transport sector only at the request of both parties.***

The Committee notes in this respect that the Government informed the Conference Committee on the Application of Standards about the adoption of Executive Decree No. 26 establishing parameters to be taken into account in determining the percentage of workers to be assigned to shift work in public services during a strike in the private sector (minimum services). ***The Committee requests the Government to send a copy of the abovementioned Decree;***

- obligation to provide minimum services with 50 per cent of the staff in the transport sector and penalty of summary dismissal for failure to comply with minimum services in the event of a strike (sections 152.14 and 185 of Administrative Careers Act No. 9 of 1994). The Committee recalls in this respect that minimum services should be limited to activities that are strictly necessary to cover the basic needs of the population or satisfy the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service. ***In these circumstances, the Committee requests the Government to take the necessary steps to ensure that these minimum services provided in public services which go beyond essential services in the strict sense of the term, are reduced to a reasonable level and that organizations of the workers concerned may participate in determining them;***
- legislation interfering with the activities of employers' and workers' organizations (sections 452.2, 493.1 and 494 of the Labour Code) (closure of the enterprise in the event of a strike and compulsory arbitration at the request of one party). The Committee notes that in its comments of 2009, CONEP refers to the matter of closure of the enterprise in the event of a strike and indicates that such decisions may not be challenged by the employers concerned. The Committee notes that, according to CONEP, closure of an enterprise is not a symbolic act; the administrative authorities for labour with the collaboration of the police, place plastic seals on the entrances to the industrial and commercial facilities and the offices of enterprises thus barring access to the work centres by administrative staff or workers who do not support the strike, including access to computer equipment, archives and facilities that are necessary not only to the conduct of business but also to an informed approach (costs and other data) to negotiation with the union. According to CONEP, it is likewise impossible to undertake banking transactions or other activities to ensure the survival of the enterprise and, hence, the source of work. This leaves the employers defenceless in the face of the unions' demands – which are granted, as is permission to use the facades of the buildings and access roads for painting and displaying posters and union propaganda. As a result, says CONEP, employers have to work "underground", using hotels or their own homes to organize, administrate and coordinate negotiations for settlement of the dispute and to conduct all business necessary to the survival of the enterprise, taking care to leave no trace of their efforts, which might otherwise later be cited as proof that the employer has violated the closure order.

The Committee further notes that in its conclusions, the Conference Committee noted with concern the adverse effects of legislative provisions ordering the closure of an enterprise and barring the entrance of management staff to the facilities. ***In these circumstances, the Committee requests the Government to take the necessary steps to have the legislation amended so that: (1) in the event of a strike, management staff and non-striking workers are guaranteed the***

right to enter the facilities; and (2) compulsory arbitration is possible only at the request of both parties to the dispute, or in essential services in the strict sense of the term in the case of public servants who exercise authority in the name of the State.

Observing that for many years there have been discrepancies between law and practice and the Convention, and bearing in mind the gravity of some of the restrictions mentioned, the Committee again urges the Government, in consultation with the social partners, to take the necessary steps to amend the legislation so as to make it fully consistent with the provisions of the Convention and the principles of freedom of association. In view of the Government's statement that although there is not as yet agreement with the social partners on amending the Labour Code, it is willing to harmonize law and practice with the Convention and is preparing a bill for the purpose, the Committee urges the Government to seek technical assistance from the ILO in this process, and in its next report to provide information on all progress made.

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

The Committee notes the comments of 23 July 2009 by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP) referring to matters examined by the Committee, and the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) referring to acts of anti-union discrimination and interference, and indicating that labour disputes in export processing zones are subject to compulsory arbitration (on this point, the Government informed the Conference Committee on the Application of Standards that a Bill has been submitted to resolve the matter). ***The Committee requests the Government to send comments in response.***

The Committee also notes the comments of 29 May 2009 by the National Council of Private Enterprise of Panama (CONEP). ***The Committee asks the Government to send its observations in response.***

Articles 1, 4 and 6 of the Convention. In its previous comments, the Committee noted that Act No. 24 of 2 July 2007 to amend the Administrative Careers Act contains provisions to protect public servants against acts of anti-union discrimination, and establishes the right of associations of public servants to collective bargaining. ***In view of FENASEP's assertion that the right to collective bargaining has been regulated, the Committee requests the Government to indicate whether municipal workers and workers in decentralized institutions enjoy the right to collective bargaining.***

The Committee recalls that for many years it has been commenting on the following provisions:

Article 4

- (a) section 12 of Act No. 8 of 1981 provides that no enterprises (other than building enterprises) shall be required to conclude a collective labour agreement in the first two years of operations, which could in practice imply denial of the right to collective bargaining;
- (b) the need to amend the legislation so that in the event of a strike attributable to the employer, the payment of wages for strike days is not imposed by law (section 514 of the Labour Code) but is a matter for collective bargaining between the parties involved; in this context, CONEP points out that the legislation does not require any proof, prior to the strike, that a collective agreement was breached or legal provisions repeatedly violated;
- (c) the requirement that the number of representatives of the parties in negotiations shall be from two to five (section 427 of the Labour Code).

Bargaining with non-unionized groups. In its previous comments the Committee referred to collective bargaining in the private sector with groups of non-unionized workers (section 431 of the Labour Code), and asked the Government to look into the matter with a view to ensuring that there is no collective bargaining with groups of workers where there is a trade union in the bargaining unit. The Committee notes with ***satisfaction*** that in its report the Government states that on 20 May 2009 Executive Decree No. 18 was adopted to regulate sections 398, 400, 401, 403 and 431 of the Labour Code. This Decree establishes that the right to negotiate and sign a collective labour agreement belongs to properly established social organizations and that, consequently, the Ministry of Labour will not entertain claims submitted by a non-organized group of workers (section 1). Furthermore, the employer may not negotiate with a non-organized group of workers the conclusion of a collective labour agreement or the claims for a collective labour agreement where there is a properly constituted trade union in the enterprise (section 2). Non-organized groups may apply for the registration of claims or a collective agreement, but the Ministry of Labour must first ascertain that there is no trade union in the enterprise and that there is no breach of trade union rights. Furthermore, such claims shall not preclude later submission of claims by an organization of workers, and the employer may not refuse to bargain.

Restrictions on collective bargaining in the maritime sector. In its earlier comments, the Committee took note of restrictions on collective bargaining in the maritime sector under section 75 of Legislative Decree No. 8 of 1998, establishing the conclusion of collective agreements as an option, which in practice leads to the denial of workers' claims by employers and about which an application had been filed for this legislation to be found unconstitutional. The Committee also noted the Government's statement that a draft of a new Shipping Code was to be submitted to the Legislative Assembly. ***The Committee requests the Government to report on this matter.***

Lastly, the Committee notes that CONEP seeks the regulation of legal disputes and asks the possibility for employers to submit claims and initiate conciliation proceedings. *The Committee invites the Government to address these matters through tripartite dialogue.*

Noting that the discrepancies between legislation and practice and the Convention have existed for many years, and bearing in mind the seriousness of some of the restrictions mentioned, the Committee again urges the Government to take the necessary steps, in consultation with the social partners, to amend the legislation to bring it into full conformity with the provisions of the Convention and the principles of freedom of association. In view of the Government's statement that although there is no agreement with the social partners for amendment of the Labour Code, it is ready to harmonize law and practice with the Convention and is formulating a Bill for this purpose, the Committee urges the Government to seek ILO technical assistance in this process and to provide information in its next report on all progress made.

Paraguay

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

The Committee notes the Government's reply to the comments of 29 August 2008 by the International Trade Union Confederation (ITUC) referring to acts of violence by police against workers in the sugar and steel sectors who took part in demonstrations, and to arrests of trade unionists. With regard to incidents that took place in a sugar plant, the Committee notes that according to the Government, in May 2007 a number of workers in the Tebicuary area blocked the access roads to the sugar plant and played a leading part in violence that prompted the police to intervene to restore the peace, protect private property and ensure workers' free access to the plant. According to the Government, negotiations at the initiative of the enterprise put an end to the dispute. As to the comments regarding the steel enterprise, the Committee notes the Government's statement that trade unionists initiated a strike and used violence and weapons to prevent the workers from entering or leaving the enterprise, even blocking the way of an ambulance that was transporting a member of the anti-riot squad who was seriously hurt, which prompted the police authority to arrest three people; the strikers went to the police station to object the arrest and assaulted the police officers present and the latter reacted. The Committee also notes the ITUC's comments of 26 August 2009 referring to these matters. Lastly, the Committee notes with *regret* that the Government has not sent its observations on the comments of 2005 by the International Confederation of Free Trade Unions (ICFTU) – presently known as ITUC – referring to numerous acts of violence, including the murder of trade unionists. The Committee emphasizes in this respect that in the event of assaults on the physical or moral integrity of individuals, an independent judicial inquiry should be instituted immediately with a view to fully clarifying the facts, determining responsibility, punishing those responsible and preventing the repetition of such acts. *The Committee urges the Government to conduct such an inquiry.*

The Committee reminds the Government that for many years it has been pointing out that the following provisions of the law are incompatible with the Convention:

- the requirement of an unduly high number of workers (300) to establish a branch trade union (section 292 of the Labour Code);
- the prohibition on joining more than one union even if the worker has more than one part-time employment contract, whether at the level of the enterprise, industry, occupation or trade, or institution (section 293(c) of the Labour Code);
- imposition of unduly demanding conditions of eligibility for office on the executive body of a trade union: the need to be an employee in the enterprise, industry, occupation or institution, whether active or on leave (section 298(a) of the Labour Code), to have reached the age of majority and to be an active member of the union (section 293(d) of the Labour Code);
- the requirement for trade unions to respond to all requests from the labour authorities for consultations or reports (sections 290(f) and 304(c) of the Labour Code);
- the requirement that, for a strike to be called, its sole purpose must be directly and exclusively linked to the workers' occupational interests (sections 358 and 376(a) of the Labour Code);
- the obligation to provide a minimum service in the event of a strike in public services that are essential to the community without any requirement to consult the employers' and workers' organizations concerned (section 362 of the Labour Code);
- the referral of collective disputes to compulsory arbitration (sections 284–320 of the Code of Labour Procedure).

The Committee notes with *interest* that the Government has sent information on the drafting of a Bill to amend certain provisions of the Labour Code and Amending Act No. 496/94 which was submitted to the President of the Republic on 5 June 2009 for consideration. The Committee observes that various provisions have been amended to take account of the comments made by the Committee of Experts. Specifically: section 290(f), which limits the information the

labour authorities may require to annual financial statements; section 293(c), allowing every worker to belong to several unions corresponding to the categories of work they perform; section 293(d) extending to non-active members of the union the possibility of standing for membership of the executive body; section 298(a), establishing that the general meeting shall decide as to the appointment to and removal from offices to be filled by workers who are employed in or are independent of the enterprise, industry or occupation, whether active or on leave; sections 358 and 376, extending the purposes of lawful strikes to economic and social protection interests as well as occupational ones.

Furthermore, the Committee is of the view that other amendments proposed in the Bill could be better drafted to bring them fully into line with the freedom of association, in particular:

- the amendment proposed to section 292 reducing the minimum requirement for establishing a branch union from 300 to 100. Although this is a significant reduction, the Committee is of the view that a membership of 100 workers could be difficult to reach and that the number should therefore be reduced to 50. Likewise, the minimum number of workers needed for trade unions in the public sector should be reduced by one half;
- the amendment to section 304(c), restricting the obligation to provide information and data “in the event of complaints raised by trade unionists”. The Committee is of the view that in order to avoid interference in trade union activities, there should be a requirement for a percentage of the membership (for example 10 per cent) in order to request administrative intervention;
- the amendment to section 362 on minimum services introducing a final sentence that reads “The decision shall be notified to the organization of workers and employers to allow them to participate in the determination of the services and, in the event of disagreement, shall be referred to the competent authority.” In the Committee’s view, any disagreement in the determination of minimum services should be settled by an independent body – such as the judicial authority – that has the trust of all the parties.

The Committee further observes that the abovementioned Bill does not provide for any amendment of sections 284–320 of the Code of Labour Procedure regarding the referral of collective disputes to compulsory arbitration. The Committee points out that in an earlier observation it noted that according to the Government, these provisions had been tacitly repealed by article 97 of the Constitution of the Republic promulgated in 1992 which states that “the State shall facilitate conciliatory solutions to labour disputes and social dialogue. Arbitration shall be optional.” ***The Committee again asks the Government to take the necessary steps, in accordance with the Constitution and in order to avoid all confusion, expressly to repeal sections 284–320 of the Code of Labour Procedure.***

The Committee hopes that in the near future it will be able to note progress in the legislation and asks the Government to provide information on any developments in this respect in its next report. Lastly, noting that the Government has requested technical assistance from the Office in addressing the matter of the abovementioned legislative amendments within the National Congress, the Committee expresses the hope that this will be forthcoming in the near future.

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

Articles 1 and 2 of the Convention. Protection against acts of discrimination and anti-union interference. The Committee recalls that for many years it has been commenting on:

- the absence of legal provisions affording protection to workers who are not trade union leaders against all acts of anti-union discrimination (article 88 of the Constitution only affords protection against discrimination based on trade union preferences);
- the absence of adequate penalties for non-observance of the provisions relating to the employment stability of trade unionists and to acts of interference in workers’ and employers’ organizations by each other (the Committee indicated previously that the penalties laid down in the Labour Code for failure to comply with the legal provisions on this point in sections 385, 393 and 395 are not sufficiently dissuasive, except in the case of a repeat offence by the employer, when the fine is doubled). In this respect, the Government refers in general terms to section 286 of the Labour Code, which provides that workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other; and
- the delays in the application of justice in relation to acts of anti-union discrimination and interference.

The Committee notes the Governments reply to the comments of the International Trade Union Confederation (ITUC), of 29 August 2008, in relation to the application of the Convention, and also to comments made in previous years concerning the dismissal of trade union leaders and members, as well as acts of anti-union interference. The Committee also notes the new comments of the ITUC of 26 August 2009 referring to further dismissals of trade union leaders and members. ***The Committee requests the Government to provide its observations in this respect.***

The Committee also notes that the Committee on Freedom of Association requested the Government, in consultation with the social partners, to ensure effective national procedures for the prevention and sanctioning of anti-union discrimination (see Case No. 2648, 355th Report, paragraph 953(a)).

The Committee further recalls that the Convention guarantees to workers adequate protection against any acts of anti-union discrimination during recruitment and employment, and in respect of termination of employment, and that this protection encompasses all measures that are discriminatory in nature (dismissals, transfers, demotion). The Committee emphasizes the importance of rapid protection procedures accompanied by effective and dissuasive penalties. Furthermore, the Convention provides that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other. The Committee also emphasizes that legislative provisions are inadequate if they are not accompanied by effective and prompt procedures and sufficiently dissuasive penalties to ensure their enforcement in cases of anti-union discrimination or interference. ***The Committee requests the Government to take measures to resolve these matters, for example through the draft partial reform of the Labour Code that is under examination.***

Article 6. Public officials not engaged in the administration of the State. The Committee recalls that in its previous observation it considered that sections 49 and 124 of the Public Service Act do not afford adequate protection against all acts of anti-union discrimination within the meaning of *Article 1* of the Convention (which not only covers dismissal, but also transfers and other prejudicial measure). ***The Committee requests the Government to take the necessary measures to establish in the legislation adequate protection against acts of anti-union discrimination against public servants and public employees, including those who are not trade union leaders, and also sufficiently dissuasive sanctions for those who commit violations.***

Finally, while appreciating the fact that the Government has requested technical assistance from the Office with a view to resolving the pending problems and to address the issue of the legislative amendments requested in the previous paragraphs in the context of the National Congress, the Committee hopes that this assistance will be provided in the near future.

The Committee hopes that it will be able to note progress at the legislative level (particularly in relation to the forthcoming reform of the Labour Code) in the near future and requests the Government to provide information in its next report on any developments in this respect.

Philippines

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1953)

The Committee notes the discussion which took place in the 2009 Conference Committee on the Application of Standards and the Government's indication therein that it would accept an ILO High-level mission as requested by the Conference Committee in 2007. The Committee notes with *interest* that the High-level mission took place from 22 to 29 September 2009 and that the Government fully cooperated with the mission and facilitated its access to all relevant parties.

The Committee observes in particular the recommendations by the High-level mission in relation to the need for capacity building, awareness raising and training in relation to freedom of association and collective bargaining throughout the country. In particular, it notes the suggestion that: the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) be trained in the respect of the basic civil liberties of trade unionists; targeted training should be undertaken to focus on freedom of association rights in the special economic zones, including for the officers of the Philippine Economic Zone Authority, employers and workers; training to be carried out of judges and lawyers on international labour standards and their use by the judiciary, with a special focus on freedom of association; and continuing training be provided to the officials of the Department of Labour and Employment, the Civil Service Commission and the Public Service Labour-Management Commission. The Committee notes with *interest* the commitment expressed by the Government to embark upon a comprehensive technical cooperation programme on freedom of association and the efforts made thus far to concretize the details of such a programme in collaboration with the Office. In this regard, it welcomes the communication just received from the Government in which it reports upon the National Tripartite Conference on Principles of Freedom of Association: Toward Fair Globalization and Decent Work which was held from 2 to 4 December 2009 in order to maintain the momentum created by the ILO High-level Mission.

The Committee notes the detailed information provided by the International Trade Union Confederation (ITUC), particularly in relation to violence against trade unionists and impunity in the country, and requests the Government to reply to these comments in its next report. The Committee once again recalls the importance it attaches to the Government making all efforts to ensure that workers may exercise their trade union rights in a climate free from violence, threat and fear. It notes with *interest* from the Government's latest report that, in keeping with the High-level Mission's recommendations, the Executive Secretary, speaking on behalf of the President, confirmed the Government's commitment to create a high-level tripartite monitoring body to review the progress made in investigating and prosecuting the cases of violence brought to the attention of the ILO supervisory machinery. It further notes the Executive Secretary's statement that, with the repeal of the anti-subversion law, those opposing the Government are no longer regarded as subversive or targeted in this regard and any such persecution will not be tolerated. ***The Committee requests the Government to provide information in its next report on the progress made in establishing the high-level tripartite monitoring body, and on its mandate and functioning.***

The Committee will examine all of the outstanding points in relation to the application of the Convention in both law and in practice next year when it will have at its disposal the detailed mission report and any comments which the Government and the workers' and employers' organizations may wish to make. ***It requests the Government to provide a detailed report in reply to its previous comments for examination next year.***

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

The Committee notes with *interest* that an ILO High-level Mission took place from 22 to 29 September 2009 with a mandate to review its comments in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the pending cases before the Committee on Freedom of Association. The Committee observes that the matters considered by the High-level Mission touch also upon those matters it has been raising in previous years under this Convention. The Committee will thus examine all of the outstanding points in relation to the application of the Convention in both law and in practice next year when it will have at its disposal the detailed mission report and any comments which the Government and the workers' and employers' organizations may wish to make. ***It requests the Government to provide a detailed report in reply to its previous comments for examination next year.***

The Committee further notes the detailed information provided by the International Trade Union Confederation (ITUC) in relation to the application of the Convention and requests the Government to reply to these comments in its next report.

Rwanda

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1988)

The Committee notes the Government's reply to the comments of the International Trade Union Confederation (ITUC), received in 2008, concerning matters already raised by the Committee relating to the status of public servants and the exercise of the right to strike.

The Committee also notes the adoption of Law No. 13/2009 of 27 May 2009, issuing the new Labour Code.

Article 2 of the Convention. *Right of workers, without distinction whatsoever, to establish organizations of their own choosing.* In its previous comments, the Committee noted that: (1) articles 11, 33, 35, 36, 38 and 39 of the Constitution of 4 June 2003 guarantee freedom of expression and association for State employees, as for all other citizens; (2) Law No. 22/2002 of 9 July 2002, on the General Statute for the Rwanda public service, is silent on the right of public servants to organize and to collective bargaining, although section 73 of the Law provides that public servants and the staff of public enterprises enjoy rights and freedoms on the same basis as other citizens; (3) the procedures for the implementation of section 73 of Law No. 22/2002 are still to be determined, and the scope of the relevant provisions of the Labour Code respecting occupational organizations need to be extended to state officials; and (4) although the Government indicated that there are unions of public servants in Rwanda, the legal void as regards the right to organize of this category of workers could give rise to problems in practice. The Committee notes that, under the terms of section 3 of the new Labour Code, "every person employed under the general statutes for the Rwanda public service or every person under specific statutes shall not be subject to the provisions of this law, except for matters that may be provided for by Prime Minister's orders". It further notes that, according to the Government's report, the process is under way of revising the General Statute governing public civil servants. The Committee recalls that public servants shall enjoy the right to establish and join organizations of their own choosing to further and defend their interests. ***The Committee trusts that the revision of the General Statute governing public civil servants will be completed in the near future and that it will take duly into account the above principle so as to ensure that public servants enjoy the guarantees laid down in the Convention. It requests the Government to provide a copy of the Law once it has been adopted.***

Article 3. *Right of organizations to organize their administration and activities and to formulate their programmes in full freedom.* The Committee notes that section 155(2) of the new Labour Code refers to an order of the Minister responsible for labour to determine "indispensable services" and the conditions of exercising the right to strike in these services. In its report, the Government indicates that the order is prepared following consultations with the National Labour Council and that the text is still at the draft stage. ***The Committee requests the Government to provide a copy of the order once it has been adopted.***

The Committee observes that, under the terms of section 124 of the Labour Code, any organization requesting recognition as the most representative organization has to authorize the labour administration to check the register of its members and property. In this respect, the Committee recalls that the control exercised by the public authorities over trade union finances should not go beyond the requirement for the organizations to submit periodic reports. ***The Committee trusts that the Government will take the necessary measures to amend section 124 of the Labour Code taking into account the above principle.***

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1988)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) dated 26 August 2009. ***It requests the Government to send its observations on this matter.***

The Committee also notes the adoption of Act No. 13/2009 of 27 May 2009 issuing the new Labour Code.

Articles 1 and 2 of the Convention. In its previous comments the Committee asked the Government to take steps to establish sufficiently dissuasive penalties for acts of anti-union interference and discrimination. The Committee notes that, according to the provisions of section 114 of the new Labour Code, any act which infringes the provisions providing protection against acts of discrimination and interference shall constitute an offence and incur the payment of damages. The Committee notes that the amount of damages has not been fixed, except for wrongful termination of an unemployment contract, as laid down by section 33 of the Code. In the latter case, the damages vary from three to six months' wages, and may amount to as much as nine months' pay where the worker has more than ten years' service with the same employer, or where staff delegates or union representatives are concerned. ***The Committee requests the Government to provide further information on the amount of damages applicable for acts of discrimination against trade union members or officials, other than the dismissal of trade union representatives.***

Article 4. With reference to its previous comments concerning compulsory arbitration in the context of collective bargaining, the Committee notes with ***regret*** that the collective dispute settlement procedure provided for in section 143 ff. of the new Code culminates, in cases of non-conciliation, in referral to an arbitration committee whose decisions may be the subject of an appeal to the competent jurisdiction, whose decision shall be binding. The Committee recalls that, except for the cases of public servants engaged in the administration of the State and essential services in the strict sense of the term, arbitration imposed by the authorities or at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements established by the Convention, and thus the autonomy of bargaining partners (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 257). ***The Committee requests the Government to take the necessary steps to amend the legislation in such a way that, except in the circumstances referred to above, a collective labour dispute in the context of collective bargaining may be submitted to the competent legal authority only with the agreement of both parties.***

Moreover, with reference to its previous comments, the Committee notes that section 121 of the Code provides that, at the request of a representative organization of workers or employers, the collective agreement shall be negotiated within a joint committee convened by the Minister of Labour or his delegate or the competent labour inspector. The Committee recalls that such a provision may well restrict the principle of free and voluntary negotiation of the parties within the meaning of the Convention, and even of being applied where one party wishes to have a new collective agreement even before the existing agreement has expired. ***The Committee requests the Government to take steps to amend section 121 of the Labour Code so that recourse to a joint committee for negotiating a collective agreement is possible only with the agreement of both parties.***

With regard to the question of the extension of collective agreements, the Committee notes that, under section 133 of the Labour Code, at the request of a representative workers' or employers' organization, whether or not it is a party to the agreement or on its own initiative, the Minister of Labour may make all or some of the provisions of a collective agreement binding on all employers and workers covered by the occupational and territorial scope of the agreement. ***The Committee requests the Government to take the necessary steps to amend the legislation so that the extension of collective agreements is the subject of in-depth tripartite consultations (even where provision is made, as is the case in section 136 of the Code, for the parties affected by the application of an extended collective agreement to file a request for an exemption with the Minister of Labour).***

Article 6. With reference to its previous comments, the Committee notes that, under section 3 of the Code, any person governed by the general or individual public service regulations is not subject to the provisions of the Code other than for matters determined by an Order of the Prime Minister. ***The Committee regrets that the national authorities have not taken the opportunity afforded by the reform of the Labour Code to guarantee the right to collective bargaining for public servants covered by the Convention and requests the Government to indicate any measures taken or contemplated to this end.***

Finally, the Committee requests the Government to supply information in its next report on the activities of the National Labour Council with regard to collective bargaining, on the number of collective agreements concluded, and on the sectors and numbers of workers covered.

Saint Lucia

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1980)

Article 2 of the Convention. Right of workers and employers without distinction whatsoever, to establish and to join organizations of their own choosing and without previous authorization. Requirements for the establishment of an

organization. In its previous comments, the Committee had noted that in a draft Labour Code the minimum founding membership for a trade union and for an employers' organization had been reduced from 30 to 20 and from ten to six, respectively. It had requested the Government to keep it informed of new developments concerning the draft and to submit a copy of the Code. The Committee notes that the Government indicates that the draft Labour Code had passed into law but has been placed on hold by the new Government and that it is currently with the Attorney-General. *The Committee again hopes that the new legislation will soon be applicable and requests the Government to submit a copy of the legislation with its next report.*

Sao Tome and Principe

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1992)

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

Article 3 of the Convention. Right of organizations to organize their activities and formulate their programmes. The Committee recalls that it has been commenting for a number of years on the need for the Government to take steps to amend the provisions of Act No. 4/92, which refer to the following issues:

- the majority required for calling a strike is too high (section 4 of Act No. 4/92);
- with regard to minimum services, it is important, in the event of disagreement in determining such services, that the matter be settled by an independent body and not by the employer (section 10(4) of Act No. 4/92);
- the hiring of workers without consultation with the trade unions concerned to perform services essential to maintain the economic and financial viability of the enterprise should it be seriously threatened by a strike (section 9 of Act No. 4/92); and
- compulsory arbitration for services which are not essential in the strict sense (services whose interruption might endanger the life, personal safety or health of the whole or part of the population) (postal, banking and loan services; section 11 of Act No. 4/92).

The Committee asks the Government to take steps to amend the abovementioned legislative provisions so as to bring the legislation into line with the Convention and to indicate, in its next report, any measures adopted in this respect. The Committee also asks the Government to indicate whether federations and confederations are able to exercise the right to strike.

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

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1992)

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

Articles 1 and 2 of the Convention. The Committee had asked the Government to indicate what sanctions may be imposed against acts of discrimination which undermine freedom of association and acts of interference by employers and their organizations in workers' organizations and vice versa. The Committee noted the Government's indication that there is no appropriate legislation providing for sanctions against acts of anti-union discrimination. *The Committee therefore asks the Government, once again, to take the necessary steps to adopt appropriate legislation which imposes sufficiently effective and dissuasive sanctions against acts of anti-union discrimination and acts of interference committed by employers against trade union organizations, in conformity with the provisions of the Convention.* The Committee reminds the Government that it may seek technical assistance from the Office in this respect.

The Committee is addressing a request on other points directly to the Government.

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

Sierra Leone

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1961)

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

Articles 1 and 2 of the Convention. Need to adopt specific provisions accompanied by sufficiently effective and dissuasive sanctions for the protection of workers and workers' organizations against acts of anti-union discrimination and acts of interference. The Committee had previously noted that the revision of the labour laws, prepared with ILO technical assistance, had already been submitted to tripartite meetings, that the comments of the tripartite body had been received and that the document had just been forwarded to the Law Officers' Department. The Committee had asked the Government to keep it informed of any further progress made in the preparation of the final draft document and to provide a copy of the revised legislation as soon as it had been adopted. *Noting that, according to the information previously sent by the Government, the revision of the labour laws was submitted to the Law Officers' Department in 1995, the Committee requests the Government*

once again to make every effort to take the necessary action for the adoption of the new legislation in the very near future and to indicate the progress made in this regard.

Article 4. The Committee requests the Government to provide detailed information on the collective agreements in force in the education sector and in other sectors.

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

Swaziland

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

The Committee notes the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) concerning issues under examination, as well as to serious acts of brutality from the security forces against peaceful demonstrations and threats of dismissal against trade unionists who took strike action in the textile sector, to the repeated arrests of union leaders, particularly of the Secretary General of the Swaziland Federation of Trade Unions (SFTU), and to the refusal from the public authorities to recognize trade unions. The Committee notes the reply of the Government dated 30 October 2009 contesting in particular the allegations made by the ITUC on arrests of union leaders for participating in protest actions. In reply to the alleged detention of the Secretary-General of the SFTU, the Government indicates that he was not arrested but questioned by the police and his fundamental constitutional rights were not violated. While noting the contradictory nature of the statements from the ITUC and the Government, the Committee wishes to recall, along with the Conference Committee on the Application of Standards, the importance it attaches to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press, and to emphasize once again that freedom of assembly constitutes a fundamental aspect of trade union rights and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 35).

The Committee notes the discussion which took place in the Conference Committee in June 2009. The Committee observes that in its conclusions the Conference Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years have yet to be adopted. The Conference Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts would finally be adopted. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act (IRA), and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Steering Committee on Social Dialogue, as well as in respect of other contested legislation and bills.

The Committee recalls that for many years it has been referring to certain provisions of the law that are inconsistent with those of the Convention and asked the Government:

- to amend the legislation or enact other laws to ensure that domestic workers (section 2 of the IRA) have the right to organize in defence of their economic and social interests;
- to amend section 29(1)(i) of the IRA placing statutory restrictions on the nomination of candidates and eligibility for union office, to enable such matters to be dealt with in the statutes of the organizations concerned;
- to amend section 86(4) of the IRA to ensure that the Conciliation, Mediation and Arbitration Commission (CMAC) does not supervise strike ballots unless the organizations so request in accordance with their own statutes;
- to recognize the right to strike in sanitary services (at present banned by IRA section 93(9)), and establish only a minimum service with the participation of workers and employers in the definition of such a service; and
- to amend the legislation in order to shorten the compulsory dispute settlement procedures laid down in IRA sections 85 and 86, read in conjunction with sections 70 and 82.

The Committee takes note of the information provided by the Government on 22 May and 9 September 2009 on steps taken so far to amend the legislation on the abovementioned issues. In this regard, the Government indicates that the Labour Advisory Board has agreed in May 2009 on a finalized consensus document of proposed amendments to the Industrial Relations Act (IRA) of 2000, a copy of which was communicated to the Committee. As of September 2009, the Cabinet had received the draft bill scrutinized by the Attorney-General and would be passed into a bill. ***While taking note of the progress made in this regard, the Committee firmly hopes that the Industrial Relations (Amendment) Bill will be adopted without delay and expects that the Government will provide copy of the new Industrial Relations Act as amended in the near future.***

Furthermore, the Committee recalls that its previous comments referred to other legislative issues and provisions that are inconsistent with those of the Convention, as well as a request for information on the effect given to some provisions in practice:

- The repeal of the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning trade union rights, and the amendment of the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes. On these matters, the Committee notes from the Government's report that it was decided that constitutional review issues raised by the Committee be referred to the Legal and Institutional Affairs Subcommittee of the High-level Steering Committee on Social Dialogue. Concerning measures envisaged with regard to the 1973 Decree and the 1963 Public Order Act, the Committee notes the Government's statement according to which it is in the process of reviewing, repealing and harmonizing all laws that may be in conflict with the Constitution of 2005.
- The amendment of the legislation to ensure that prison staffs have the right to organize in defence of their economic and social interests. The Committee notes from the Government's report that it has been recommended that the issue of the right to organize of prison staff should be addressed under the law governing the Prison Service (Correctional Services) and that consultations have already been initiated to review the Prisons' Act.
- Information on any practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular the charges that may be brought under section 40(13); as well as information on the effect given in practice to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. In this regard, the Government indicates that it would keep the Office informed of any development.

Recalling that the Conference Committee noted with concern that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months, the Committee urges the Government to tackle all pending issues mentioned above in full consultation with the social partners as a matter of urgency. Consequently, the Committee firmly hopes that the Government will take without delay the necessary steps: (1) to abrogate the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning union rights; (2) to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes; (3) to amend the Prisons' Act so as to guarantee that prison staff have the right to organize in defence of their economic and social interests; (4) to keep the Office informed of the practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and section 97(1) of the IRA concerning criminal liability of trade union leaders, while ensuring their conformity with the principles enshrined in the Convention.

Taking into account that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives of the Organization (see ILO Declaration on Social Justice for a Fair Globalization, 2008), the Committee encourages the Government as a matter of priority to engage with the Office, including through its technical assistance, so as to ensure the full application of the Convention.

United Republic of Tanzania

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC), in a communication dated 26 August 2009, which primarily concern matters previously raised by the Committee and also refer to the denial of freedom of association rights to employees in privatized industries; to the difficulties in organizing legal strikes for teachers, 2,000 bank employees and railway workers; to the locking up by employers of fish processing plant workers during an official visit; and to the dismissal of 350 strikers in the textile sector. ***The Committee requests the Government to provide its observations thereon.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. The Committee had previously requested that the Government amend section 2(1)(iii) of the Employment and Labour Relations Act (ELRA) so that prison guards enjoy the right to establish and join organizations of their own choosing. In this respect, the Committee notes with **regret** that the Government reiterates that prison guards were part of the armed forces, and were thus governed by their respective sets of law. The Committee must once again recall that the only admissible exceptions to the right to organize are those explicitly provided for under *Article 9* of the Convention, i.e. the armed forces and the police. All other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing. The Committee considers that the functions exercised by prison guards are different from the regular functions of the army and the police and do not justify their exclusion from the right to organize (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). ***Accordingly, the Committee once again requests the Government to amend section 2(1)(iii) of the ELRA so that prison guards enjoy the right to establish and join organizations of their own choosing.***

The Committee had previously requested the Government to provide adequate information on the types of workers included in the category of the national service, which is excluded from the provisions of the ELRA, so that it may assess whether they qualify for the exceptions of *Article 9* of the Convention. The Committee notes the Government's indication that the Ministry of Labour, Employment and Youth Development is at a preparatory stage of formulating rules which will set the definition of the category of workers included in the national service. ***The Committee recalls that only the armed***

forces and the police may be deprived of the rights provided in the Convention, and requests the Government to provide a copy of the said rules and regulations once they are finalized.

Right of workers and employers to establish organizations without previous authorization. In its previous comments, the Committee had noted that section 48 of the ELRA, which provides for the process of registration, does not set forth a time period in which the registrar must either approve or refuse an organization's application, and had requested the Government to consider amending the ELRA so as to provide for a reasonable time period for the processing of applications for registration. *Noting the Government's statement that the rules and regulations referred to above would address this matter, the Committee, recalling once again that problems of compatibility with the Convention arise where the registration procedure is long and complicated, expresses the hope that the rules and regulations being prepared by the Ministry would, once finalized, provide for a reasonable time period for the processing of applications for registration.*

Article 3. Right of organizations freely to organize their activities and to formulate their programmes. The Committee had previously noted that sections 4 and 85 of the ELRA allow for protest action, i.e. strikes in disputes that are not interest disputes, but that, under section 4, such action is apparently not lawful when taking place in relation to "a dispute in respect of which there is a legal remedy". The Committee notes the Government's statement that it covers any dispute in which a party to the dispute may apply for relief in any authority with competent jurisdiction. In this connection, the Committee recalls again that the solution to legal conflicts arising as a result of a difference in the interpretation of a legal text should be left to the competent courts, and that the prohibition of strikes in such situations does not constitute a breach of freedom of association rights. However, prohibiting protest action in respect of all disputes possessing a legal remedy may unduly infringe upon the right to strike. *The Committee once again requests the Government to amend section 4 of the ELRA so as to limit the restriction on strikes to those taking place in relation to a dispute of rights.*

The Committee had also previously requested the Government to amend section 76(3)(a) of the ELRA, which prohibits picketing in support of a strike, or in opposition to a lawful lockout. In this regard, the Committee *regrets* that the Government confines itself to stating that the Committee would be notified if and when any progress is made respecting this matter. *Recalling once again that it considers that restrictions on strike pickets should be limited to cases where the action ceases to be peaceful (see General Survey, op. cit., paragraph 174), the Committee once again requests the Government to amend section 76(3)(a) of the ELRA accordingly.*

In its previous comments, the Committee had requested the Government to modify sections 12, 13(b), 15, 17(1) and (2), 19 and 22 of the draft Public Service (Negotiating Machinery) Bill so as to ensure that restrictions on the right to strike in the public sector were limited to public servants exercising authority in the name of the State. It takes note of the Government's answer that the restrictions on the right to strike in the public sector are limited to those holding paid public office in the United Republic, charged with the formulation of government policy and delivery of public services, and to any office declared by or under any other law to be a public office. While noting this information, the Committee must once again recall that a too broad definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers (see General Survey, op. cit., paragraph 158). *Accordingly, the Committee once again requests the Government to modify sections 12, 13(b), 15, 17(1) and (2), 19 and 22 of the draft Public Service (Negotiating Machinery) Bill so as to ensure that restrictions on the right to strike in the public sector are strictly limited to public servants exercising authority in the name of the State.*

The Committee had also previously requested the Government to provide information in respect of the designations of essential services that the Essential Services Committee has made under section 77 of the ELRA. It notes the Government's answer that no designation had yet been made by the Committee to that effect. *Recalling that essential services should be defined in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), the Committee requests the Government to inform it of any designations of essential services that the Essential Services Committee has made under section 77 of the ELRA.*

Zanzibar

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish organizations. In its previous comments, the Committee had requested the Government to review and amend section 2(2) of the Labour Relations Act (LRA), which excluded the following categories of employee from the LRA's provisions: (a) judges and all judiciary officers; (b) members of special departments; and (c) employees of the House of Representatives. Noting the Government's indication that the relevant authorities will be advised accordingly and to take appropriate measures to address the matter, the Committee once again recalls that the only admissible exceptions to the right to organize are those explicitly provided for under *Article 9* of the Convention, i.e. the armed forces and the police. *Recalling once again that other categories of workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing, the Committee trusts that the Government will soon review and amend section 2(2) of the LRA in accordance with this principle.*

Previously, the Committee had requested the Government to amend section 4(1) of the LRA in order to bring it into conformity with the principle that *Article 2* of the Convention guarantees the right to organize to employers and workers,

including those who are not in contractual employment relationships. It takes due note of the Government's answer that when read together with sections 43, 44 and 45(1) of the Employment Act, (which provide for the definition and different types of services), section 3(1) of the LRA includes even workers and employers who are not in contractual employment relationships and therefore grants them the right to organize.

Right of workers and employers to establish organizations without previous authorization. The Committee had previously requested the Government to provide further information on section 21(1)(c) of the LRA, particularly on the criteria employed by the Registrar for determining whether an organization's constitution contains suitable provisions to protect its members' interests, and on the expeditiousness of the registration procedure, including the average time period, from the submission to the application, for an organization to be registered. The Committee recalls that the competent authority must not be given discretionary power to refuse registration, as it could amount in practice to a system of previous authorization, contrary to the principles of the Convention; it also recalls that the registration procedure must not be too long and complicated, so as to comply with the Convention (see General Survey, op. cit., paragraphs 73–75). ***Noting the Government's report to the effect that the intended Rules and Regulations for the implementation of the Act will address the matter, the Committee requests the Government to provide a copy of the said rules and regulations once they are finalized.***

Article 3. Right of organizations to organize their administration and activities and to formulate their programmes. In its previous comments, the Committee had requested the Government to indicate whether, under section 42 of the LRA, trade union's funds could be applied to pay any fines or penalties incurred by a trade union official in the discharge of his or her duties on behalf of the Organization. The Committee takes note of the Government's reply concerning section 42 of the LRA, confirming that this provision forbids the union to use, directly or indirectly, its funds for the abovementioned purpose. The Committee recalls, in this regard, that trade unions should have the power to manage their funds without undue restrictions from the legislation (see General Survey, op. cit., paragraph 124). ***Accordingly, the Committee requests the Government to amend section 42 of the LRA so that the trade unions may use their funds if they wish to, inter alia, pay fines or penalties incurred by trade union officials in the discharge of their duties.***

Political activities. Previously, the Committee had requested the Government to provide information on the definition of political affiliation under section 8(2) of the LRA, and to indicate in particular whether under this provision trade unions may still pursue certain political activities, including the expression of opinions on economic and social policy. In this regard, the Committee notes the Government's indication that section 8(2) of the LRA forbids trade unions from being affiliated to political parties. While further noting the Government's statement that section 8(2) emphasizes trade unions' independence from political influences, the Committee nevertheless recalls that the legislative provisions which prohibit all political activities for trade unions give rise to serious difficulties with regard to the principles of the Convention: workers' organizations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy (see General Survey, op. cit., paragraphs 131 and 133). ***Accordingly, the Committee requests the Government to amend section 8(2) of the LRA in accordance with the principle cited above.***

The right to strike. In its previous comments, the Committee had requested the Government to take the necessary measures to amend section 64(1) of the LRA, which sets forth categories of employees, namely (a) employees of any public authority who are actually engaged in the management of such authority; and (b) employees actually engaged in the management of a business of the employer for which such an employee is engaged, that may not participate in a strike, without any additional indication, and section 64(2) of the LRA, which lists several services that are deemed essential, including sanitation services, and in which strikes are forbidden. The Committee *regrets* that the Government confines itself to stating that the relevant authorities would be advised accordingly. ***Recalling once again that the right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population), the Committee requests the Government to amend sections 64(1) and 64(2) of the LRA accordingly.***

Protests. Previously, the Committee had requested the Government to amend sections 63(2)(b) and 69(2) of the LRA, which determines that before resorting to protest action, the trade union must give the mediation authority at least 30 days to resolve it and subsequently give 14 days' advance notice explaining the purpose, nature and place and date of the protest action; it requested the Government to shorten this 44-day period (to a maximum of 30 days, for example). In this respect, the Committee *regrets* that the Government confines itself to stating that the relevant authorities would be advised accordingly. The Committee recalls once again that the period of advance notice should not be an additional obstacle to bargaining, with workers in practice simply waiting for its expiry in order to be able to exercise their right to strike (see General Survey, op. cit. paragraph 172). ***The Committee requests the Government to amend sections 63(2)(b) and 69(2) of the LRA accordingly.***

Finally, with respect to Zanzibar, the Committee *regrets* that the Government still provides no information about section 41(2)(j) of the LRA, which concerns restrictions on the use of trade unions' funds. ***Accordingly, it once again requests the Government to take the steps necessary to amend section 41(2)(j) of the LRA so that the institutions a trade union may wish to contribute to are not subject to the Registrar's approval.***

The Committee again expresses the hope that the Government will make every effort to bring its legislation into full conformity with the Convention and provide detailed information on the abovementioned points in its next report. Further recalling that it has been commenting upon the abovementioned legislative matters for a period of several years, the Committee invites the Government to seek the technical assistance of the Office in this regard.

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

The Committee notes the Government's report. It also notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009. The ITUC alleges that collective agreements must be submitted to the Industrial Court for approval and may be refused registration if they do not conform to the Government's economic policy. It further alleges employees in privatized industries are denied freedom of association and the right to collective bargaining, despite difficult working conditions. ***The Committee requests the Government to provide its observations in respect of these matters.***

The Committee takes note of the Government's statement that the Public Service (Negotiating Machinery) Bill is now an Act of Parliament and is referred to as the Public Service (Negotiating Machinery) Act, 2003. ***The Committee requests the Government to provide a copy of the said Act in its next report.***

In respect of the Public Service (Negotiating Machinery) Act, 2003, the Committee notes that according to the Government section 4 of the said Act establishes the service joint staff councils as negotiating and consultation mechanisms for the civil service, the teachers' service, the local civil service and the health service, and section 9 of the Act provides for the establishment of the public service joint staff council as the highest participatory negotiating and consultative body in the public service. The Government also indicates that section 17(1) of the Act provides that the minister, upon receipt of an agreement reached by the public service joint staff council, may either accept the agreement or remand the matter to the council if he considers further negotiations necessary. ***In light of these indications, the Committee requests the Government: (1) to indicate whether the Act covers all civil servants, without exception; (2) to indicate whether the Act makes express provision for protection against acts of anti-union discrimination and interference, including through the use of sufficiently dissuasive sanctions; (3) to provide information on the subjects that may be negotiated under the Act, particularly wages, as well as on those matters that may only be the object of consultation; (4) to indicate whether all agreements and decisions of the public service joint staff council require the approval of the minister or another authority; (5) to indicate whether the Act contains any provisions respecting the duration of collective agreements; (6) to indicate in which cases compulsory arbitration may be imposed under the Act; and (7) to indicate whether all the individual public services each have the right to conclude collective agreements.***

Zanzibar

Article 4 of the Convention. Trade union recognition for purposes of collective bargaining. Previously, the Committee had requested the Government to amend section 57(2) of the Labour Relations Act of 2005 (LRA), which provides that in order to be designated as representative (and thus be accorded exclusive bargaining agent status), the union concerned must be registered and represent "the majority of employees at the appropriate bargaining level", which corresponds in fact to 50 per cent of the members of a bargaining unit. While noting the Government's indication that the Committee's comments have been noted and will be taken on board in the Rules and Regulations for the implementation of the Act, the Committee must once again recall that such a system denies the possibility of bargaining to a majority union which fails to secure this absolute majority (see 1994 General Survey on freedom of association and collective bargaining, paragraph 241). ***The Committee once again requests the Government to take the necessary measures to amend section 57(2) of the LRA so that if no union covers more than 50 per cent of the workers, the minority unions in the bargaining unit are not denied collective bargaining rights, at least on behalf of their members.***

In its previous comments, the Committee had requested the Government to provide full information on the procedures and criteria by which the disputes resolution authority, in cases brought before it under section 57(4) of the LRA, determines representative trade union status when the employer does not recognize the trade union or when there is an objection from another trade union. ***Noting the Government's statement that the rules and regulations referred to above would address this matter, the Committee expresses the hope that the rules and regulations will provide for objective procedures and criteria for the determination of representative trade union status and requests the Government to provide a copy of the rules and regulations once finalized.***

Article 6. Public servants. The Committee had previously requested the Government to amend section 54(2)(b) of the LRA, so as to guarantee to managerial employees the right to bargain collectively, and to indicate the categories of employee excluded from the right to bargain collectively by the minister under section 54(2)(c) of the LRA. ***Noting the Government's statement that the rules and regulations referred to above would address this matter, the Committee, recalling once again that only the armed forces and the police, public servants directly engaged in the administration of the State, and workers in essential services in the strict sense of the term may be denied the right to bargain collectively, once again requests the Government to amend section 54(2)(b) of the LRA so as to guarantee to managerial employees the right to bargain collectively, and to indicate the categories of employee excluded from the right to bargain collectively by the minister under section 54(2)(c).***

Togo

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

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009. *The Committee requests the Government to provide its observations in this respect.*

Article 2 of the Convention. Export processing zones. The Committee recalls that it has been asking the Government for several years to recognize the trade union rights of workers in export processing zones. *The Committee requests the Government to indicate whether, under the terms of the new Labour Code (Act No. 2006-010 of 13 December 2006), this category of workers benefits from the guarantees afforded by the Convention. It also once again requests the Government to provide information on any trade union organization that has requested the legal capacity to defend workers in export processing zones.*

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

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

The Committee notes that the Government's report does not reply to the comments made in 2006, 2008 and 2009 by the International National Trade Union Confederation (ITUC), according to which the right to collective bargaining is confined to a single agreement that has to be negotiated at the national level and needs to obtain the approval of Government representatives, as well as of trade unions and employers. The ITUC further indicate that workers in export processing zones do not benefit from the same protection against anti-union discrimination as other workers. *The Committee requests the Government to take all the necessary measures to give full effect to the Convention, and to submit these points to tripartite discussion. The Committee requests the Government to provide information in this respect as well as on the exercise of collective bargaining in practice (the number of workers and sectors covered, including the public service, and promotional measures undertaken by the authorities).*

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

Turkey

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

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, by the Confederation of Public Employees' Trade Unions (KESK) in a communication dated 20 August 2009, by the Confederation of Progressive Trade Unions of Turkey (DISK), in a communication dated 14 May 2009, and by the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) in a communication dated 15 September 2009. The Committee further notes the comments made by the Turkish Confederation of Employers' Associations (TISK) in a communication dated 2 September 2009. *The Committee requests the Government to provide its observations on these comments.*

The Committee notes the discussions in the Conference Committee on the Application of Standards in 2009 on the application of the Convention. The Committee notes in particular that the Committee on the Application of Standards requested the Government to accept a high-level bipartite mission with the aim of assisting the Government in making meaningful progress in relation to the long outstanding issues raised by the Committee.

The Committee notes the Government's indication according to which a group of six persons, under the presidency of the Director-General of Labour, has been established in order to re-examine draft Act No. 2821 on trade unions and draft Act No. 2822 on collective labour agreements, strikes and lockouts.

Civil liberties

The Committee notes the Government's reply to the comments made by the ITUC in a communication dated 29 August 2008 that referred to: (1) violent detention and arrest by the police force of trade union leaders and union members of the TÜMTİS trade union for legitimate exercise of trade union rights; (2) violent attacks on trade union members of the TÜMTİS trade union by security forces of a private enterprise; (3) violent repression during a teachers demonstration on 26 November 2005, arrest and prison sentences against ten trade union leaders of unions affiliated to KESK; (4) setting on fire of the trade union premises of Egitim-Sen's branch office on 4 March 2007; (5) public authorities interference on the statutes of public sector confederation KESK and its affiliates; and (6) closing down of the Turkish trade union of retirees (EMEKLİ-Sen) on 19 September 2007. Concerning the allegations of violence against trade unionists and prison sentences, the Government indicates that according to article 34 of the Constitution, everyone has the right to organize meetings and demonstrations without permission provided that they are non-violent. Moreover, it refers once more to Law No. 2911 on Meetings and Demonstrations that provides for the right of meetings and demonstrations, responsibilities, circumstances of prohibition and penalties. Besides, Circular No. 2005/14 of the Prime

Minister, already referred to by the Government, states that press statements made by union leaders are not subject to disciplinary proceedings and provides for facilities for meetings and demonstrations organized according to Law No. 2911. The Committee observes that the Government provides general indications as to the allegations concerning violence exercised by the police force. In this regard, while appreciating the important step taken by the Government in 2008 to declare May Day a public holiday, the Committee notes that the recent comments from the ITUC, DISK and KESK refer to new cases of recourse to violence by the police force during May Day celebrations in 2009. The Committee recalls that in previous comments it had taken note of similar allegations and it had raised the issue of measures to give the police adequate instructions so as to ensure that police intervention is limited to cases where there is a genuine threat to public order and to avoid the danger of excessive violence in trying to control demonstrations. The Committee wishes to refer to the conclusions of the Conference Committee on the Application of Standards in 2009, when it took note of the Government's indication that it was determined to take all necessary disciplinary and judicial measures against the members of the security forces who used disproportionate and excessive force, but that it was important that those demonstrating respected the relevant provisions of national legislation. The Committee on the Application of Standards emphasized in this regard, that respect for basic civil liberties was an essential prerequisite to the exercise of freedom of association and urged the Government to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. ***The Committee requests the Government to provide information in this respect. Moreover, the Committee requests once again the Government to respond to the comment formulated by the ITUC in 2007 that trade unions must allow the police to attend their meetings and record the proceedings. The Committee also requests the Government to carry out an investigation on the allegations concerning all the cases of use of violence during police or other security force interventions and to indicate any developments in this respect.***

With respect to the allegations concerning the interference by the Government on the statutes of public sector confederations and trade unions, the Government indicates that these confederation and trade unions refer in their statutes to "collective bargaining", "collective dispute" and "strike", which are not applicable to public sector trade unions because of a Constitutional restriction; they should instead refer, according to the Government, to "collective negotiations". The Committee recalls that *Article 3 of the Convention* provides for the right of workers' organizations to draw up their constitutions (statutes) and rules. In order for this right to be fully guaranteed, the Committee believes that two basic conditions must be met: firstly, national legislation should only lay down formal requirements as regards trade union constitutions; and secondly, the constitutions and rules should not be subject to prior approval at the discretion of the public authorities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 109). The Committee further recalls that the prohibition of strikes is only acceptable in the case of public servants exercising authority in the name of the State and essential services in the strict sense of the term and that trade unions representing public servants who are not engaged in the administration of the State should be able to engage in collective bargaining on behalf of their members, as one of the fundamental activities in which trade unions are involved. The Committee recalls that under *Article 8 of the Convention*, while trade unions are expected to respect the law of the land, this law should not be such as to impair the guarantees provided for in the Convention. ***The Committee requests the Government to refrain itself from all intervention with respect to the right of trade unions to draw their own statutes, especially when, like in the present case, they provide for trade union rights that are in conformity with the principles enshrined in Conventions Nos 87 and 98 ratified by Turkey. The Committee requests the Government to indicate any developments in this regard.***

With respect to the alleged closing down of the EMELKLI-Sen on 19 September 2007, the Government indicates that only employees and employers have the right to establish unions and senior organizations without permission and that there is no provision in Acts Nos 2821 and 2822 concerning the retired persons in these laws, who may, however, organize in the form of an association. The Committee recalls that the legislation should not prevent the trade union organizations and associations from affiliating retirees if they so wish, particularly when they belong to the activity represented by the union.

The Committee further notes that the Government does not provide any information concerning the setting on fire of the premises of Egitim-Sen's branch office. The Committee recalls that attacks against trade unionists and trade union premises and property constitute serious interference with trade union rights. Criminal activities of this nature create a climate of fear which is extremely prejudicial to the exercise of trade union activities. ***The Committee requests the Government to carry out an appropriate investigation on these events and to provide information in this respect.***

Legislative issues

The Committee recalls that for a number of years it has been commenting upon several provisions of Act No. 2821 on trade unions, Act No. 2822 on collective labour agreements, strikes and lockouts and Act No. 4688 on Public Employees' Trade Unions. The Committee notes the copies of draft bills amending Acts Nos 2821, 2822 and 4688 submitted by the Government. The Committee had taken note in its previous observation that the Bills amending Acts Nos 2821 and 2822, after having been consulted with the social partners who reached consensus on some issues, were submitted to the Turkish Grand National Assembly on 27 May 2008. In this regard, the Committee on the Applications of Standards took note of the Government's indication that the Tripartite Consultation Board had conducted intensive work

in this regard. The Committee notes, that these Bills contain some improvements in the application of the Convention with respect to the following provisions (some of which the Committee had already taken note of in previous comments):

- The condition of the Turkish citizenship to be a founding member and for the election of trade union officers (sections 5 and 14 of Act No. 2821) has been removed.
- The possibility for the governor to appoint an observer at the General Congress of a trade union (section 14(1), of Act No. 2821) has been removed.
- The condition of the certification of the notary public for the membership registration form and for the notice of resignation (sections 22(2) and 25(2) of Act No. 2821) has been removed.
- The definition of public servant includes those occupied in a post or in a contractual employee position other than that of a worker in the public establishments and institutions, including public servants under probation (section 3(a) of Act No. 4688).

Furthermore, the Committee notes the Government's indication in its reply to the Committee on the Application of Standards, that the Constitutional Court found that section 73(3), of Act No. 2822 was in breach of the Constitution and had therefore repealed it.

However, a reading of the draft bills reveals that a number of concerns raised by the Committee remain valid with respect to their conformity with:

Article 2 of the Convention

- The need to ensure that the self-employed workers, homeworkers and apprentices enjoy the right to organize as section 2 of Act No. 2821 and section 18 of Act No. 3308 (Apprenticeship and Vocational Training) lead to the exclusion either explicitly or in practice of these categories of workers.
- The exclusion from the right to organize of a number of public employees (such as senior public employees, magistrates, civilian personnel in military institutions and prison guards, section 15 of Act No. 4688). According to the ITUC and KESK, almost 450,000 public employees are deprived of their right to organize due to this provision.
- The prohibition concerning the establishment of trade unions on an occupational or workplace basis (section 3 of Act No. 2821 and section 4 of Act No. 4688).
- The criteria under which the Ministry of Labour determines the branch of activity covering a worksite (as unions must be constituted on a branch of activity basis) and the implications of such determinations on the workers' right to form and join organizations of their own choosing (section 4 of Act No. 2821).
- The criteria under which the Ministry of Labour determines the branch of activity in the public sector and the implications of such determination on the workers' right to form and join organizations of their own choosing taking into account that unions have to be constituted on a branch of activity basis (section 5 of Act No. 4688 as well as the Regulation on the Determination of Branch of Activity of Organizations and Agencies). In this respect, the Committee has already taken note of Case No. 2537 based in a complaint from Yapi Yol Sen in which the trade union alleged that due to the closure of an administrative unit (General Directorate of village affairs) which belonged to the branch of "Public works, construction and village services" its personnel was transferred to the local administration and therefore to the branch of "local governments" which meant that Yapi Yol Sen automatically lost its membership and had to face financial difficulties as well as the fact that trade union officers lost their office pursuant to section 16 of Act No. 4688.

Article 3 of the Convention

- The detailed provisions of Acts Nos 2821, 2822 and 4688 in respect to the internal functioning of unions and their activities that lead to repeated interference by the authorities.
- The provision under which trade union officers' mandates are suspended in case of candidacy in local or general elections and terminated in case of election (Act No. 2821, section 37(3)).
- The removal of union executive bodies in case of non-respect of requirements set out in the law (section 10 of Act No. 4688).
- The termination of trade union office by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work (section 16 of Act No. 4688, this issue was also dealt with by the Committee on Freedom of Association in Case No. 2537 concerning Yapi Yol Sen, mentioned above).

Severe limitations to right to strike

- Prohibition of strikes for political reasons, general strikes and sympathy strikes (section 25 of Act No. 2822 and article 54 of the Constitution). The Government had indicated that this issue was not included in the reform as it required a constitutional revision. ***In this regard, the Committee calls upon the Government to rapidly put forward and ensure the necessary legal and constitutional reforms for the application of the Convention.***

- Prohibition of strike in many services which cannot be considered to be essential in the strict sense of the term (production of coal for water, electricity, gas and coal power plants, exploration, production and distribution of natural gas and petroleum; petrochemical works, banking and public notaries, land, sea, railway urban public transportation and other public transportation on rail, chemists shops, pharmacies, educational and training institutions) and compulsory arbitration in services where strikes are prohibited (sections 29, 30 and 32 of Act No. 2822). The Committee recalls that in these services, rather than a prohibition, the establishment of a minimum service could satisfy both the workers and the public interest.
- The possibility for the Council of Ministers to suspend for 60 days a lawful strike for public health and national security reasons and then to refer the matter to compulsory arbitration, if the parties have not been able to reach a settlement upon the expiry of the suspension period (section 33 of Act No. 2822). The draft Bill provides for the advisory opinion of the High Board of Arbitration (a tripartite body), however, the Committee considers that the responsibility for suspending a strike should lie with an independent body which has the confidence of all the parties concerned.
- Excessively long waiting period before a strike can be called (section 27 – referring to section 23 – and section 35 of Act No. 2822).
- Minimum services are determined by the regional directorate of the Ministry of Labour and Social Security. The Committee considers, however, that minimum services should be determined with the participation of workers' and employers' associations involved and, in case of disagreement, the question should be settled by an independent body and not by the Ministry of Labour and Social Security (section 40 of Act No. 2822).
- Severe limitations on picketing (section 48 of Act No. 2822); although the draft Bill has eliminated the prohibition for the trade unions to provide shelter to those workers in the picket, other restrictions subsist.
- Heavy sanctions, including imprisonment for participating in unlawful strikes, the prohibition of certain of which however, is contrary to the principles of freedom of association (sections 70, 71, 72, 73 (except for paragraph 3 repealed by the Constitutional Court), 77 and 79 of Act No. 2822 (although section 79 has been modified in the draft, it still provides for fines to those who write posters or signs in workplaces on strike)). KESK refers to concrete cases of trade unions and union members sanctioned for having participated in a strike.
- Section 35 of Act No. 4688 that provides for the determination and settlement of disputes by the conciliation board, makes no mention of the circumstances in which strike action may be exercised in the public service. The Committee recalls that restrictions on the right to strike in the public service should be limited to public servants who are exercising authority in the name of the State and those working in essential services in the strict sense of the term.

The Committee requests the Government to indicate the current situation of the Bills amending Acts Nos 2821, 2822 and 4688 and the extent to which consensus has been reached with the social partners in this regard. The Committee expresses the hope that the final texts will take fully into account its comments and that it will be in a position of noting progress.

Associations Act (supervision of organizations' accounts)

The Committee had already observed that section 35 of Associations Act No. 5253 of 4 November 2004 provides that certain specific sections of this Act apply to trade unions, employers' organizations, as well as federations and confederations, if there are no specific provisions in special laws concerning these organizations. In this respect, section 19 enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24 hours' notice. Once again, the Committee recalls that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers' or workers' organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey, op. cit., paragraph 125). ***The Committee requests the Government once again to indicate in its next report the measures taken or contemplated to amend sections 19 and 35 of Act No. 5253 of 2004 so as to exclude workers' and employers' organizations from the scope of application of these provisions or ensure that verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members.***

The Committee ***regrets*** to note that the Government has not provided any information with respect to the elaboration of the plan of action with clear time lines (requested by the Committee on the Application of Standards) that would allow the Committee to note significant progress in bringing the law and practice into full conformity with the provisions of the Convention. ***The Committee requests the Government to accept the high-level bipartite mission suggested by the Conference Committee with the aim of assisting the Government in making meaningful progress on these long***

outstanding issues. The Committee considers that this kind of mission would be particularly useful taking into consideration the Government's indication to the Conference Committee that some legislative changes required a constitutional amendment.

Uganda

Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratification: 1963)

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

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC).

The Committee had noted with interest the ITUC's indication that the recently amended legislation and efforts undertaken by the authorities have contributed to a significant improvement in respect of trade union rights, and that in most sectors employers that had traditionally been hostile towards trade unions have agreed to recognize and negotiate with them. **Further noting that the ITUC refers to the absence of collective bargaining in the public service sector, the Committee requests the Government to provide its observations thereon and to reply to the other matters raised in its previous observation.**

Article 4 of the Convention. Promotion of collective bargaining. The Committee notes that section 7 of the Labour Union Act (LUA) sets forth the lawful purposes for which trade union federations may be established. The said purposes include, inter alia: the formulation of policy relating to the proper management of labour unions and the general welfare of employees; the planning and administration of workers' education programmes; and consulting on all matters relating to labour union affairs. Noting that the lawful purposes delineated under section 7 of the LUA does not include collective bargaining, the Committee recalls that the right to collective bargaining should also be granted to federations and confederations of trade unions (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 249). **In this connection, the Committee requests the Government to confirm whether the right of trade union federations to engage in collective bargaining is assured, in the LUA or in other legislation.**

Compulsory arbitration. The Committee notes that, under section 5(3) of the Labour Disputes (Arbitration and Settlement) Act of 2006, in cases where a labour dispute reported to a labour officer is not referred to the Industrial Court within eight weeks from the time the report is made, any of the parties or both the parties to the dispute may refer the dispute to the Industrial Court. Section 27 of the Act, the Committee further notes, empowers the minister to refer disputes to the Industrial Court where one or both parties to a dispute refuse to comply with the recommendations of the report issued by a board of inquiry. In this connection, the Committee recalls that recourse to compulsory arbitration is acceptable only for: (1) workers in essential services, in the strict sense of the term; and (2) public employees engaged in the administration of the State. Otherwise, provisions that permit the authorities to impose compulsory arbitration, or allow one party unilaterally to submit a dispute to the authorities for arbitration, run counter to the principle of the voluntary negotiation of collective agreements enshrined in *Article 4* of the Convention. **The Committee requests the Government to amend the above legislation so as to bring it into conformity with the Convention.**

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

United Kingdom

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1949)

The Committee notes the comments made by the British Airline Pilots' Association (BALPA) dated 22 October 2008, supported by the International Transport Federation (ITF) and Unite the Union, and the Government's reply thereto. The Committee notes in particular that BALPA refers to two recent decisions of the European Court of Justice (ECJ), *International Transport Workers' Federation and the Finnish Seaman's Union v. Viking Line ABP (Viking)* and *Laval un Partneri v. Svenska Byggnadsarbetareförbundet (Laval)* which held that the right to strike was subject to restrictions under the European Union law where its effect may disproportionately impede an employer's freedom of establishment or freedom to provide services. BALPA asserts that these judgements have negatively impacted upon their rights under the Convention.

In particular, BALPA explains that it decided to go on strike, following a decision by its employer, British Airways (BA), to set up a subsidiary company in other EU States. While efforts were made to negotiate this matter, in particular the impact that the decision would have upon their terms and conditions of employment, all attempts were unsuccessful and BALPA members overwhelmingly voted to go on strike. The strike action was, however, effectively hindered by BA's decision to request an injunction, based upon the argument that the action would be illegal under *Viking* and *Laval*. In addition, BA claimed that, should the work stoppage take place, it would claim damages estimated at £100 million per day. Under these circumstances, BALPA did not follow through with the strike, stating that it would risk bankruptcy if it were required to pay the damages claimed by BA. BALPA expresses its deep concern that the application of *Viking* and *Laval* by the UK courts will result in injunctions against industrial action (and dismissal of workers) if a strike's impact on the employer is judicially determined to outweigh the benefit to workers.

The Committee notes the Government's indication in its reply that BALPA's application is misdirected and misconceived because any adverse impact of *Viking* and *Laval* would be a consequence of the European Union law, to

which the United Kingdom is obliged to give effect, rather than of any unilateral action by the United Kingdom itself. The Government further asserts that BALPA's application is premature because it remains unclear what, if any, impact the *Viking* and *Laval* judgements would have on the application of trade union legislation in the United Kingdom. The Government adds that these judgements would not likely have much effect on trade union rights because they are only applicable where the freedom of establishment and free movement of services between Member States are at issue. Moreover, the impact of the principles they set forth may differ considerably depending upon the facts of the case. There have been no subsequent analogous cases at the ECJ level, nor have there been any decisions by the UK domestic courts as to whether and to what extent the new principles might represent an additional restriction on the freedom of trade unions to organize industrial action in the United Kingdom. Finally, the Government indicates that it is not obvious that the current limit on damages in tort would be bypassed or overridden in a *Viking*-based claim since that limit has a sound basis in the protection of the freedoms of trade unions which would be taken into consideration if the limit were challenged as contrary to the European Union law.

The Committee first wishes to recall more generally its previous comments, in which it has noted the limitations on industrial action in the United Kingdom, including that it remains a breach of contract at common law for workers to take part in strike action and that trade union members are protected from the common law consequences (dismissal) only when the trade union has immunity from liability, i.e. when the strikes are in contemplation or furtherance of a trade dispute, which would not include secondary action or sympathy strikes (section 224 of the Trade Unions and Labour Relations (Consolidation) Act, 1992 (TULRA)). The Committee has asked the Government in this regard to indicate the measures taken or envisaged so as to amend the TULRA, with a view to broadening the scope of protection available to workers who stage official and lawfully organized industrial action.

With respect to the matter raised by BALPA, the Committee wishes to make clear that its task is not to judge the correctness of the ECJ's holdings in *Viking* and *Laval* as they set out an interpretation of the European Union law, based on varying and distinct rights in the Treaty of the European Community, but rather to examine whether the impact of these decisions at national level are such as to deny workers' freedom of association rights under Convention No. 87.

The Committee observes that when elaborating its position in relation to the permissible restrictions that may be placed upon the right to strike, it has never included the need to assess the proportionality of interests bearing in mind a notion of freedom of establishment or freedom to provide services. The Committee has only suggested that, in certain cases, the notion of a negotiated minimum service in order to avoid damages which are irreversible or out of all proportion to third parties, may be considered and if agreement is not possible the issue should be referred to an independent body (see 1994 General Survey on freedom of association and collective bargaining, paragraph 160). The Committee is of the opinion that there is no basis for revising its position in this regard.

The Committee observes with *serious concern* the practical limitations on the effective exercise of the right to strike of the BALPA workers in this case. The Committee takes the view that the omnipresent threat of an action for damages that could bankrupt the union, possible now in the light of the *Viking* and *Laval* judgements, creates a situation where the rights under the Convention cannot be exercised. While taking due note of the Government's statement that it is premature at this stage to presume what the impact would have been had the court been able to render its judgement in this case given that BALPA withdrew its application, the Committee considers, to the contrary, that there was indeed a real threat to the union's existence and that the request for the injunction and the delays that would necessarily ensue throughout the legal process would likely render the action irrelevant and meaningless. Finally, the Committee notes the Government's statement that the impact of the ECJ judgements is limited as it would only concern cases where freedom of establishment and free movement of services between Member States are at issue, whereas the vast majority of trade disputes in the United Kingdom are purely domestic and do not raise any cross-border issues. The Committee would observe in this regard that, in the current context of globalization, such cases are likely to be ever more common, particularly with respect to certain sectors of employment, like the airline sector, and thus the impact upon the possibility of the workers in these sectors of being able to meaningfully negotiate with their employers on matters affecting the terms and conditions of employment may indeed be devastating. The Committee thus considers that the doctrine that is being articulated in these ECJ judgements is likely to have a significant restrictive effect on the exercise of the right to strike in practice in a manner contrary to the Convention.

In light of the observations that it has been making for many years concerning the need to ensure fuller protection of the right of workers to exercise legitimate industrial action in practice, and bearing in mind the new challenges to this protection as analysed above, the Committee requests the Government to review the TULRA and consider appropriate measures for the protection of workers and their organizations to engage in industrial action and to indicate the steps taken in this regard.

Bermuda

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

Protection against employer interference. In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to further protect against any possible employer intimidation or interference in respect of union certification or decertification. The Committee notes the information provided by the Government that

the number of Labour Relations Officers has been doubled from two to four, a measure which it believes will assist the labour relations environment and play some part in protecting against any possible employer intimidation or interference in respect of union certification or decertification. ***The Committee requests the Government to provide information, in its next report, in this regard and to consider other ways of ensuring protection against acts of interference.***

Coverage of management personnel. In its previous comments, the Committee requested the Government to indicate any measures taken or envisaged to include management personnel within the scope of the Trade Union Act so as to guarantee them the rights established by the Convention. In this regard, the Committee notes that the Government indicates that the Labour Advisory Council is in the process of finalizing a process of consideration of specific amendments to the Act which will help to protect employees generally and, specifically, will include management personnel within the scope of the Trade Union Act. ***The Committee requests the Government to transmit, with its next report, the amended Trade Union Act.***

The Committee appreciates the information contained in the Government's report and hopes that it will soon be able to note progress on these two issues.

Isle of Man

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

The Committee notes that the Government's report indicates that the Employment Act 2006 has been adopted into law. In addition, referring to its previous observation, the Committee notes with ***satisfaction*** that the Act provides for: enhanced protection against discrimination on trade union grounds at recruitment, during employment and at termination of employment; the right of workers to make use of trade union services; a prohibition on employer offers to workers designed to induce them to alter their union membership, activities, or bargained-for terms and conditions of employment; empowering the Employment Tribunal to order reinstatement of unfairly dismissed employees; and greater protections for workers taking industrial action, including the ability of the employee to file a complaint with the Employment Tribunal if they are subject to dismissal or other adverse action for taking lawfully organized, official industrial action.

Uruguay

Labour Relations (Public Service) Convention, 1978 (No. 151) (ratification: 1989)

The Committee recalls that in its previous observation, after noting that the trade union confederation Inter-Union Assembly of Workers – Workers' National Convention (PIT–CNT) had referred to the absence of machinery for collective bargaining in the public administration, the judicial authorities and education, it invited the Government to examine with the most representative organizations the possible machinery for the promotion of collective bargaining in the public administration and requested it to provide information in the next report on any developments in this respect.

In this regard, the Committee notes with ***satisfaction*** the Government's indication in its report that, following the entry into office of a new administration in 2005, a bargaining framework was convened in the public sector. The Government indicates that the bargaining worked and a framework agreement was established which provides for three different levels of bargaining and that several agreements have been concluded (one of which covers the wages of workers in the public administration). Finally, the Committee also notes the adoption of Act No. 18508 of 26 June 2009 on collective bargaining in the framework of labour relations in the public sector.

Bolivarian Republic of Venezuela

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (ratification: 1982)

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), dated 3 June 2009, and the Confederation of Workers of Venezuela (CTV), dated 28 August 2009. Finally, the Committee notes the conclusions of the Committee on Freedom of Association in relation to the cases presented by national and international organizations of workers (Cases Nos 2422 and 2674) and employers (Case No. 2254), and observes that three other cases are under examination (Nos 2711, 2727 and 2736). In its previous observations, the Committee noted the conclusions of the high-level mission which visited the country in January 2006; the Government has provided a report to follow up the mission. Finally, the Committee notes the discussion in June 2009 on the application of the Convention by the Bolivarian Republic of Venezuela in the Committee on the Application of Standards of the International Labour Conference.

Murders of trade union leaders and members and issues relating to compliance with the human rights of trade unionists and employers' leaders

The Committee notes that, according to the ITUC, four trade union leaders were murdered in December 2008 in the State of Aragua, for whom it supplies the names. According to the ITUC, the murders were also committed of 19 trade unionists and 10 workers in the construction and petroleum sectors in the context of disputes relating to the negotiation and sale of jobs (there were 48 homicides in 2007), but no investigations have been conducted. According to the ITUC, new sections 357 and 360 of the reformed text of the Penal Code repress and punish with sanctions the right of peaceful demonstration and the right to strike, while the Special People's Defence Act against hoarding, speculation and boycotts restrict labour protest action and other forms of social mobilization. According to the ITUC, the authorities have made use on 70 occasions of sections 357 and 360 of the Penal Code and section 56 of the Basic Security Act in the context of strikes and demonstrations. The CTV indicates that hundreds of workers and trade union leaders have been the victims of murders in the construction sector, without any arrests being made up to now. The CTV states that over 2,000 workers, including trade union leaders, have been brought before the criminal courts under a "probationary system" in accordance with which they have to report regularly to the judicial authorities. They are then released, but are prevented from engaging in any protest activities. Eleven workers in the metropolitan town hall were detained for engaging in protests against the Special Act respecting municipal authorities.

FEDECAMARAS indicates that employers who, in the context of their sectorial representative activities, protest against the kidnapping of their members or the fall in national production as a result of government policies are the victims of threats by the authorities (such as in the case of the President of FEDENAGA) and of the occupation and expropriation of land or interference with their enterprises and property. Various important enterprises have been the victims of harassment and fines and the closure has been ordered of television enterprises which gave air time to employers. The food and agricultural sectors are subject to discretionary practices by the authorities. Furthermore, the investigations by the authorities into the attack on the premises of FEDECAMARAS on 26 May 2007 and the attempted bomb attack on 24 February 2008 (carried out by an inspector of the metropolitan police, whose explosive device blew up and killed him) on its headquarters have not produced any results (according to the Government, arrest warrants have been issued against two persons).

The Committee *regrets* to note that the Government has not replied to the comments on the application of the Convention made by the above workers' and employers' organizations in relation to violations of human rights. In his statement, the Government representative of the Bolivarian Republic of Venezuela in the Committee on the Application of Standards indicated that in certain cases of the murder of trade union leaders the investigations had identified those responsible, including police officers.

The Committee expresses *deep concern*, particularly taking into account the high number of assassinations of trade union leaders and members, the apparent impunity of those responsible and the persistence of such deaths in the cement and construction sectors. The Committee wishes to refer to the conclusions of the Conference Committee on the Application of Standards, which read as follows:

Concerning the alleged acts of violence, detentions and attacks on the FEDECAMARAS headquarters, the Committee highlighted the seriousness of these allegations that urgently needed thorough investigation. The Committee further noted with concern the allegations of violence against trade unionists and the expropriation of private properties. The Committee recalled that the rights of workers' and employers' organizations can only be enjoyed in a climate of absolute respect for human rights, without exception. Recalling that freedom of association cannot exist in the absence of full guarantees of civil liberties, in particular freedom of speech, assembly and movement, the Committee highlighted that respect for these rights implied that both workers' and employers' organizations are able to exercise their activities in a climate free of fear, threats and violence and that the ultimate responsibility in this regard lies with the Government.

The Committee also notes with *concern* the various provisions of the Penal Code and other legislation which tend to restrict the exercise of the right to demonstrate and the right to strike and which criminalize legitimate trade union activities, as well as the allegations that a climate of intimidation is being intensified towards workers' and employers' organizations and their leaders which do not support the Government.

The Committee requests the Government to reply in detail to the allegations made by the workers' and employers' organizations and to carry out investigations into them with a view to addressing the worrying situation of impunity alleged by these organizations. The Committee requests the Government to indicate any progress in the investigations. The Committee also requests the Government to examine together with the workers' and employers' organizations the penal provisions that they criticize and to ensure that their application is not incompatible with the requirements of the Convention.

Legislative issues

The Committee recalls that it previously raised the following issues:

- the need to adopt the Bill to amend the Basic Labour Act so as to eliminate the restrictions placed on the exercise of the rights granted by the Convention to workers' and employers' organizations. On this issue, the Committee previously made the following comments:

The Committee previously noted that a Bill to amend the Basic Labour Act took account of the requests for amendment that it had made on the following points: (1) it deletes sections 408 and 409 (over-detailed enumeration of the mandatory functions and purposes of workers' and employers' organizations); (2) it reduces from ten to five years the required period of residence before a foreign worker may hold office in an executive body of a trade union organization (it should be noted that the new Regulations of the Basic Labour Act establish that trade union statutes may provide for the election of foreign nationals as trade union leaders); (3) it reduces from 100 to 40 the number of workers required to establish a trade union of independent workers; (4) it reduces from ten to four the number of employers required to establish an employers' organization; (5) it provides that the technical cooperation and logistical support of the electoral authority (the National Electoral Council) for the organization of elections to executive bodies of trade unions shall be provided only where so requested by the trade union organizations in accordance with the provisions of their statutes, and that elections held without the participation of the National Electoral Council and which comply with the statutes of the trade unions concerned shall have full legal effect once the corresponding reports are submitted to the appropriate labour inspectorate.

The Committee also noted that the Bill provided that "in accordance with the constitutional principle of democratic changeover, the executive board of a trade union organization shall discharge its functions during the period established by the statutes of the organization, but in no case may a period in excess of three years be established". Although the Government provided information indicating that trade union leaders are re-elected in practice, the Committee hoped that the legislative authority would include in the Bill a provision explicitly allowing the re-election of trade union leaders;

- the need for the National Electoral Council (CNE), which is not a judicial body, to cease interfering in trade union elections and to no longer be empowered to annul them, and the need for the statute for the election of the executive bodies of national (trade union) organizations, which accords a preponderate role to the CNE in the various stages of such elections, to be amended or repelled;
- the need to amend section 152 of the Regulations of the Basic Labour Act, dated 25 April 2006, which provide for the possibility of compulsory arbitration in non-essential public services;
- the Committee also noted the criticisms made by the International Confederation of Free Trade Unions (ICFTU) – presently known as ITUC – concerning Resolution No. 3538 of 3 February 2005 giving trade union organizations 30 days to provide information on their administration and register of members in a form that includes each worker's full identify, their place of residence and signature. The Committee requested the Government to adopt measures to guarantee their confidentiality.

The Committee notes that the Conference Committee, after hearing the Government representative indicate that in May 2009 a new process of public consultations had been initiated on the draft text of the Basic Labour Act, adopted the following conclusion:

The Committee on the Application of Standards observed with deep concern that the Committee of Experts had, for ten years, been requesting legislative amendments to bring the law into conformity with the Convention and that the Bill submitted to the Legislative Assembly several years ago has not been adopted. The Committee regretted the Government's apparent lack of political will to pursue the adoption of the Bill in question and the lack of progress despite visits by several ILO missions to the country. The Committee considered that the National Electoral Council's interference in the elections of occupational organizations seriously violated freedom of association.

The Committee notes the Government's indication in its report that a public consultation has encompassed numerous trade union federations, workers and branch associations (including through a virtual forum) and that the observations of the ILO supervisory bodies have been forwarded to the competent committee of the Legislative Assembly. The draft text should be examined in plenary in the month of September or when this phase of broad consultations has been completed.

With regard to the interference by the CNE in trade union elections, the Committee notes the Government's statement that, in accordance with section 33 of the Basic Act on the Electoral Authority, the CNE has the following functions: "To organize trade union elections in compliance with their autonomy and independence, in accordance with the international treaties to which the Bolivarian Republic of Venezuela has subscribed in this respect, and providing the necessary technical and logistical support". The Government concludes that, based on an interpretation of article 293(6) of the Constitution of the Bolivarian Republic of Venezuela in conjunction with section 33 of the Basic Act on the Electoral Authority, it may be understood that trade union organizations, whether they are first, second or third level, are independent and autonomous organizations for the organization of their internal electoral processes, and that the intervention of CNE is therefore only possible when so requested by the respective trade union organization.

With regard to the CNE standards for the election of the authorities of trade union organizations, the Government indicates that by Resolution No. 090528-0264, of 28 May 2009, the CNE issued standards on technical advice and logistical support for trade union elections (once these standards have entered into force, the standards for the election of the authorities of trade union organizations, issued by the CNE in Resolution No. 041220-1710, will be repealed). The Government adds that the CNE, through Resolution No. 090528-0265 of the same date as the previous Resolution, and published in the *Gaceta Electoral* No. 488, issued standards to guarantee the human rights of workers in trade union elections, the objective of which is to safeguard the principles and human rights of active participation, trade union democracy, suffrage, free election and the alternation of representatives of trade union organizations.

The Committee observes that these standards regulate very closely trade union elections and give an important role to the CNE, once again empowering it to examine appeals made by workers or "the worker concerned". The Committee concludes that the new standards governing trade union elections are not only in violation of *Article 3 of the Convention*

(under which, the regulation of elections is a matter for trade union rules), but also allows an appeal by one worker to paralyse the proclamation of election results, which is open to anti-union interference of every type.

Under these circumstances, the Committee *regrets* that for over nine years the Bill to reform the Basic Labour Act has still not been adopted by the National Assembly despite the fact that it had tripartite consensus support. *Taking into account the significance of the restrictions which remain in the legislation with regard to freedom of association and the freedom to organize, the Committee once again urges the Government to take measures to accelerate the examination by the Legislative Assembly of the Bill to reform the Basic Labour Act and to ensure that the CNE ceases to interfere in trade union elections. The Committee emphasizes the need to reform the standards adopted in 2009 respecting trade union elections and recalls that the Committee on Freedom of Association has repeatedly found cases of interference by the CNE that are incompatible with the Convention. The Committee once again requests the Government to provide information on the scope of the Regulations of the Basic Labour Act in relation to compulsory arbitration in basic or strategic services.*

Shortcomings in social dialogue

In successive observations in recent years, the Committee has identified considerable shortcomings in social dialogue. The ITUC, the CTV, the General Confederation of Venezuelan Workers (CGT) and FEDECAMARAS have indicated that the authorities only hold formal consultations without the intention of taking into account the views of the parties consulted and that there is no authentic dialogue. The Committee notes that in its most recent comments the ITUC states that the absence of dialogue between the Government and trade union organizations meant that workers had little or no participation in the nationalization of enterprises in the steel and cement sectors. According to the ITUC, the Government is promoting “parallel” trade unionism at all levels, with emphasis on the establishment of a new trade union confederation (the Bolivarian Socialist Workers’ Force) as a counterweight to organizations that are not close to the policies of the Ministry of Labour or which oppose the Government. This “parallelism” has given rise to a high number of trade unions with a low number of workers covered by collective agreements, with the result that the proportion of workers covered by collective bargaining has continued to decline in relation to previous years. The lack of social dialogue and tripartite meetings in the public sector is a recurrent practice and 243 collective contracts in the sector have not been signed.

The CTV indicates that national executive authorities do not recognize trade union organizations which are not close to them and disregard federations in the health and education sectors, thereby creating an obstacle to collective bargaining or interfering in it.

FEDECAMARAS emphasizes the absence of social dialogue and of bipartite or tripartite consultations with the Government and the adoption without previous consultation of important laws which affect the interests of workers and employers, despite the principle of participatory democracy enshrined in the law. In its view, this is giving rise to numerous controls, legal barriers for the productive sector and new taxes which are endangering production and employers’ organizations. It adds that the Government has still not convened the National Tripartite Commission envisaged in the Basic Labour Act for the determination of minimum wages, which are established by the Government without due consultation with any sector. With reference to the employers’ delegation to the Conference, FEDECAMARAS confirms that the Government imposed the inclusion as employers’ technical advisers of representatives of CONFAGAN, FEDEINDUSTRIA and EMPREVEN, which follow Government policy and are not representative (see, in this respect, the report of the Credentials Committee of the International Labour Conference in 2009, objection concerning the nomination of the Employers’ delegation of the Bolivarian Republic of Venezuela).

The Committee notes the Government’s indications that: (1) social dialogue has been broad and inclusive; the national, regional and local governments have held innumerable meetings and discussions with the participation of various members and leaders of the different employers’ and workers’ organizations which form part of the life in the country; the confederations and federations of employers and workers of the Bolivarian Republic of Venezuela have been convened to national dialogue round tables and their comments and observations have been sought on different types of subjects, which has given rise to an inclusive, participative and productive exchange with all the social actors; (2) the various types of action undertaken by the Government have shown its interest, unequivocal action and will to promote dialogue and seek agreement with employers, workers and the productive sectors of the population, without the exclusion of or discrimination against any organization or sectorial association, through dialogue that has been broad and inclusive; (3) in addition, the Government has maintained and continues to maintain dialogue and negotiations with the sectors of small and medium-sized enterprises, which have traditionally been excluded from political, economic and social decisions, which were previously undertaken only by a group of employers or organizations within a highly monopolistic and oligarchic structure subordinated to transnational interests; (4) emphasis needs to be placed on the innumerable attempts by the national, regional and local executive authorities to establish discussion round tables for economic and social decision-making, which have been repeatedly rejected in view of the lack of readiness and will of certain employers’ sectors; (5) as a result of this social dialogue, in the first half of 2009, a total of 255 collective labour agreements were approved, covering 537,332 workers in various sectors; (6) similarly, in 2008, over 600 new trade union organizations were established freely and democratically, while in the first half of 2009 a total of 152 have been established, thereby rebutting any argument claiming to insinuate violations of freedom of association in the context of Convention No. 87; (7) the existence of isolated cases, which have been presented as generalized and inappropriate conduct by the

Government, of alleged violations of freedom of association are fabrications presented out of context, and fail to take a comprehensive view of all the respective information; (8) it is necessary to reiterate that the Venezuelan State guarantees, respects and protects the exercise of freedom of association at both the individual and collective levels, and consequently guarantees political and ideological freedom; (9) the national Government, on 26 May 2009, following the recommendations of the ILO supervisory bodies in relation to the determination of objective and verifiable criteria with regard to representativeness, convened a meeting which was attended by representatives of FEDECAMARAS, EMPREVEN, CONFAGAN and FEDEINDUSTRIA, with a view to the adoption of positive measures to determine the level of representativeness and the membership of employers' organizations, chambers of commerce, industry, agriculture and any other branch; (10) subsequently, on 30 June 2009, a second meeting was held with the representatives of the Ministry and of the employers' organizations referred to above with a view to continuing the discussions of aspects relating to the determination of criteria of representativeness; no representative of FEDECAMARAS attended this meeting; (11) the People's Ministry for Labour and Social Security is currently engaged in a process of broad consultation with a view to the amendment of section 11 of the Social Security Act, with a view to extending maternity and paternity benefits, and invitations were sent to the employers' organizations referred to above with a view to their commenting on the leave provisions of the above Act; during these meetings, the organizations referred to above engaged in an open dialogue in a cordial atmosphere, thereby illustrating the will of the national Government and of the most representative employers' organizations in the country to develop broad, inclusive and participatory social dialogue as a principle based on an international mandate. The Committee also notes the Government's information concerning recent legislation establishing the Occupational Safety and Health Committee as a tripartite, collegial and joint body and providing for the inclusion in the Directorate of the National Occupational Prevention, Health and Safety Institute of a representative of the most representative organizations of employers and workers.

The Committee expresses appreciation at the invitation made by the Government to FEDECAMARAS to two meetings for the determination of criteria of representativeness and to meetings on the Social Security Act, but emphasizes that the Government has not specified or provided details concerning other meetings held with the most representative trade union organizations and with FEDECAMARAS.

The Committee *regrets* to note, with reference to certain of its previous requests and those of the Conference Committee and the Committee on Freedom of Association, that the national tripartite commission on minimum wages envisaged in the Basic Labour Act has not been established and that a national forum for social dialogue has not been created in accordance with ILO principles with a tripartite composition and which complies in its composition with the representative status of workers' organizations. The Committee further observes that the Government has repeatedly disregarded the recommendations of the Committee on Freedom of Association in relation to the important problems encountered by employers and their organizations, in which it requested direct dialogue with this organization, and more specifically its recommendation urging the Government to establish in the country a high-level joint national commission (Government–FEDECAMARAS) assisted by the ILO to examine each and every one of the allegations and matters that are pending so that such problems can be resolved through direct dialogue. As it is not a complex or costly measure, the Committee concludes that the Government has not promoted the conditions for social dialogue in the Bolivarian Republic of Venezuela with the most representative organization of employers. The Committee emphasizes the conclusions of the Conference Committee on in which it observed that the Government was continuing to ignore its urgent calls to promote meaningful dialogue with the post representative social partners and called on the Government to intensify social dialogue with the representative organizations of workers and employers, including FEDECAMARAS, and to ensure that this organization was not marginalized in respect of all matters of concern to it. The Conference Committee requested a follow up to the 2006 high-level mission to assist the Government and the social partners to improve social dialogue, including through the creation of a national tripartite committee, and to resolve all of the outstanding matters brought before the supervisory bodies. The Committee *deplores* the fact that there has been no follow-up to the high-level mission of 2006, as requested by the Conference Committee.

The Committee, noting that there are still no structured bodies for tripartite social dialogue, once again emphasizes the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be proceeded by full and detailed consultations with the independent and most representative workers' and employers' organizations. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues which affect workers, employers and their organizations should first be the subject of real in-depth consultations with the independent and most representative employers' and workers' organizations, and that sufficient efforts are made in so far as possible to reach joint solutions, since this is the cornerstone of dialogue.

The Committee once again invites the Government to request the technical assistance of the ILO for the establishment of the dialogue bodies mentioned above. In this context, the Committee emphasizes once again that it is important, taking into account the allegations of discrimination against FEDECAMARAS, the CTV and their member organizations, including the establishment or promotion of organizations or enterprises close to the regime, that the Government is guided exclusively by criteria of representativeness in its dialogue and relations with workers' and employers' organizations and that it refrains from any form of interference and complies with *Article 3* of the Convention.

The Committee requests the Government to indicate any developments in social dialogue and their outcome, and it strongly hopes that it will be in a position to note progress in the near future.

In this respect, it is important to determine with precision the representativeness of workers' and employers' organizations, and particularly of confederations. The Committee notes the Government's indication that these confederations do not comply with their legal obligation to provide the registers of their members. The Committee emphasizes that in 2008 it received allegations that the CNE did not give authorization for the holding of many of the respective elections. The Committee recalls that the ILO's assistance for the determination of criteria of representativeness in accordance with the principles of the Convention remains at the Government's disposal.

In the view of the Committee it is also important, in relation to social dialogue, for an independent investigation to be conducted into the allegations concerning the promotion by the authorities of parallel organizations of workers and employers that are close to the Government, and of favouritism and partiality in relation to such organizations (the Government maintains that these may be erroneous perceptions by those who benefited from exclusive rights in the past).

The Committee requests the Government to take steps for this investigation to be conducted and to provide information on this matter.

The Committee also ***regrets*** that the former President of FEDECAMARAS, Carlos Fernández, is still covered by an arrest warrant which prevents his return to the country without fear of reprisals.

The Committee notes the Government's statements on certain legislative matters (section 115 of the Basic Labour Act and the single paragraph of the Regulations, respecting the majorities required to engage in collective bargaining, and the possibility of compulsory arbitration in certain essential public services (section 152)). ***The Committee requests it to supply further information on the application of these provisions in practice and on cases in which they have been applied.***

Finally, with regard to the decision of the Ministry of Labour of 3 February 2005, which requires trade union organizations to present within 30 days the data concerning their administration and the list of members in a format which includes the full identification of each worker, their address and signature, the Committee reiterates that the confidentiality of trade union membership should be ensured and recalls the importance of developing a code of conduct between trade union organizations covering the conditions under which membership data may be furnished, with the use of appropriate techniques respecting personal data which guarantee absolute confidentiality. The Committee notes the Government's statement that the confidentiality of the data has been guaranteed, that it has received no information of cases of abuse and that there have not been denunciations. ***The Committee also raises this comment with regard to the obligation for trade union organizations to supply the lists of their members to the Ministry and requests the Government to take measures in this respect.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 11** (Kyrgyzstan, Tajikistan, Uganda); **Convention No. 87** (Albania, Angola, Australia, Bosnia and Herzegovina, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, China: Macau Special Administrative Region, Congo, Côte d'Ivoire, Croatia, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Eritrea, France, Gabon, Gambia, Ghana, Grenada, Kyrgyzstan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sierra Leone, Swaziland, Togo, United Kingdom: Anguilla); **Convention No. 98** (Algeria, Angola, Armenia, Australia, Belgium, Benin, Bosnia and Herzegovina, Brazil, Central African Republic, China: Macau Special Administrative Region, Congo, Côte d'Ivoire, Democratic Republic of the Congo, El Salvador, Estonia, France, Gabon, Ireland, Kuwait, Kyrgyzstan, Namibia, Niger, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Tajikistan, Togo, United Kingdom: Anguilla); **Convention No. 135** (Antigua and Barbuda, Armenia, Austria, Cameroon, Democratic Republic of the Congo, Dominica, El Salvador, Finland, Kazakhstan, Mongolia, Montenegro, Netherlands, Niger, Rwanda, Serbia, Sri Lanka, Uzbekistan, Yemen); **Convention No. 151** (Antigua and Barbuda, Chad, Mali, Republic of Moldova, Peru, Poland, Seychelles, United Kingdom); **Convention No. 154** (Albania, Antigua and Barbuda, Armenia, Belize, Brazil, Guatemala, Kyrgyzstan, Niger, Romania, Saint Lucia, United Republic of Tanzania, Uganda).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 87** (Colombia, Israel); **Convention No. 98** (Indonesia); **Convention No. 135** (Gabon, Lithuania); **Convention No. 151** (Chile, China: Hong Kong Special Administrative Region); **Convention No. 154** (Spain, Suriname).

Forced labour

Afghanistan

Abolition of Forced Labour Convention, 1957 (No. 105) (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:

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In its earlier comments, the Committee referred to the following provisions of the Penal Code, under which prison sentences involving an obligation to perform labour may be imposed:

- (a) sections 184(3), 197(1)(a) and 240 concerning, inter alia, the publication and propagation of news, information, false or self-interested statements, biased or inciting propaganda concerning internal affairs of the country which reduces the prestige and standing of the State, or for the purpose of harming public interest and goods;
- (b) section 221(1), (4) and (5) concerning a person who creates, establishes, organizes or administers an organization under the name of a party, society, union or group with the aim of disturbing and nullifying one of the basic and accepted national values in the political, social, economic or cultural spheres of the State, or makes propaganda for its extension or attraction to it, by whatever means it may be, or who joins such an organization or establishes relations, himself or through someone else with such an organization or one of its branches.

While having noted the Government's earlier indication concerning the special status given to prisoners convicted under the abovementioned sections of the Penal Code, the Committee pointed out that the imposition of sanctions involving compulsory labour on these persons remains contrary to the Convention, which prohibits the use of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 163 of its 2007 General Survey on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. A similar situation arises where certain political views are prohibited, subject to penalties involving compulsory labour, as a consequence of the prohibition of political parties or associations.

The Committee has noted the Government's intention to prepare and supply to the ILO a separate report related to the penal law provisions, as well as the Government's indications concerning the adoption of the new Prisons Law of 2005, which replaced the previous law of 1982, and the adoption in 2004 of the law related to the freedom of media. *The Committee asks the Government to communicate copies of these laws with its next report and hopes that the abovementioned penal provisions will be re-examined in the light of the Convention with a view to ensuring that no sanctions involving forced or compulsory labour may be imposed as a punishment for holding or expressing political or ideological views and that the Government will indicate the measures taken to this end.*

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

Algeria

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

Article 2, paragraph 1, of the Convention. Civic service. Since 1986, the Committee has been drawing the Government's attention to the incompatibility with the Convention of sections 32, 33, 34 and 38 of Act No. 84-10 of 11 February 1984 on civic service, as amended and supplemented by Act No. 86-11 of 19 August 1986 and by Act No. 06-15 of 14 November 2006, under which it is possible to require persons who have completed a course of higher education or training to perform a period of civic service ranging from one to four years before being able to exercise an occupation or obtain employment.

The Government indicated in a previous report that civic service is a statutory period of work performed for a public administration, body or enterprise in local communities by persons to whom such an obligation applies. It represents a contribution of such persons to the economic, social and cultural development of the country. According to the Government, persons liable to perform civic service have the same rights and obligations as the workers governed by the legislation respecting the general conditions of service of workers, including the right to receive remuneration from the employing entity in accordance with the law. Furthermore, the years of civic service performed are taken into account for purposes of seniority, promotion and retirement, and also in the contract period during which the person concerned is bound to a public body by a training contract. The Government further indicated that persons obliged to perform civic service are assigned exclusively to the specialized branch or discipline in which they were trained.

The Committee noted these explanations. However, it also pointed out that, under sections 32 and 38 of the Act, any refusal to perform civic service and the resignation of the person concerned without valid reason results in the prohibition on their exercising an activity on their own account, and that any infringement will incur the penalties laid down in section 243 of the Penal Code (imprisonment ranging from three months to two years and/or a fine of between 500 and

5,000 DA). Similarly, under sections 33 and 34 of the Act, all private employers are required to satisfy themselves before engaging any workers that applicants are not subject to civic service or can produce documentation proving that they have completed it. Furthermore, any private employer knowingly employing a citizen who has evaded civic service is liable to imprisonment and a fine. Hence, even though persons liable to civic service benefit from conditions of work (remuneration, seniority, promotion, retirement, etc.) similar to those of regular public sector workers, they discharge this service under threat because, in the event of any refusal, they are denied access to any self-employed occupational activity or employment in the private sector. This means that civic service falls within the concept of compulsory labour within the meaning of *Article 2(1)* of the Convention. Furthermore, since it consists of a contribution by the persons concerned to the economic development of the country, this compulsory service violates Article 1(b) of Convention No. 105, which has also been ratified by Algeria.

In its report of 2008, the Government explains that civic service currently in force in Algeria may be regarded as an opportunity, given in particular to persons who have completed higher education, to familiarize themselves with the world of work and facilitate their integration into working life. *While noting the willingness expressed by the Government in its report to take account of the Committee's comments, until the removal of the ambiguities resulting from the application of the law has been achieved, the Committee reiterates the hope that the Government will take the necessary steps to repeal or amend the provisions concerned in the light of Conventions Nos 29 and 105 and that the Government will soon be in a position to report on the measures adopted in this respect.*

The Committee further noted that under section 2 of Ordinance No. 06-06 of 15 July 2006, civic service may be performed in private-sector health establishments in accordance with arrangements set forth by regulation. The Committee reminds the Government that, according to Paragraph 3(3) of the Special Youth Schemes Recommendation, 1970 (No. 136), the services of participants should not be used for the advantage of private persons or undertakings. *Since the Government has not supplied any information on this point, the Committee reaffirms the hope that the Government will take this into account and again requests it to indicate whether regulations have been adopted to specify arrangements under which civic service may be performed in private-sector health establishments and, if so, to provide a copy. It also again requests the Government to indicate whether, in practice, persons subject to the civic service obligation perform such service in private-sector health establishments, and to supply any other information allowing the extent of this practice to be assessed (number of persons and establishments concerned, length of service, etc.), together with information on the conditions of work of the persons concerned.*

Article 2, paragraph 2(a). National service. The Committee has been referring for a number of years to Ordinance No. 74-103 of 15 November 1974 issuing the National Service Code and the Order of 1 July 1987, under which conscripts are required to take part in the running of various sectors of the economy and administration. The Committee noted that they are further required to perform civic service for a period ranging from one to four years, as referred to above. The Committee recalled that, under the terms of *Article 2(2)(a)*, of the Convention, compulsory military service is excluded from the scope of the Convention only where conscripts are assigned to work of a purely military character.

The Government indicated in a previous report that the civic form of national service had not been used since 2001. The Government explained that this de facto suspension would be reflected in law as soon as the reform of the National Service Code was placed on the agenda. *As the Government has not provided any information on this point, the Committee again requests it to provide information on any developments in this matter showing that the national legislation has been aligned with practice and hence with the provisions of the Convention, and to provide copies of the relevant texts.*

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

In the communication received in November 2009, the Government indicates that, according to the national legislation, prison labour is a voluntary activity based on the prisoners' consent and performed in accordance with the prisoners' state of health and their physical and psychological abilities. According to the Government, a personal file shall be constituted in regard to each prisoner called on to perform prison work, which necessarily contains a medical certificate and a document confirming the prisoner's explicit acceptance to work. The Committee takes note of this information, but observes, however, that voluntary character of prison labour does not follow from the legislation, which stipulates that "prisoners shall be given useful work" (section 2 of Inter-Ministerial Order of 26 June 1983 on the modalities of the use of a prison workforce by the National Office of Educational Works) and that "a prisoner may be assigned useful work by the director of the penitentiary establishment" (section 96 of Act No. 05-04 of 6 February 2005 establishing the Code on Penal Institutions and Social Integration of Inmates).

The Committee asks the Government to supply sample copies of personal files of prisoners called on to perform prison work, and in particular, copies of documents confirming the prisoner's explicit acceptance to work. The Committee also considers that, if in practice prison labour is voluntary, it would be appropriate to amend legislation accordingly, in order to avoid any legal ambiguity. It hopes that the Government will supply, in its next report, information on the progress made in this regard. The Committee also repeats its previous comments, to which the Government has not replied in its report.

Article 1(a) of the Convention. Penalties for expressing political views. For many years the Committee has referred to Act No. 90-31 of 4 December 1990 concerning associations, certain provisions of which allow the imposition of prison sentences involving the obligation to work in circumstances which are covered by the Convention. The Committee previously noted that, under section 5 of the Act, an association's legal status is automatically invalidated if its objectives are contrary to the established institutional system or public order or offend morals or the laws and regulations in force. It further noted that, under section 45 of the Act, anyone who manages, administers or actively participates in an association that has not been approved or which has been suspended or dissolved, or facilitates meetings of the members of such an association, shall be liable to imprisonment ranging from three months to two years involving the obligation to work.

The Committee noted the information sent by the Government to the effect that the penalty laid down by section 45 of Act No. 90-31 of 4 December 1990 concerns persons breaching the legal provisions regarding the establishment of associations and not persons holding certain political views, which could be expressed in full freedom subject to the legislation in force. In its General Survey of 2007 on the eradication of forced labour, the Committee indicated that the range of activities which must be protected, under the present provisions of the Convention, from punishment involving forced or compulsory labour, includes the freedom to express political or ideological views, and also various other generally recognized rights. The latter include the rights of association and of assembly, through which citizens seek to secure the dissemination and acceptance of their views and the adoption of policies and laws reflecting them, and which may also be affected by measures of political coercion (see paragraph 152 of the General Survey). The provisions imposing the penalty of imprisonment involving the obligation to work on any infringement of the rules governing the establishment, dissolution or approval of an association are therefore contrary to the Convention. ***The Committee therefore again requests the Government to take the necessary steps to bring its legislation into conformity with the provisions of the Convention, either by amending section 45 of Act No. 90-31 of 4 December 1990 or by explicitly exempting the persons convicted under this section from the obligation to work.***

The Committee previously asked the Government to supply information on the practical application of section 87bis of the Penal Code (Ordinance No. 95-11 of 25 February 1995) on "terrorist or subversive acts", which permits imprisonment involving compulsory labour for anyone convicted of committing a number of very broadly defined acts. It noted the information sent by the Government to the effect that section 87bis of the Penal Code deals with acts affecting the security of the State, territorial integrity, national unity, stability and the normal working of institutions, through use of violence. The Government indicated that acts having a peaceful objective do not come under the scope of section 87bis.

The Committee observed, however, that the very general terms of section 87bis of the Penal Code – obstructing traffic or freedom of movement on public thoroughfares and occupying public places with gatherings, damaging means of communication and transport, public and private property, taking possession thereof or unduly occupying it, obstructing the actions of the public authorities or the free exercise of worship or public freedoms and also the functioning of public service establishments, hindering the operation of public institutions – might enable peaceful acts to be penalized. The Committee underlines the fact that, although anti-terrorist legislation responds to the legitimate need to protect the safety of the population against the use of violence, it can still become a means of political coercion and of repression of the peaceful exercise of civil rights and liberties, such as freedom of expression and freedom of association. The Convention protects these rights and liberties against repression which is exercised by means of penalties involving an obligation to work, and the limits which the law may impose on them must be strictly defined.

The Committee therefore hopes that the Government will soon take the necessary steps to limit the scope of section 87bis of the Penal Code so that persons who peacefully express ideological opposition to the established political, social or economic system cannot be sentenced to a term of imprisonment which includes the obligation to work.

Article 1(d). Penalties for participating in strikes. For a number of years the Committee has referred to section 41 of Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, which states that requisition orders may be issued pursuant to the legislation in force for workers on strike who hold posts in public institutions or administrations, or in enterprises, that are essential for the safety of persons, plant and property and for the continuity of public services which are essential to the vital needs of the country, or who carry on activities essential to supplying the public. Section 42 states that, without prejudice to the penalties laid down in the Penal Code, refusal to execute a requisition order constitutes serious professional misconduct.

The Committee previously noted that sections 37 and 38 of Act No. 90-02 establish a list of essential services in which the right to strike is limited and for which a compulsory minimum service must be organized. It observed that the list is very broad and includes services such as banking and radio/television services, which, according to the Committee on Freedom of Association, do not constitute essential services in the strict sense of the term (see *Digest of decisions and principles of the Freedom of Association Committee*, 2006, paragraph 587, and also the General Survey of 1994 on freedom of association and collective bargaining, paragraphs 159–160). The list in sections 37 and 38 of Act No. 90-02 also includes court registry services.

The Committee also referred to section 43 of Act No. 90-02 prohibiting strikes in certain sectors of public institutions and administrations, such as the judiciary and customs. Furthermore, section 55(1) of Act No. 90-02 provides that anyone who causes or seeks to cause, or maintains or seeks to maintain, a concerted collective stoppage of work in

conflict with the provisions of this Act, but without violence or assault against persons or property, shall be liable to imprisonment ranging from eight days to two months and/or a fine.

The Committee noted the Government's information in a previous report that the imposition of any penalty on workers taking part in a strike is prohibited. It also noted the Government's statement that the organization of a minimum service provided for by Act No. 90-02 does not constitute forced labour, the objective being to ensure the functioning of public institutions. While noting these indications, the Committee recalled that penalizing participation in strikes through imprisonment including the obligation to work is contrary to the present provisions of the Convention. It also recalled that as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services, the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Surveys on freedom of association and collective bargaining, paragraph 159, and on the eradication of forced labour, paragraph 185). ***The Committee again requests the Government to take the necessary steps to ensure that no worker may be sentenced to imprisonment including the obligation to work for going on strike and also to supply information on the practical application of sections 41, 43 and 55(1) of Act No. 90-02, stating in particular the number of persons convicted and supplying copies of any court decisions issued.***

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

Argentina

Forced Labour Convention, 1930 (No. 29) (ratification: 1950)

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. In its previous observation, the Committee took detailed note of the comments on the application of the Convention made by the General Confederation of Labour of the Republic of Argentina (CGT) and the International Trade Union Confederation (ITUC) relating to the trafficking of persons for labour and sexual exploitation, the direct involvement of public officials in trafficking, the slowness and ineffectiveness of the judicial system and the absence of specific legislation on trafficking. The Committee observed that trafficking in persons constitutes a serious violation of the Convention and requested the Government, while awaiting the rapid adoption of measures specifically classifying trafficking as a crime in respect of which penal sanctions may be imposed, in accordance with the provisions of *Article 25* of the Convention, to provide information on current prosecutions under existing penal provisions. In this respect, the Committee recalls the Government's obligation to ensure that the penalties imposed by law are really adequate and are strictly enforced.

Domestic and transnational trafficking of women and girls for sexual exploitation. In its previous observation, the Committee noted the comments of the ITUC on the issue of transnational trafficking, according to which Argentina is a destination for the trafficking of women and girls for sexual exploitation from the Dominican Republic, Paraguay and Brazil. The ITUC referred to a report published by the International Organization for Migration (IOM) documenting the trafficking of 259 Paraguayan women to Argentina for prostitution, of whom 90 were under the age of majority, as well as the information provided by the Paraguayan Vice-Consul concerning over 100 reports from parents of daughters who were believed to have disappeared in cases of trafficking. According to the ITUC, Argentinian women and girls are also trafficked for sexual exploitation abroad, most of whom are from Misiones, Tucumán, La Rioja, Chaco and Buenos Aires. Spain and Brazil are the principal destinations. Intimidation and deception are the means normally used, although an unusually high number of kidnappings have been carried out by gangs involved in the trafficking of persons. In such cases, overt violence and physical confinement of the women are used to prevent them from escaping. An example is the case of a young woman kidnapped in 2002 in San Miguel de Tucumán. The investigation carried out by her mother uncovered evidence of trafficking networks operating in the provinces of La Rioja, Tucumán, Buenos Aires, Córdoba and Santa Cruz, and it was possible to rescue 17 Argentinean women from prostitution in Bilbao, Burgos and Vigo in Spain. The Committee also noted that around 70 cases had been filed in Tucumán over the past five years relating to women and girls who have disappeared and are presumed trafficked.

The Committee noted that the Government's reply to the allegations made by the trade union organizations did not address these specific and serious allegations of the trafficking of women and girls from the Dominican Republic, Paraguay and Brazil, nor the allegations concerning the trafficking networks of Argentinian women and girls abroad. The Committee requested the Government to indicate the investigations carried out and the measures taken against the perpetrators.

Trafficking in persons for labour exploitation. In its previous observation, the Committee noted the comments made by the National Apparel and Allied Workers' Federation (FONIVA) and the Apparel and Allied Workers' Union (SOIVA), which are member organizations of the CGT, as well as the comments of the ITUC, concerning the existence of practices in the apparel sector consisting of subjecting workers, mainly of Bolivian nationality, to forced labour conditions. These include the retention of their identity documents, locking in workers and in some cases their families in illegal workshops, excessive working hours of up to 17 hours a day and a lack of food. The Committee noted that, as a result of the fire which broke out in Buenos Aires on 30 March 2006 in an apparel factory where 60 Bolivian nationals were working under forced labour conditions, six persons were killed, including four children. A series of inspections were ordered which resulted in the closure within a week of 30 of the 54 workshops inspected because of the appalling

working conditions. According to the Minister for Human and Social Rights of the city of Buenos Aires, there are around 1,600 clandestine sweatshops in the city, some 200 of which employ persons under conditions of slavery. The Committee noted the Government's indications concerning the inspections that had been carried out and the charges brought in one case for the offence of reduction to a condition of slavery. The Committee requested the Government to provide information on the measures adopted or envisaged in this respect, particularly with a view to reinforcing the inspection system.

Legislative measures. The Committee notes with *interest* the adoption of Act No. 26364 of 9 April 2008 on the prevention and punishment of trafficking in persons and assistance to victims. The Committee notes that the Act makes a distinction between trafficking in adults and in persons under 18 years of age. Under the terms of section 2 of the Act, trafficking in adults over 18 years of age means the capture, transport and/or transfer, either within the country or abroad, the taking in or receipt of persons over 18 years of age for the purposes of exploitation. For persons of 18 years of age and over, the means used have to include deception, fraud, violence, threats or any means of intimidation or coercion, abuse of authority or of a situation of vulnerability, the offering or receipt of payment or benefits to obtain the consent the person. In the case of persons under 18 years of age, under the terms of section 3 of the Act, trafficking exists even without the use of any of the means referred to above and the consent of the victim shall be null and void. Section 4 enumerates the constituent elements of exploitation, namely: (a) where a person is reduced to or maintained in conditions of slavery or servitude or is subject to analogous practices; (b) where a person is compelled to engage in forced work or services; or (c) where any form of advantage is sought, facilitated, developed or obtained from the sex trade.

The Committee also notes that the Penal Code has been amended to include provisions establishing penalties for the offence of trafficking in persons. The penalties envisaged are terms of imprisonment of from three to six years for trafficking in adults who are 18 years of age or over and between four and ten years for trafficking in young persons, which is increased from six to 15 years where the victims are under 13 years of age.

Article 25. Application of effective penalties. The Committee notes the information provided by the Crime Office for the investigation of offences against sexual integrity, trafficking in persons and prostitution of the General Prosecution Service of the Nation, concerning the investigations initiated in 2007 and 2008. The Committee notes the indication that charges were brought in nine cases, including charges of reduction to slavery, the facilitation or promotion of the prostitution of adults or young persons; 18 cases are undergoing preliminary investigation, nine of which relate to labour exploitation and reduction to slavery, and five concern the prostitution of young persons. The Committee observes that, according to the information received, prosecutions are being carried out in only two cases, one of which was initiated in March 2007 when charges were brought by the Office of the Attorney-General of the Republic of Bolivia for the exploitation of the labour of a young person and the other was initiated in February 2008 on grounds of reduction to slavery and prostitution. In both cases, the magistrates declared that they were not competent and the cases were referred to other instances. The Committee observes that in none of the cases has information been provided on the penalties imposed. The Committee further notes that the investigations were carried out under penal provisions which allowed for judicial action prior to the adoption of Act No. 26364 of 9 April 2008. The Committee takes due note of the Government's indication in its last report that it was difficult to obtain convictions and impose penalties prior to the adoption of Act No. 26364.

The Committee hopes that the Government will provide information in its next report on the effect given to Act No. 26364 and the provisions of the Penal Code establishing penalties for the offence of trafficking in persons for purposes of labour or sexual exploitation, including information on the charges brought, the prosecutions initiated and the penalties imposed on those found guilty. The Committee hopes that the Government will provide copies of the relevant rulings.

Corruption of the police forces. Involvement of public officials in trafficking. The ITUC made allegations concerning corruption in the police forces and the direct involvement of police officers in criminal activities related to trafficking in persons. It provided the example of the case in Mar del Plata, in the province of Buenos Aires, of 13 deaths and disappearances of women which were attributed to an organization of police officers involved in prostitution; the case of the police station in the *Cuartel Quinto* in Moreno, where the complaint made by three women who had managed to escape was not filed and the owner of the brothel was informed of what was happening; and the case of two minors who were rescued from a brothel in the port of Quequén run by a municipal employee and a police officer from the province of Buenos Aires.

In the case of the 17 Bolivian workers who were victims of trafficking for labour exploitation, referred to above, witnesses stated that the police came to the factory to take a percentage of the profits and that four of the workers were threatened before the judge (identified in the comments) set the owner of the factory free on the grounds that there was insufficient proof to show that the workers had been subjected to servitude. According to the ITUC, the involvement of the police is one of the pivotal factors in explaining the rise in domestic and transnational trafficking in recent years and the lack of effective prosecutions of those accused of trafficking.

The Committee noted the gravity of the allegations made and emphasized the key role of the police in enforcing the law and the Convention, which is undermined in the event of the corruption of the police forces. The Committee urged the Government to provide information on the measures adopted or envisaged to conduct full investigations into all

allegations of complicity or the direct involvement of public officials in the trafficking of persons and on the penalties imposed, if the allegations were found to be true.

In its report, the Government indicates that, under the terms of Act No. 26364, the offence of trafficking in persons lies within the competence of the federal authorities and that Resolution No. 1679/2008 provides for the establishment of specific units in the four national security forces to engage in action to prevent and investigate the offence of trafficking in persons, as well as the intelligence work required for this purpose.

The Committee observes that the Government's report does not contain information on the cases reported in the ITUC's allegations and, consequently, reiterates its previous request that the Government provide information on measures adopted or envisaged to conduct full investigations of all allegations of complicity or the direct involvement of public officials in the trafficking in persons. It hopes that the Government will indicate in its next report whether the establishment of specific units in the federal security forces has made it possible to combat the phenomenon of police corruption and the involvement of public officials in the crime of trafficking in persons, and the manner in which this has been done.

Other measures. Human Rights Observatory. The Committee notes the information provided by the Government concerning the Human Rights Observatory established by Resolution No. 019/06 of the Secretariat for Human Rights of the Ministry of Justice with a view to promoting the rights of migrants of Bolivian origin and preparing reports with recommendations on their situation. Among the activities carried out by the Observatory, the Committee notes the training course on human rights and migration, for which support was provided by UNDP, which lasted four months, and the preparation of an information brochure for migrant families containing information on trafficking in persons for labour and sexual exploitation. ***The Committee hopes that the Government will provide information on the activities that the Observatory is continuing to undertake with a view to protecting migrant Bolivian workers against the imposition of forced labour.***

International cooperation. The Committee requested the Government in its previous observation to provide information on the measures adopted or envisaged for the coordination of the action taken with all the countries that in one way or another are involved in the trafficking in persons within or outside the country.

The Committee notes the information provided concerning the measures adopted in the context of cooperation between the Member States of MERCOSUR related exclusively to the protection of boys, girls and young persons who are victims of crimes related to trafficking. The Committee will note this information in the context of the application of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee observes that the report does not contain information on the measures adopted with a view to international cooperation in relation to trafficking in adults. ***The Committee hopes that the Government will take the necessary measures for the indispensable international cooperation in combating the trafficking in persons, including adults, taking into account the comments of the trade union organizations which referred specifically to countries of origin and of destination of the victims and to the existence of organized networks for trafficking in persons.***

Assistance to victims. The Committee notes with *interest* the National Programme for the Prevention and Eradication of Trafficking in Persons and Assistance to Victims. ***It hopes that the Government will provide information on the activities undertaken in the context of the Programme, as well as data on the number of victims who have received the comprehensive assistance envisaged in the Programme.***

The Committee observes that trafficking in persons for labour and sexual exploitation constitutes a serious violation of the Convention and requires action that is energetic, effective and proportional to the gravity and magnitude of the phenomenon. ***The Committee urges the Government to take all the necessary measures for the eradication of this practice, and that the Government will provide information on the progress achieved in this respect.***

Australia

Forced Labour Convention, 1930 (No. 29) (ratification: 1932)

The Committee has noted the Government's report. It has also noted the comments on the application of the Convention submitted by the Australian Council of Trade Unions (ACTU) in a communication dated 1 September 2008, in which ACTU expressed concern about the vulnerable situation of temporary overseas skilled workers, who are not adequately protected from exploitation and sometimes subjected to forced labour. According to ACTU, Australian trade unions and the media have reported numerous cases, in which workers on temporary visas (under the 457 visa scheme) have been denied wages or had their wages illegally reduced to pay for recruitment or migration agent fees and airfares, have been forced to work long hours without adequate meals or rest breaks, have been forced to work in unsafe workplaces and have been threatened with deportation if they seek to enforce their rights. The Committee has noted that this communication was forwarded to the Government, on 18 September 2008, for any comments it might wish to make on the matters raised therein. The Committee hopes that the Government will supply its comments with its next report.

Article 1, paragraph 1, and Article 2, paragraphs 1 and 2(c), of the Convention. Privatization of prisons and prison labour. Work of prisoners for private companies. In comments it has been making for a number of years concerning the privatization of prisons and prison labour in Australia, the Committee pointed out that the privatization of

prison labour transcends the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. The Committee recalled that compulsory work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met: namely, that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to, or placed at, the disposal of private individuals, companies or associations. The Committee asked the Government to take the necessary measures to ensure observance of the Convention, such as, for example, to provide that any prisoners working for private enterprises offer themselves voluntarily without being subjected to pressure or the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free employment relationship. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved.

The Committee notes with *regret* that the position of the Government remains unchanged and that the report repeats the statements by the Government already noted in its previous comments. The Committee observes that there appears again from the Government's report to be little change in national law and practice, during the reporting period 2006–08, with regard to the work of prisoners for private enterprises. The Government reiterates its view that its law and practice comply with the Convention, given that privately managed prisons remain under the supervision and control of public authorities, and that the private sector has no rights in relation to establishing conditions for the work of prison inmates, such conditions being established by the public authorities. It follows from the report that no Australian jurisdiction is currently considering amending its law and practice.

In its earlier comments, the Committee noted that private prisons existed in *Victoria, New South Wales, Queensland, South Australia* and *Western Australia*, while there were no prisons administered by private concerns under the *Tasmanian, Northern Territory* and *Australian Capital Territory* jurisdictions. In its latest report, the Government again refers to prison labour in private prison facilities in *New South Wales, Queensland, South Australia, Victoria* and *Western Australia*, laying special emphasis upon the fact that prisoners accommodated in privately operated facilities are under the supervision and control of a public authority, as required by the exemption in *Article 2(2)(c)*. The Government reiterates the view that prisoners are not “hired to or placed at the disposal of private individuals, companies or associations”, since the “legal custody” of prisoners has not been transferred to a private provider of prison services, and sentenced prisoners remain in the legal custody of the Secretary to the Department of Justice until they are released from prison (*Victoria*). However, as the Committee noted previously, the Government recognized in its earlier report that “prisoners are at the ‘disposal’ of the private contractor only in a very literal sense”.

In this connection, the Committee again draws the Government's attention to the explanations concerning the scope of the terms “hired to or placed at the disposal of” contained in paragraphs 56–58 and 109–111 of its 2007 General Survey on the eradication of forced labour and observes that these terms cover not only situations where prisoners are “employed” by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the type of work they can request the prisoner to do, since they are limited by the rules set by the public authority, and where the performance of work is “merely one of the conditions of imprisonment imposed by the State”. The Committee also refers to paragraph 106 of its 2007 General Survey, where it considered that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons; consequently, it applies to all work organized by privately run prisons.

Referring also to the explanations in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above, the Committee points out once again that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves *voluntarily*, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain the prisoners' formal consent to work for private enterprises in state-run prisons or in privatized prisons and that it should be provided in writing. Further, given that such consent is required in a context of lack of freedom with limited options, there should be indicators which authenticate or satisfy the giving of the free and informed consent. The Committee recalls that the most reliable indicator of the voluntariness of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health.

As regards the question of voluntariness, the Committee previously noted that in privately operated prisons in *Victoria, New South Wales* and *South Australia* the formal consent of prisoners to work does not appear, so far, to be asked for. It notes, however, that the Government confirms its previous indication that, in *New South Wales*, employment of inmates in correctional centres (including Junee Correctional Centre, the only privately operated facility) is voluntary on the part of the inmate and there are no incidents of forced labour. The Committee also notes the Government's indication that, in *South Australia*, where prison labour is compulsory both inside and outside the correctional institution (section 29(1) of the Correctional Services Act 1982, division 6), prisoners at Mt Gambier Prison (*South Australia's* only privately operated prison) apply in writing to undertake work programmes.

The Committee has also noted the Government's repeated indications that, in *Queensland*, prisoners are not forced to participate in approved work activities: though no formal consent of prisoners is required, the work programme is a

voluntary initiative and there are no ramifications or negative effects for a prisoner for refusal to participate in such a programme. As regards *Western Australia*, where the legislation requires prisoners to work (section 95(4) of the Prisons Act, as amended in 2006), the Government indicates that the relevant provision has not been enforced, and the prisoners are not forced to participate in work programmes (even in privately run prisons, like the Acacia Prison), though they are encouraged to participate.

While noting these indications concerning positive trends of practical application of existing legislation in certain Australian jurisdictions referred to above, the Committee reiterates its hope that measures will be taken to ensure that freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, so that such consent is free from the menace of any penalty in the wide sense of Article 2(1) of the Convention, such as loss of privileges or an unfavourable assessment of behaviour taken into account for reduction of sentence. Furthermore, in the context of a captive labour force, having no alternative access to the free labour market, such “free” and “informed” consent needs to be authenticated by the conditions of work approximating a free labour relationship, as regards wage levels (leaving room for deductions and attachments), social security and occupational safety and health.

In the light of the above considerations, the Committee trusts that the necessary measures will be taken in all Australian jurisdictions, both in law and in practice, to grant prisoners working in privately operated facilities and other prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this basic human rights instrument, and that the Government will soon be in a position to report the progress made in this regard.

As regards those jurisdictions where, according to the report, prisoners are not forced to participate in work programmes, the Committee asks the Government to indicate how “informed” consent of prisoners to work for private companies is achieved in practice, what measures are taken to ensure that such consent is freely given and what remedies are available to a prisoner if the consent is alleged not to be freely given.

Please also provide information on the practical impact of the recommendation of the Australasian Correctional Industries Association’s Code of Practice to establish an independent consultative body which includes representatives of industry, unions and the community to monitor the development and operation of correctional industries, which was referred to by the Government in its report, as well as information on any other measures taken or envisaged to ensure compliance with the Convention.

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

Belize

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1983)

Article 1(c) and (d) of the Convention. Penalties involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes. In comments it has been making for a number of years, the Committee has referred to section 35(2) of the Trade Unions Act, under which a penalty of imprisonment (involving an obligation to perform labour, by virtue of section 66 of the Prison Rules) may be imposed on any person employed by the Government, municipal authority or any employer in charge of supplying electricity, water, railway, health, sanitary or medical services or communications or any other service that may by proclamation be declared by the Governor to be a public service, if such person wilfully and maliciously breaks a contract of service, knowing or having reasonable cause to believe that the probable consequences will be to cause injury or danger or grave inconvenience to the community. The Committee has also noted that section 2 of the Settlement of Disputes (Essential Services) Act, Statutory Instrument No. 92 of 1981, declared the national fire service, postal service, monetary and financial services (banks, treasury, monetary authority), airports (civil aviation and airport security services) and the port authority (pilots and security services) to be essential services, and Statutory Instrument No. 51 of 1988 declared the Social Security Scheme administered by the Social Security Branch an essential service.

The Committee pointed out that the imposition of sanctions involving compulsory labour as a punishment for breaches of labour discipline or for having participated in strikes is incompatible with the Convention. It noted that section 35(2) of the Trade Unions Act refers not only to injury or danger but, alternatively, to grave inconvenience to the community, and applies not only 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), but also to other services, such as most employment under the Government or a municipal authority and most banking, postal and transport services.

The Committee notes from the Government’s report that section 35(2) of the Trade Unions Act has not been amended. It also notes the Government’s repeated indication that there have been no recorded penalties of imprisonment imposed under this section. The Government states that the comments made by the Committee will be submitted to the Labour Advisory Board, which was reactivated in March 2009, and that one of its main duties is to review national legislation. According to the report, the Ministry is currently in the process of identifying a consultant that will work along with the Labour Advisory Board to conduct the revision of the labour legislation.

While having noted these indications, the Committee trusts that the necessary measures will soon be taken to bring section 35(2) of the Trade Unions Act into conformity with the Convention and the indicated practice, and that the Government will report the progress made in this regard.

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

Benin

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 2, paragraph 2(a), of the Convention. Work of a purely military character performed in virtue of compulsory military service laws. In its previous comments, the Committee requested the Government to review the provisions of section 35 of Act No. 63-5 respecting recruitment of 26 June 1963 and to provide information on their application in practice. Under the terms of these provisions, the purpose of active military service is, first, to provide conscripts with military instruction and also education intended to develop their civic sense and, second, to further their training and employ them, inter alia, in specialized army units to participate in the work of national construction. Under these provisions therefore, and contrary to the terms of *Article 2(2)(a)* of the Convention, the work exacted from conscripts may not be of a purely military character and shall consequently be considered as forced or compulsory labour within the meaning of the Convention. In its 2006 report, the Government indicated that information on the effect given in practice to section 35 of the Act would be provided in the near future. However, the Committee notes that the Government's latest report does not contain information on this matter. ***The Committee therefore requests the Government to take the necessary measures to bring the provisions of section 35 of Act No. 63-5 into conformity with those of the Convention.***

The Committee notes the adoption of Act No. 2007-27 of 23 October 2007 establishing the military service of national interest, issued under Act No. 63-5 respecting recruitment of 26 June 1963, on which the Committee has commented (see point 1 of this observation), and the adoption of Decree No. 2007-486 of 31 October 2007 establishing general conditions for the organization and performance of military service in the national interest. It notes that under the terms of sections 2 and 5 of Act No. 2007-27, the military service of national interest, to which all nationals of Benin of both sexes aged between 18 and 35 years are subject, consists of compulsory service for 12 months and supplements active military service. By virtue of section 3, the purpose of military service of national interest is the mobilization of the citizens with a view to their participation in work for the development of the country. Section 4 provides that, after a first stage of instruction, recruits are then assigned to administrative units, production units, institutions and bodies with a view to participating in the performance of relevant work of national interest that is of a social or economic nature. The Committee further notes that section 18 of Decree No. 2007-486 specifies that, following two months of military, civic and moral training, the conscripts are engaged in work for socio-economic development for nine months. The Committee recalls that under the terms of *Article 2(2)(a)* of the Convention, work or service exacted in virtue of compulsory military service laws is only excluded from the scope of the Convention on condition that it is of a purely military character. The Committee notes that the provisions of Act No. 2007-27 and of Decree No. 2007-486 are not in compliance with this condition as those conscripted for military service of national interest are assigned to work for socio-economic development that is not of a purely military character. ***The Committee therefore requests the Government to take the necessary measures to amend or repeal Act No. 2007-27 and Decree No. 2007-486 so as to ensure conformity with the Convention.***

For many years, the Committee has been drawing the Government's attention to the need to amend Act No. 83-007 of 17 May 1983 governing civic, patriotic, ideological and military service. The Committee observed that this Act is in contradiction with this provision of the Convention as persons subject to this compulsory civic and military service are assigned to a production unit in accordance with their occupational aptitudes and may be compelled to perform work that is not of a purely military character. As the Government indicated in this respect that the Act is no longer applied in practice, the Committee requested it to confirm that the Act had been formally repealed. In its report received in November 2006, the Government indicated that information on this matter would be provided to the ILO. However, the Government's latest report does not contain any information on this matter. ***The Committee therefore once again requests the Government to indicate whether Act No. 83-007 of 17 May 1983 has actually been repealed and, if so, to provide a copy of the repealing Act.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(a) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In its previous comments, the Committee recalled that *Article 1(a)* of the Convention prohibits the use of forced labour as punishment for expressing certain political views or views ideologically opposed to the established political, social or economic system. It emphasized, in particular, that when they involve compulsory labour, sentences of imprisonment fall within the scope of the Convention if they may be imposed for the expression of political views or views ideologically opposed to the established political, social or economic system. It observed that, by virtue of section

67 of Decree No. 73-293 of 15 September 1973, issuing the prison regulations, as amended by Decree No. 78-161 of 23 June 1978, convicted prisoners may be assigned to social rehabilitation work.

In view of the foregoing, the Committee has for many years been drawing the Government's attention to certain provisions of Act No. 60-12 of 30 June 1960 on the freedom of the press under which various acts or activities relating to the exercise of freedom of expression are punishable by a prison sentence. The Committee referred more particularly to the following provisions of the Act: section 8 (deposit of a publication with the authorities before its release to the public); section 12 (ban on publications of foreign origin in French or the vernacular, printed within or outside the country); section 20 (incitement to commit an act classified as an offence); section 23 (causing offence to the Prime Minister); section 25 (publishing false reports); and sections 26 and 27 (slander and insults).

The Committee also referred to Act No. 97-010 of 20 August 1997 liberalizing audiovisual communication and establishing special penal provisions relating to offences relating to the press and audiovisual communications. While noting that the provisions of Act No. 97-010 prevail should they conflict with those of the Act on the freedom of the press, the Committee pointed out that the two Acts are different in scope, since Act No. 97-010 covers audiovisual communications and the Act on the freedom of the press covers printing, books and periodicals. For the above reasons, the Committee also drew the Government's attention to certain provisions of Act No. 97-010: section 79(3), under which "any seditious shouting or chanting against the lawfully established authorities in public places or meetings" is punishable by a sentence of imprisonment of from six months to two years; section 81, under which causing offence to the President of the Republic is punishable by imprisonment of from one to five years; and section 80, which punishes by imprisonment of from two to five years any provocation against the public security forces aimed at distracting them from their duty of defending security or of obeying the orders given by their chiefs for the enforcement of military laws and regulations.

In its last two reports, received in October 2008 and November 2006, the Government indicates that it intends to bring national laws into line with ratified Conventions. In this context, a department to promote fundamental rights at work was established in November 2005 with responsibility, inter alia, for ensuring that laws and regulations are consistent with Conventions. The Government adds in its latest report that a study of their conformity was carried out by the Ministry of Labour and the Public Service and validated in 2007, and that it takes into account the Committee's observations. The report indicates that draft texts to repeal or amend the provisions in question will soon be submitted to the National Assembly and will be communicated to the Office once they have been adopted. ***The Committee notes the renewed will of the Government to amend the provisions of the national legislation which may be incompatible with the Convention and it hopes that these provisions will be reviewed so as to ensure that the normal exercise of freedom of expression and peacefully expressed opposition to the established political, social or economic system cannot be punished by imprisonment involving an obligation to work. The Committee once again requests the Government to specify whether the courts have had recourse to the above provisions of Acts Nos. 60-12 and 97-010 and, if so, to send copies of court decisions clarifying their scope.***

Article 1(c). Imposition of forced labour as a means of labour discipline. For many years, the Committee has been drawing the Government's attention to the need to amend sections 215, 235 and 238 of the Merchant Shipping Code of 1968. Under these provisions, certain breaches of labour discipline by seafarers are punishable by imprisonment which, pursuant to section 67 of Decree No. 73-293 of 15 September 1973, involves the obligation to work. The Committee notes the Government's indication in its last two reports that the draft Merchant Shipping Code that has been submitted to the National Assembly for adoption takes into account the Committee's comments.

The Committee trusts that the new Merchant Shipping Code will be adopted very shortly and that it will make no provision for prison sentences involving the obligation to work to be imposed for breaches of labour discipline where they do not endanger the safety of the vessel or the life or health of persons. Please send a copy of the new Merchant Shipping Code as soon as it has been adopted.

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

Bolivia

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1990)

Article 1(d) of the Convention. Punishment for having participated in strikes. In its previous comments, the Committee referred to section 234 of the Penal Code, under which advocacy of lockouts, strikes or stoppages declared illegal by the labour authorities is punishable by imprisonment of from one to five years. Sentences of imprisonment involve an obligation to work under sections 48 and 50 of the Penal Code. The Committee requested the Government to provide information on the effect given in practice of these provisions in order to enable it to evaluate their scope and to provide copies of court decisions made under them, with an indication of the number of convictions. The Committee also referred to sections 2, 9 and 10 of Legislative Decree No. 2565 of 6 June 1951 establishing penal sanctions for participation in general strikes and sympathy strikes, and to other restrictions set out in the legislation in relation to strikes, including the requirement for a majority of three-quarters of the workers of the enterprise to call a strike (section 114 of the General Labour Act and section 159 of its Regulations), and the possibility to impose compulsory arbitration by decision of the executive authorities (section 113 of the General Labour Act).

The Committee emphasizes that no worker on strike who has acted peacefully should be subject to criminal sanctions and observes once again that the excessive restrictions imposed on the exercise of the right to strike have an impact on the application of the Convention. This is the case with the requirement of a qualified majority to call a strike and the existence of compulsory arbitration systems when such restrictions result in a declaration that the strike is illegal with the consequent penal sanctions and the imposition of compulsory prison labour.

The Committee also requests the Government to provide information on the draft text drawn up on the basis of a tripartite agreement resulting from negotiations between the representatives of the Bolivian Central Workers' Organization (COB), the Bolivian National Confederation of Private Sector Employers (CEPB) and the Ministry of Labour, who agreed on the amendment of various legal provisions, including sections 2, 9 and 10 of Legislative Decree No. 2565 of 6 June 1951 establishing penal sanctions for sympathy strikes and section 234 of the Penal Code.

The Committee notes that, according to the Government's indications in its report, during the period 2005–07 there were no cases of the application of section 234 of the Labour Code nor of Legislative Decree No. 2565. It further notes that the Government is taking measures with a view to amending the penal legislation and giving effect to the tripartite agreement that was concluded on the need to amend the provisions referred to above.

The Committee once again expresses the hope that the Government will take the necessary measures to ensure that penalties involving compulsory labour cannot be imposed for participation in strikes by amending or repealing the legislative provisions which establish such penalties and since, according to the Government's indications, these provisions are not applied in practice, the Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the Convention and with existing practice, as described by the Government.

Brazil

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee notes the Government's report, the comments made by the Single Confederation of Workers (CUT) and the Government's reply to these comments, which were received in October 2008, September 2008 and March 2009, respectively.

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Slave labour. In its previous comments, the Committee noted that, despite the series of measures adopted by the Government to combat "slave labour", many workers continue to be victims of inhumane and degrading conditions of work, debt bondage or internal trafficking for the exploitation of their labour. The Committee emphasized in particular: the adaptation of the legislation to national circumstances with section 149 of the Penal Code, which defines the elements that constitute the crime of "reducing a person to a condition akin to that of slavery"; the activities undertaken by specialized institutions to combat this phenomenon; the action of the labour inspectorate, and particularly the Special Mobile Inspection Group, which has each year removed an increasing number of workers from these situations of exploitation; and the action by the labour courts, which have convicted persons engaging in such exploitation to substantial fines and compensation. Noting that all of these actions have failed to be sufficiently dissuasive to prevent certain employers from having recourse to this practice, which remains lucrative, the Committee requested the Government to continue taking action without respite against persons who exact forced labour by adopting measures in the fields of legislation, labour inspection and the judicial authorities.

(a). *Strengthening of the legal framework.* In its previous comments, the Committee noted that several Bills had been tabled with the objective of undermining the economic and financial interests of those exploiting slave labour and it requested the Government to take all possible measures to accelerate their adoption. The Committee notes that, according to the Government's report and the comments made by the CUT, these legislative initiatives have still not been completed and that, despite the mobilization of the Government and civil society, certain members of Parliament continue to block the adoption of these texts. The Committee recalls its view that, if they are adopted, these bills would constitute significant additional tools in combating slave labour. In particular, the Bill to provide a legal basis for the prohibition of persons recognized to have used slave labour from obtaining fiscal benefits and credits or from participating in public contracts, and the Bill to increase the penalties applicable to the crime of reducing a person to a condition akin to slavery. The draft amendment to article 243 of the Constitution (PEC No. 438/2001) is also a significant initiative intended to authorize the expropriation, without compensation, of establishments in which the use of slave labour has been identified. The amendment also provides that the expropriated lands will be consigned to the agrarian reform and reserved as a priority for the persons who fell victim to slave labour at those locations.

Status and use of the list of persons who use or have used slave labour. Since 2003, the names of individuals or entities convicted by a final decision of a court of law for having used labour under conditions akin to slavery appear on a list drawn up by the Ministry of Labour and Employment. The list, which is updated every six months, is sent to various public administration bodies and to banks administering constitutional and regional financing funds so that no financial assistance, grants or public credits are granted to those included on the list. For two years following the inclusion of a name on the list, the labour inspectorate verifies the conditions of work in the establishments concerned. If there is no recidivism and if the fines and the debts to the workers have been acquitted, the name may be removed from the list (Decree No. 540 of the Ministry of Labour and Employment of 15 October 2004). The Committee notes that in the latest

revision of the list, in July 2009, 34 names were removed from the list, while a further 13 were added, bringing the total number of individuals or entities on the list to 175 (compared to 192 in 2007).

In its previous comments, the Committee noted with concern that the lawfulness and constitutional nature of the list had been contested, and that the courts had upheld appeals by certain employers demanding the removal of their names from the list while awaiting a final decision. The Government indicated that, with a view to bringing an end to this controversy, a Bill establishing the list of employers which have maintained workers in conditions akin to slavery had been tabled with a view to giving legal force to the list, which has up to now been drawn up by means of a Ministerial Order (PLS No. 25/05). The Committee notes that the Government has not provided information on the progress made in relation to this Bill, although it indicates that the dominant case law in regional labour courts recognizes the lawful nature of the list.

The Committee further notes, according to the information provided by the Government, that the list serves as a basis for the examination of the ownership and registration of the assets of persons who are on the list. Where an instance of unlawful occupation is noted, the assets can be immobilized with a view to agrarian reform projects. The Committee has already observed that inclusion on the list is used as a basis for considering that an establishment is not fulfilling its social purpose. In this respect, in 2004, the President of the Republic ordered the expropriation of an establishment declared of social interest for agrarian reform purposes. The Committee notes the Government's indication that an appeal was lodged against this expropriation with the Federal Supreme Court, which has still not ruled on the appeal.

The Committee considers that the establishment of the list of persons who use or have used slave labour and the resulting measures constitute effective tools in combating slave labour. In this respect, it expresses concern at the attacks on the measures adopted by the executive authorities, both in terms of the establishment of the list itself and the penalties imposed on the basis of the list against persons whose names are on the list.

The Committee firmly hopes that the Government will take every measure to expedite the adoption of the Bills referred to above and, in particular, those intended to guarantee greater legal security, with a view to preventing the questioning of the legality of the list by offenders who want to see their names removed and so that expropriation of lands is not contested. The Committee once again emphasizes in this respect the importance of adopting the proposed amendment to the Constitution (PEC No. 438/2001) intended to authorize the expropriation, without compensation, of establishments in which the use of slave labour has been identified. In the meantime, the Committee requests the Government to indicate whether the President of the Republic has ordered further expropriation measures and whether the Federal Supreme Court has ruled on the expropriation ordered in 2004 by the President of the Republic.

(b). *Strengthening of the labour inspectorate.* In its previous comments, the Committee emphasized the central role of labour inspection, and particularly of the Special Mobile Inspection Group (GEFM), in combating slave labour. Observing that the GEFM is a vital link in the action to combat slave labour, the Committee expressed concern at the pressure that it has to face and asked the Government to continue to take measures to allow the GEFM to carry out its activities in a serene climate free from threats or political pressure, and to strengthen its capacity for intervention and reaction.

In its comments, the CUT recognizes the praiseworthy work carried out by the GEFM. However, the CUT notes that the labour inspectorate lacks human and material resources, and emphasizes in particular the difference between the number of complaints lodged with the Secretariat of the Labour Inspectorate (SIT) and the number of interventions carried out in practice by the inspectorate, as well as the climate of violence confronting the inspection services. In its reply, the Government indicates that it cannot be completely in disagreement with this assessment. However, measures are being taken to strengthen the labour inspection services, including training and capacity building for the staff and the improvement of the infrastructure and logistical support. The Government adds that in 2008 the GEFM was composed of nine teams, compared with four up to 2003. The primary purpose of the GEFM's interventions is to remove enslaved workers from their working environment and the figures show that the action carried out by the GEFM has continued to be intensified with an ever greater number of establishments inspected and workers released (158 operations carried out in 2008, with 301 establishments inspected and 5,016 workers released). With regard to the reinforcement of the labour inspection services, the Government indicates that public competitions are regularly organized to recruit new labour inspectors and controllers; 192 candidates were appointed in November 2007, and the administration has called for the organization of a new public competition. From a logistical viewpoint, additional vehicles have been acquired, as well as computer and technological equipment (GPS, etc.). With regard to the difference between the number of denunciations made to the SIT and the number of interventions by the inspection services, the Government explains that the denunciations pass through a process of "filtering" to ensure the optimal use of resources and the effectiveness of inspections. Denunciations are examined on the basis of certain criteria; how recent the events are, their location, and the serious nature and precision of the allegations. The GEFM's interventions, involving the mobilization of a high number of officials from various institutions and significant material resources, have a high financial cost and it is therefore indispensable to "filter" denunciations to ensure the success of the inspections that are carried out. Finally, the Government indicates that, despite the threats and pressure exerted by certain sectors, particularly the sugar industry, the number of inspections has remained high. It also recalls that the federal police and officials of the Office of the Attorney-General accompany labour inspectors on each intervention.

The Committee notes all the measures adopted by the Government to strengthen the labour inspection services. ***It encourages the Government to continue to pursue its efforts and to take every measure to ensure that the GEFM has at its disposal adequate human and material resources to move rapidly, effectively and safely throughout the national territory. The inspections carried out by the GEFM result not only in the release of workers from situations of forced labour, but also provide the judicial system with documents which serve as a basis for civil and criminal prosecutions against those responsible for these practices and are essential for the proper imposition of sanctions on perpetrators.***

(c). *Imposition of effective penalties.* The Committee recalls that the effective imposition of penalties for violations of labour legislation is an essential element in combating slave labour, as slave labour is characterized by the accumulation of a number of violations of labour legislation which must be punished as such. Moreover, taken as a whole, these violations constitute the criminal offence of “reduction of a person to a condition akin to slavery”, which in itself gives rise to specific penalties. The Committee notes that the CUT emphasized in its comments that, to bring an end to the practice of slave labour, it is essential to recognize the inadequacy of the procedures for imposing penalties and the need to increase civil and penal sanctions.

Administrative sanctions. In its previous comments, the Committee requested the Government to continue to ensure that the administrative penalties imposed are dissuasive and effectively applied. In its report, the Government recalls that each violation of the labour legislation identified by the GEFM during inspections gives rise to the imposition of fines. Furthermore, the Office of the Attorney-General for Labour, in the context of the civil action initiated, in addition to fines, calls for the payment of compensation for material damages for the prejudice suffered by the worker and for collective moral damages. The Government considers that the fines and compensation damages that are sought, combined with the establishment of the list of persons who have used slave labour, constitute effective and dissuasive instruments in the action to combat slave labour, as they make the exploitation of slave labour economically unviable. ***The Committee notes this information and requests the Government to continue ensuring that the fines and compensation imposed are collected in practice. It encourages the Government to take every measure available to it and to provide support for the measures adopted by the judicial authorities and civil society to continue to exert economic pressure on those who exploit the labour of others, including: the payment of dissuasive fines and compensation, the removal of access to public subsidies and financing, prevention of the sale of the goods produced, and the expropriation of lands.***

Penal sanctions. For many years, the Committee has been concerned with the very low number of convictions by the criminal courts under section 149 of the Penal Code for the reduction of a person to a condition akin to slavery. In its previous comments, the Committee noted that, by deciding that competence for examining and trying the crime of the reduction of a person to a condition akin to slavery lies with the federal courts, the ruling of the Federal Supreme Court (STF) of 30 November 2006 brought an end to the conflicts concerning jurisdiction which had prevented or delayed the trial of those responsible for such crimes. In its report, the Government indicates that the ruling by the STF opens the way to an increase in the number of convictions for this crime. During 2008, the Government refers to two convictions; one involving a sentence of five years of imprisonment by the Federal Court of Marabá and another sentence of 14 years of imprisonment by the Federal Court of Maranhão. The Government adds that, despite the controversy relating to jurisdiction, the Office of the Federal Attorney-General has never stopped bringing charges for these crimes. ***The Committee notes this information and hopes that the Government will be able to report other criminal convictions in its next report. In view of the number of situations of slave labour identified by the labour inspectorate in recent years and the practice followed by the Office of the Federal Attorney-General of requesting the competent jurisdiction to examine the charges (denunciations) with a view to starting a criminal trial, the Committee trusts that these cases will finally be resolved so that those who have imposed forced labour are convicted and really effective penalties imposed, in accordance with Article 25 of the Convention. The Committee considers that, in order to reduce the incidence of slave labour, it is indispensable, on the one hand, to undermine the economic interests of those who exploit the labour of others and, on the other hand, to impose the sentences of imprisonment envisaged in section 149 of the Labour Code in view of their dissuasive nature and their symbolic value.***

(d). *Reintegration of victims.* In its previous comments, the Committee noted that the workers released following the GEFM’s inspections were entitled to an unemployment benefit in the form of three payments each corresponding to a minimum wage. It notes that the Government refers in its report to a series of measures to facilitate the integration of released workers: (a) the priority inclusion of these workers in the federal programme for the redistribution of income “Bolsa -família”; if they are not eligible, the workers receive the minimum integration income; in 2007, the beneficiaries included 1,453 released workers; (b) inclusion of the workers in the “literate Brazil” programme; (c) the launching in November 2008 in the context of the national employment system of a pilot project for the placement in employment of rural workers in zones particularly affected by slave labour. This project is intended to replace the role of the middlemen (*gatos*), who are the first link in the chain of slave labour. In the first place, the workers are informed of their rights and conditions of work and are offered training. Secondly, employers are put into contact with workers with various profiles. The project will also enable the Ministry of Labour and Employment to understand the specific characteristics of employment placement for rural workers. ***The Committee notes these initiatives and requests the Government to continue providing information on the measures adopted for the reintegration of victims and the results achieved. The provision of material and financial support for victims is key in order to prevent them from returning to a situation of***

vulnerability in which they would once again be exploited for their labour. Please also provide information on the measures adopted to raise the awareness of workers of the risks involved in the regions concerned.

Burundi

Forced Labour Convention, 1930 (No. 29) (ratification: 1963)

The Committee notes with *regret* that the Government's report has not been received. It further notes with *regret* that the Government has not provided its comments on the observations presented by the Trade Union Confederation of Burundi (COSYBU), which were transmitted to it in September 2008. In its observations the COSYBU underlined that, contrary to what is required by the Convention, community work is decided on without popular consultation. It adds that the persons who participate in this work are confined to their workplace, since the Government prohibits the movement of persons during the performance of this work. ***The Committee insists all the more that the Government provide its comments on this subject, considering that the question of community development work has been the subject of its comments for a number of years (see below as well as the direct request addressed to the Government).***

In the absence of the Government's report, the Committee must repeat its previous observation, which read as follows:

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Compulsory community development work. Compulsory agricultural work. Compulsory labour resulting from a sentence handed down for the offences of begging and vagrancy. For many years, the Committee has drawn the Government's attention to the need to take measures to bring certain provisions of the national legislation into line with the Convention. The Committee notes from the information provided by the Government in its report that the provisions in question still appear to be in force.

With regard to Legislative Decree No. 1/16 of 29 May 1979, which establishes the obligation, under penalty of sanctions (one month of penal labour performed on one half-day a week), to perform community development work, the Committee notes that, according to the Government, Act No. 1/016 of 20 April 2005 organizing municipal administration, provides for voluntary participation in municipal development activities within the framework of national reconstruction. The Committee does not, however, note any provision to this effect in the version of the text annexed to the Government's report. Furthermore, the Committee notes that, according to the Government, the Legislative Decree of 29 May 1979 has been repealed. The Committee notes, however, that Act No. 1/016 of 20 April 2005 does not expressly repeal the abovementioned Legislative Decree. ***The Committee would therefore be grateful if the Government would indicate, firstly, whether Act No. 1/016 of 20 April 2005 was amended following its promulgation in the sense indicated by the Government and, secondly, the provisions which expressly repeal Legislative Decree No. 1/16 of 29 May 1979.***

The Committee recalls that its previous comments referred to the following matters:

- the need to set out in the legislation the voluntary nature of agricultural work resulting from obligations relating to the conservation and utilization of the land and the obligation to create and maintain minimum areas of food crops (Ordinances Nos 710/275 and 710/276 of 25 October 1979);
- the need to repeal formally certain texts on compulsory cultivation, portage and public works (Decree of 14 July 1952, Ordinance No. 1286 of 10 July 1953, and Decree of 10 May 1957);
- the need to amend sections 340 and 341 of the Penal Code, pursuant to which, in the event of begging or vagrancy, a person may be placed at the disposal of the Government for a period of between one and five years, during which time he may be forced to perform work in a prison institution.

Recalling the Government's statement, according to which the national legislation considered contrary to the Convention and dealing with matters covered by the Ministry responsible for agriculture was to be submitted for repeal at one of the subsequent meetings of the Council of Ministers, the Committee once again expresses the hope that the Government will make every effort to take concrete measures to bring the legislation into conformity with the Convention in the very near future.

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

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

Cameroon

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Article 2, paragraph 2(c), of the Convention. Hiring of prison labour to private entities. For many years, the Committee has been asking the Government to take the necessary measures to supplement the legislation respecting the prison system (first, Decree No. 73-774 of 11 December 1973, and then Decree No. 92-052 of 27 March 1992) with a provision requiring the formal consent of detainees who are hired to private enterprises and individuals. In its previous observation, the Committee noted the information provided by the Government confirming that Order No. 213/A/MINAT/DAPEN of 28 July 1988 was still in force. It noted that this Order establishes a number of conditions respecting the use and rates for the hiring of prison labour, including the cost of the daily allowance for a manual worker and a technician, and the surveillance costs. The Government indicated that no text had yet been adopted issuing regulations under Decree No. 92-052 respecting the prison system and that it would provide an opinion in writing by the Directorate of Prison Affairs at a later date. The Committee notes that the Government's latest report does not refer to such opinion. It notes the commitment expressed by the Government in its report to ensure that the texts giving effect to the Decree respecting the prison system establish the requirement of formal consent of convicts before performing any

work for private entities and to inform the Office as soon as they have been adopted. It also notes a communication dated 20 October 2008 from the General Confederation of Labour–Liberty of Cameroon (CGT–Liberté) in which it referred to the evasive nature of the Government's reply concerning the date on which the implementing texts are to be adopted. The CGT–Liberté also regrets the fact that these draft texts have not been submitted to the National Labour Advisory Commission. The Committee further notes the Government's reply, dated 12 February 2009, to this communication. The Government indicates that the text in question was examined with the Ministry for Territorial Administration and Decentralization at the last session of the National Labour Advisory Commission.

The Committee once again recalls that, in a captive environment, it is necessary to obtain the formal consent of prisoners for work in cases where such work is performed for private individuals, enterprises or associations. The Committee further considers that certain factors are required in order to authenticate or confirm the giving of free and informed consent, and that the most reliable indicator of the voluntary nature of labour is that the work is performed under conditions which approximate a free labour relationship. ***The Committee once again hopes that the Government will take all the necessary measures for the adoption in the very near future of texts to give effect to the Decree respecting the prison system, by explicitly setting out the requirement for convicted persons to give their formal consent to any work performed for private individuals, enterprises or associations, and to ensure conditions which approximate a free labour relationship in terms of remuneration and occupational safety and health. The Committee once again requests the Government to provide information on any progress achieved in this respect.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(a) of the Convention. Imposition of sentences of imprisonment involving the obligation to work as punishment for expressing political views or views ideologically opposed to the established political, social or economic system. In the comments that it has been making for many years, the Committee has drawn the Government's attention to certain provisions of the Penal Code and of Act No. 90-53 of 19 December 1990 on freedom of association, which provide for sentences of imprisonment involving the obligation to work in situations covered by these provisions of the Convention.

The Committee noted in its previous comments that the Penal Code, as amended by Act No. 90-61 of 19 December 1990, no longer exempts from the obligation to work persons sentenced to imprisonment for political offences or crimes. Under section 24 of the Penal Code and section 49 of Decree No. 92-052 establishing the prison regime, sentences of imprisonment involve the obligation to work. The Committee emphasized that where an individual is, in any manner whatsoever, compelled to perform prison labour as punishment for expressing certain political views or opposition to the established political, social or economic system, this falls within the scope of the Convention. Penalties of imprisonment that involve compulsory labour are covered by the Convention when imposed as punishment for the expression of views or opposition. To enable the Committee to ascertain that the application of the provisions mentioned below is restricted to activities falling outside the protection of the Convention, it requested the Government to provide all available information on their application in practice, including copies of court decisions handed down under these provisions which define or illustrate their scope. The Committee referred to the following provisions:

- section 113 of the Penal Code, under which the issuing or propagation of false information liable to injure the public authorities or national unity is punishable by a prison term of from three months to three years;
- section 154(2) of the Penal Code, under which incitement, whether in speech or in writings intended for the public, to revolt against the Government and the institutions of the Republic, is punishable by imprisonment of from three months to three years;
- section 157(1)(a) of the Penal Code, under which incitement to obstruction of the execution of any law, regulation or lawfully issued order of the public authority is punishable by imprisonment of from three months to four years;
- section 33(1) and (3) of Act No. 90-53 on freedom of association, which provides for a sentence of imprisonment from three months to one year for board members or founders of an association which continues operations or which is re-established unlawfully after a judgement or decision has been issued for its dissolution, and for persons who have encouraged the assembly of members of the dissolved association by allowing continued use of the association's premises. Section 4 of the Act declares null and void associations founded in support of a cause or in view of a purpose contrary to the Constitution, and associations whose purpose is to undermine, inter alia, security, territorial integrity, national unity, national integration or the republican nature of the State. Furthermore, section 14 provides that the dissolution of an association does not bar any legal proceedings from being instituted against the officials of such an association.

The Committee notes that, in its last report received in September 2008, the Government indicates that it has not been notified of court rulings issued in relation to offences relating to the expression of opinions and adds that these cases are likely to be rare, or non-existent, in view of the multipartite system that has been in force in Cameroon for over 18 years, and the system of trade union pluralism. While taking due note of this information, the Committee emphasizes the need to examine the manner in which the above provisions are applied in practice. In the absence of any information on this subject, the Committee is bound once again to draw the Government's attention to the fact that these provisions

may give rise to violations of the Convention if they provide the basis for convictions to sentences of imprisonment as punishment for persons who express a political view or ideological opposition to the established political, social or economic system, without having recourse to or calling for violent methods.

In view of the explanations provided above, the Committee once again requests the Government to provide information in its next report on the judicial decisions handed down under the above provisions of the Penal Code and the Act on freedom of association (number of convictions and copies of the court decisions) that illustrate their scope. It once again requests the Government to indicate the measures taken or envisaged to ensure that, in accordance with Article 1(a) of the Convention, the persons protected by the Convention may not be subjected to penalties involving an obligation to work.

Article 1(c) and (d). Disciplinary measures applicable to seafarers. The Committee notes the information provided by the Government in its report to the effect that, with reference to the disciplinary measures applicable to seafarers, the provisions of the new Merchant Shipping Code of the Economic and Monetary Community of Central Africa (CEMAC) apply. It notes that section 554 of the Code, respecting the penalties applicable for faults relating to disciplinary matters, does not provide for sentences of imprisonment, as the penalties incurred for the most serious faults are dismissal and removal from the national seafarers' register. Under the terms of section 607 of the Code, it replaces the Merchant Shipping Code of Custom and Economic Union of Central Africa (UDEAC) of 22 December 1994 and repeals any previous provisions that are contrary to it. The Committee understands that these provisions apply, inter alia, to Ordinance No. 62/DF/30 of 1962, on which it commented previously. The Committee notes that under the new provisions, breaches of labour discipline committed by seafarers are no longer punishable by sentences of imprisonment involving the obligation to work.

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

Central African Republic

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 1(a) of the Convention. *Imposition of imprisonment involving an obligation to work as a sanction for expressing political views or views ideologically opposed to the established political, social and economic system.* 1. In its previous comments, the Committee recalled that the Convention prohibits to impose sanctions involving an obligation to perform labour, including compulsory prison labour, on persons who, without having recourse to violence, hold or express political views, or views ideologically opposed to the established political, social or economic system. Considering that section 62 of Order No. 2772, of 18 August 1955, regulating the functioning of penal institutions and the work of detainees, provides for the obligation to work in prison, prison sentences imposed on persons who express certain political opinions or their opposition to the established system will have an impact on the application of the Convention.

In this context, the Committee has been drawing for many years the Government's attention to the need to amend or repeal the provisions of Act No. 60/169 of 12 December 1960 (dissemination of prohibited publications liable to prejudice the development of the Central African nation) and Order No. 3-MI of 25 April 1969 (dissemination of periodicals or news of foreign origin not approved by the censorship authority), which provide for sentences of imprisonment that involve compulsory labour. The Committee notes that, according to the concluding observations of the United Nations Human Rights Committee on the Application of the International Covenant on Civil and Political Rights by Central African Republic, Order No. 05.002 of 22 February 2005, promulgating the Freedom of the Press and Communication (Organization) Act, is likely to decriminalize press offences. The Committee notes that the "Committee nevertheless observes with concern that many journalists have been subjected to pressure, intimidation or acts of aggression, and even imprisonment" (Document CCPR/C/CAF/CO/2 of 27 July 2006). ***The Committee asks the Government to provide a copy of Order No. 05.002 promulgating the Freedom of the Press and Communication (Organization) Act and to indicate whether this new legislation has repealed Act No. 60/169 of 12 December 1960 and Order No. 3-MI of 25 April 1969. If not, please indicate the progress made in the process of repealing of these texts, to which the Government has been referring for a long time. Finally, the Committee would be grateful if the Government would indicate the legal provisions under which journalists have been imprisoned and the charges.***

2. ***In order to ascertain that no sentences involving the obligation to work are imposed on persons who, without having recourse to violence, express political opinions or views opposed to the established political, social or economic system, the Committee needs to be able to assess the scope of the provisions mentioned below and to this end it would be grateful if the Government would provide copies of any court decisions handed down under these provisions.***

- (i) ***Section 77 of the Penal Code (dissemination of propaganda for certain purposes; acts jeopardizing public safety, etc.) and sections 130–135 and 137–139 of the Penal Code (offences against persons occupying various public offices), which provide for prison sentences involving the obligation to work.***
- (ii) ***Section 3 of Act No. 61/233 governing associations in the Central African Republic read in conjunction with section 12. Under section 12, the "founders, directors, administrators or members of any association that is unlawfully maintained or reconstituted after the act of dissolution" shall be liable to imprisonment. Under section 3 of this Act, any association which is "of such a nature as to give rise to political disturbances or cast discredit on political institutions and their functioning" shall be null and void.***

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

Chad

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with *regret* that the Government's report contains no reply to its previous comments. It observes that the Government, referring to the technical assistance received by Government officials and representatives of workers' and employers' organizations, hopes that it will be able to overcome the difficulties previously encountered in the submission of reports. The Committee hopes that the Government will continue to benefit from this assistance and that its next report will contain answers to the following points raised in the Committee's previous observation:

Article 2, paragraph 2(a), of the Convention. Work in the general interest imposed in the context of compulsory military service. The Committee notes Ordinance No. 001/PCE/CEDNACVG/91 organizing the armed forces, that according to military service is compulsory for every citizen of Chad. Under section 14 of the Ordinance, conscripts who are fit for service are classified into two categories: the first, the size of which is determined each year by decree, is incorporated and compelled to perform active service; the second remains at the disposal of the military authorities for two years and may be called up to perform work in the general interest by order of the Government. The Committee notes that similar provisions were contained in Ordinance No. 2 of 1961 on the organization and recruitment of the armed forces of the Republic, on which it commented for many years. Indeed, such provisions are not compatible with *Article 2, paragraph 2(a)*, of the Convention, under which, to be excluded from the scope of the Convention, any work or service exacted in virtue of compulsory military service laws must be of a purely military character. ***The Committee hopes that the Government will take the necessary measures to bring the provisions of section 14 of the Ordinance of 1991 reorganizing the armed forces and, as appropriate, any decrees issued thereunder, into conformity with the Convention.***

Article 2, paragraph 2(c). For many years, the Committee has been drawing the Government's attention to the need to amend or repeal section 2 of Act No. 14 of 13 November 1959 authorizing the Government to take administrative measures for the relocation, internment or expulsion of persons whose activities constitute a danger for public order and security, under which persons convicted of penal offences involving prohibition of residence may be used for work in the public interest for a period, the duration of which is to be determined by order of the Prime Minister. This provision would allow the administrative authorities to impose work on persons subject to a prohibition of residence once they have completed their sentence. ***The Committee hopes that the Government will take the necessary measures without further delay to amend or repeal section 2 of Act No. 14 of 13 November 1959 referred to above.***

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

Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with *regret* that the Government's report has not been received. The Committee recalls that, in its previous comments, it drew attention to the need to amend or repeal a number of texts that were inconsistent with the Convention – some of which were fairly old and were deemed by the Government to be obsolete. ***The Committee reminds the Government that it may call on the Office for technical assistance, and trusts that in its next report the Government will be in a position to inform that specific measures have been taken in response to the comments the Committee has been making for many years.***

Article 2, paragraph 2(a), of the Convention. 1. Work exacted under compulsory military service laws. The Committee has on several occasions stressed the need to amend Act No. 16 of 27 August 1981 establishing compulsory military service. According to section 1 of the Act, national service is instituted for the purpose of enabling every citizen to participate in the defence and construction of the nation and has two components: military service and civic service. The Committee drew the Government's attention to the fact that work exacted from recruits as part of compulsory national service, including work related to national development, is not purely military in nature and is therefore contrary to *Article 2(2)(a)* of the Convention. ***Noting the Government's earlier statement that the practice of imposing on recruits work which is not purely military in nature has fallen into disuse and that it intended to repeal Act No. 16 of 1981 on compulsory national service, the Committee trusts that the necessary steps will be taken very shortly to amend or repeal this Act so as to bring the legislation into line with the Convention.***

2. Youth brigades and workshops. The Committee observes that the Government has never provided information on the practical effect given to Act No. 31-80 of 16 December 1980 on guidance for youth under which the party and mass organizations were gradually to create all the conditions for the formation of youth brigades and the organization of youth workshops (type of tasks performed, number of persons involved, duration and conditions of their participation, etc.). However, the Government did indicate earlier that since 1991 such practices had fallen into disuse. ***The Committee points out that this Act has never been formally repealed and asks the Government to indicate the measures taken or envisaged to repeal it.***

Article 2, paragraph 2(d). Requisitioning of persons to perform community work in instances other than emergencies. In the comments it has been making for very many years, the Committee has pointed out that Act No. 24-60 of 11 May 1960 is inconsistent with the Convention in that it allows the requisitioning of persons to perform community work in instances other than the emergencies provided for under *Article 2(2)(d)* of the Convention, and provides that persons requisitioned who refuse to work are liable to a penalty of imprisonment of from one month to one year. ***The Committee notes the Government's earlier statement that this Act has fallen into disuse, and once again urges the Government to take the necessary steps to have it repealed formally so as to avoid any uncertainty in law.***

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

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

Democratic Republic of the Congo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

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

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. 1. *Work exacted for national development purposes.* For several years the Committee has been requesting the Government to repeal Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme. These legal texts, which aim to increase productivity in all sectors of national life, are contrary to the Convention inasmuch as they require, on pain of penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment to carry out agricultural and other development work as decided by the Government. The legal texts also deem certain persons to be making their contribution, namely political representatives, wage earners and apprentices, public servants, tradesmen, members of the liberal professions, the clergy, students and pupils. The Committee notes that, in its latest report, the Government reiterates its previous declarations to the effect that these texts have lapsed and therefore, in effect, have been repealed. ***The Committee stresses the importance of formally repealing texts which are contrary to the Convention, out of a concern for legal finality. It again expresses the hope that the Government will soon be in a position to communicate information on the measures taken to repeal or amend the abovementioned texts so as to ensure their conformity with the Convention in fact as well as in law.***

2. *Work exacted as a means of levying taxes.* In its previous comments the Committee drew the Government's attention to sections 18 to 21 of Legislative Ordinance No. 71/087 of 14 September 1971 on minimum personal contributions, which provide for imprisonment involving compulsory labour, upon decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions. The Committee notes that, contrary to the information provided in its previous reports, according to which draft amendments to the provisions in question were under consideration, the Government, in its latest report, indicates that these provisions have lapsed and have therefore been effectively repealed. ***Recalling that this matter has been the subject of its comments for many years, the Committee again expresses the firm hope that the Government will shortly adopt the necessary measures to ensure the conformity of the legislation with the Convention.***

Article 2, paragraph 2(c). *Work exacted from detainees in preventive detention.* For many years the Committee has been drawing the Government's attention to Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from detainees who have not been convicted. The Government stated that, under section 64.3 of the Ordinance of 1965 governing prison labour, detainees who have not been convicted are not subject to the obligation to work. The Committee notes that in its latest report, the Government again indicates that Ordinance No. 15/APAJ has lapsed and therefore has, in effect, been repealed. ***It again expresses the hope that the next time the legislation in this field is revised, the Government will adopt the necessary measures to repeal formally Ordinance No. 15/APAJ, so as to avoid any legal ambiguity.***

Article 25. Penal sanctions. In its previous comments, the Committee stressed the need to include a provision in national legislation establishing penal sanctions for persons who unlawfully exact forced or compulsory labour, in accordance with Article 25 of the Convention. It noted that, under section 323 of the Labour Code adopted in 2002, any infringement of section 2.3, which prohibits the use of forced or compulsory labour, shall be punished by a maximum of six months' penal servitude plus a fine or by only one of these penalties, without prejudice to criminal legislation laying down more severe penalties. In this regard, the Committee expressed the hope that the Government would indicate the penal provisions which prohibit and sanction recourse to forced labour. ***Since the Government has not replied to its previous observation on this matter, the Committee would be grateful if it would provide the requested information in its next report. Furthermore, it once again requests the Government to send an updated copy of the Penal Code and of the Code of Criminal Procedure.***

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

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

Dominica

Forced Labour Convention, 1930 (No. 29) (ratification: 1983)

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

Articles 1 (paragraph 1), and 2 (paragraphs 1, 2(a) and (d)), of the Convention. *National service obligations.* In its earlier comments, the Committee requested the Government to take the necessary measures with a view to repeal or amend the National Service Act, 1977, under which persons between the ages of 18 and 21 years are required to perform service with the national service, including participation in development and self-help projects concerning housing, school, construction, agriculture and road building, failure to do so being punishable with a fine and imprisonment (section 35(2)). The Committee observed that, contrary to the Government's repeated statement that the national service was created to respond to national disasters, the Act contained no reference to natural disasters, but specified the objectives of the national service, which "shall be to mobilize the energies of the people of Dominica to the fullest possible level of efficiency, to shape and direct those energies to promoting the growth and economic development of the State". The Committee also referred to Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), likewise ratified by Dominica, which specifically prohibits the use of forced or compulsory labour "as a means of mobilizing and using labour for purposes of economic development".

While noting the Government's previous indication that the National Service Act, 1977, has been omitted from the Revised Laws of Dominica, 1990, as well as the Government's repeated indications in its previous reports that section 35(2) of the Act has not been applied in practice, the Committee expresses firm hope that appropriate measures will be taken in the near future in order to formally repeal the above Act so as to bring national legislation into conformity with Conventions Nos 29 and 105 and that the Government will provide, in its next report, information on the progress made in this regard.

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

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

Ecuador

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(d) of the Convention. Imprisonment involving compulsory labour for participation in strikes. In the comments that the Committee has been making for many years, it has urged the Government to take the necessary measures to ensure that *Article 1(d)*, of the Convention is applied.

(a). *Decree No. 105 of 7 June 1967.* The Committee has previously referred to Decree No. 105 of 7 June 1967 which allows a prison sentence of two to five years to be imposed on any person fomenting or taking a leading part in a collective work stoppage. The penalty laid down in the Decree for anyone who participates in such a stoppage without fomenting or taking a leading part in it is correctional imprisonment of three months to one year. For the purposes of this provision, “there is a work stoppage when there is a collective stoppage of work or the imposition of a lockout except in the cases permitted by law, the paralysing of the means of communication and similar antisocial acts”. Prison sentences involve compulsory labour under sections 55 and 66 of the Penal Code. The Committee has repeatedly insisted that, in accordance with the Convention, prison sentences involving compulsory labour should not be imposed for participation in peaceful strikes.

The Government has repeatedly indicated that it is making every effort to bring the national legislation into conformity with the Convention and that, to this end, it has taken measures for the Congress of the Republic to amend the provisions contained in Decree No. 105 of 7 June 1967. It indicated previously that, to this end, the Committee’s observation had been submitted to the relevant commissions of the National Congress. The Committee noted this information and expressed the hope that Decree No. 105 would be repealed without delay.

The Committee notes that in its latest report, the Government indicates that Decree No. 105 of 1967 is not in force but does not mention its repeal. The Committee notes with *regret* that it has been commenting for many years on the repeal of Decree No. 105 and that its repeal is also requested in its observations concerning the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Noting the most recent information provided by the Government, according to which Decree No. 105 is not in force, the Committee hopes that the Government will provide a copy of the text repealing that Decree and, in the event that the Decree concerned has not been formally repealed, the Committee once again expresses the hope that the Government will take the necessary measures to repeal it, thereby bringing the national legislation into conformity with the requirements of the Convention.

(b). *Article 326(15) of the 2008 Constitution.* The Committee notes that the new Constitution promulgated in September 2008 entered into force on 20 October 2008. The Committee notes that article 326(15) of the Constitution prohibits the stoppage of public services which are not essential services in the strict sense of the term, such as education, transport, processing, public transport and the postal services, and notes with *regret* that the Committee has been commenting on this prohibition in relation to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee notes that the Government indicates that the penalties applicable in the case of a stoppage in public services are those set out in the Penal Code.

Noting with regret that the new Constitution prohibits strikes in services that are not essential in the strict sense of the term and that such interruption may be punished as a penal offence, the Committee hopes that the Government will review this situation in the light of Convention No. 87 and Convention No. 105 which protects against prison sentences involving compulsory labour as a punishment for participation in peaceful strikes, and that it will provide information on the measures taken or envisaged to ensure compliance with the Convention.

Article 1(c). Sentence of imprisonment imposed as a means of labour discipline. Under the terms of section 165 of the Maritime Police Code, crew members are prohibited from disembarking in a port other than the port of embarkation, except with the agreement of the ship’s master. Section 165 further provides that crew members who desert shall forfeit their pay and belongings to the vessel and, if recaptured, shall pay the cost of arrest and be punished in accordance with the naval regulations in force.

The Committee previously noted the Government’s indication in its reports that it was making every effort to bring the national legislation into conformity with the Convention. In its latest report, the Government merely indicates that the Committee’s observation has been forwarded to the Directorate of the Merchant Navy.

Given that the Committee has been commenting on this matter for many years, it hopes that the Government will be able to provide information without delay on the amendment or repeal of section 165 of the Maritime Police Code.

Article 1(a). Imprisonment involving compulsory labour for offences related to freedom of expression and expression of political views. The Committee previously requested the Government to provide information on the application of the following sections of the Penal Code: 230 and 231 (disrespect or insult towards public officials); 130,

133, 134, 148, 153 and 155 (internal security of the State), in order to ascertain the scope of these provisions in relation to *Article 1(a)*, of the Convention. The Committee recalled the implications for the application of the Convention of provisions that restrict the right to express peacefully a political opinion that is contrary to the established political system and requested the Government to provide information on the application of the above provisions of the Penal Code, including the number of sentences handed down, with copies of them, so that the Committee could assess their scope. ***The Committee hopes that the Government will provide the information requested and will indicate the measures taken or envisaged to ensure that prison sentences involving compulsory labour are not imposed for the peaceful expression of political views.***

Gabon

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(c) of the Convention. Imposition of a sentence of imprisonment involving the obligation to work as a means of labour discipline. In its previous comments, the Committee requested the Government to amend certain provisions of the Merchant Shipping Code (Act No. 10/63 of 12 January 1963), under which breaches of discipline were punishable by imprisonment even where they did not endanger the safety of the vessel or the life or health of persons. In its last report, the Government indicates that the Community Merchant Shipping Code, adopted by the Economic and Monetary Community of Central African States (CEMAC) and in force in Gabon, repeals all national and community provisions that are inconsistent, thereby cancelling the provisions of the 1963 Merchant Shipping Code of Gabon. The Committee takes note of this information and notes with **satisfaction** that under the Community Merchant Shipping Code, breaches of discipline are not punishable by imprisonment.

Ghana

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

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

Article 1(a), (c) and (d) of the Convention. 1. In comments made for a considerable number of years, the Committee has referred to provisions of the Criminal Code, the Newspaper Licensing Decree, 1973, the Merchant Shipping Act, 1963, the Protection of Property (Trade Disputes) Ordinance and the Industrial Relations Act, 1965, under which imprisonment (involving an obligation to perform labour) may be imposed as a punishment for non-observance of restrictions imposed by discretionary decision of the executive on the publication of newspapers and the carrying on of associations, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes. Having requested the Government to adopt the necessary measures in regard to these provisions to ensure that no form of forced or compulsory labour (including compulsory prison labour) might be exacted in circumstances falling within *Article 1(a), (c) or (d)* of the Convention, the Committee noted the Government's statement that the National Advisory Committee on Labour was discussing the comments of the Committee of Experts and that it was the wish of the Government to bring the legislation concerned into conformity with the Convention. The Government also indicated in its report received in 1996 that the National Advisory Committee on Labour concluded discussions on the Committee of Experts' comments and submitted recommendations to the Minister in March 1994 designed to bring domestic legislation into conformity with ILO standards, and the comments of the Committee of Experts had been submitted to the Attorney-General for a closer study and expert comments.

In its reports received in 1999 and 2001, the Government has indicated that the action of the Attorney-General to bring the legislation into conformity with the Convention in accordance with the recommendations of the National Advisory Committee on Labour has been halted in view of the proposed review and codification of the labour laws. It has also indicated that the tripartite National Forum that includes representatives of the Attorney-General's Office, the National Advisory Committee on Labour and the employers' and workers' organizations, would consider the comments made by the Committee of Experts regarding the application of the Convention.

The Government indicates in its latest report that the National Forum has already codified all the country's labour laws into a single labour bill, which is being considered by the Cabinet and will be forwarded to Parliament to be passed into law. ***The Committee expresses firm hope that the necessary action will at last be taken on the various points which are once again recalled in detail in a request addressed directly to the Government.***

2. The Committee previously noted the adoption of the Political Parties Law, 1992, the Emergency Powers Act, 1994, and the Public Order Act, 1994, which gave rise to a number of questions under the Convention that are also reiterated in the request addressed directly to the Government.

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

Greece

Forced Labour Convention, 1930 (No. 29) (ratification: 1952)

Article 2, paragraph 2(d), of the Convention. Recourse to compulsory labour under emergency powers. Referring to its earlier comments, the Committee notes with **satisfaction** that, following the amendment introduced by Act No. 3536/2007 concerning "Special Regulations of Migration Policy Issues and other issues under the competence of the Ministry of the Interior, Public Administration and Decentralization" (section 41(7)), Legislative Decree No. 17 of 1974

on “civil emergency planning”, under which the full or partial mobilization of civilians may be proclaimed, shall be applicable only in times of war. As regards requisition in times of peace, the Committee noted previously that, under section 41 of the new Act, the requisition of personal services is possible only in case of emergency, i.e. in a “sudden situation requiring the taking of immediate measures to face the country’s defensive needs or a social emergency against any type of imminent natural disaster or emergency that might endanger the public health”.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers. 1. In its earlier comments, the Committee referred to section 239 of the Code of Public Maritime Law, 1973, as amended by Act No. 2987 of 2002, which provides that the sanctions of imprisonment (involving compulsory prison labour) laid down in sections 205, 207(1) and 222 of the Code of Public Maritime Law and in section 4(1) of Act No. 3276 of 26 June 1944 respecting collective agreements shall be imposed in the following situations:

- (a) where the safety of the vessel, the persons on board or other persons, the cargo or property are endangered;
- (b) where pollution or other damage to the maritime environment is caused; or
- (c) where order is disturbed or public health is endangered.

The Committee recalled that *Article 1(c)* expressly prohibits the use of any form of forced or compulsory labour as a means of labour discipline. The Committee pointed out, referring also to the explanations in paragraphs 179–181 of its 2007 General Survey on the eradication of forced labour, that only acts which endanger the ship or the life or health of persons are excluded from the scope of the Convention. The Committee observed that the situations where “order is disturbed” or where “pollution or other damage to the maritime environment is caused” or “the cargo or property are endangered” do not seem to satisfy these criteria. It also pointed out that endangering cargo or other assets may be punishable by sanctions involving compulsory labour only in cases of wilful acts (which would amount to criminal offences), and not where they are caused by negligence.

The Committee has noted the Government’s repeated statement in its reports that the protection of the cargo or property or of the maritime environment and the avoidance of disturbance of order constitute elements of major importance for sea transport. In its latest report, the Government stresses once again the significance of these elements, which has been recognized by the international maritime community and for the safeguarding of which special international maritime instruments have been developed. The Government also reiterates its view that the imposition of sanctions cannot be associated with forced labour, since all cases of fraud or negligence are investigated by competent courts, which decide whether to impose a sanction or not. The Government considers that the existence of the contested provisions is necessary due to failure of ensuring in advance that any “risk against safety of a cargo or property” or “pollution or other damage to the maritime environment” or “disturbance of order” shall not endanger the safety of the ship or the life or health of individuals.

The Committee has duly noted the Government’s views on this matter expressed in its reports. The Committee is fully aware of the importance for sea transport of the factors referred to above, but wishes to draw the Government’s attention once again to the fact that neither “pollution of the maritime environment”, nor “endangering cargo or other assets” do not necessarily jeopardize the safety of the vessel or the life or health of persons, which follows also from the wording of section 239 of the Code of Public Maritime Law, which makes a clear distinction between these two situations and a situation where the safety of the vessel, the persons on board or other persons are endangered. As regards the expression “order is disturbed”, it seems broad enough to cover various kinds of situations, including those which do not necessarily endanger the ship or the life or health of persons. On the other hand, it seems clear that the offences connected with the disturbance of order, pollution of the maritime environment and endangering cargo or other assets may be made punishable by other kinds of sanctions (e.g. not involving compulsory labour), which lay outside the scope of the Convention.

As regards the Government’s repeated statement that the imposition of sanctions by the court cannot be associated with forced labour, the Committee points out once again, referring also to the explanations in paragraphs 144 to 146 of its 2007 General Survey, that labour imposed on persons as a consequence of a conviction in a court of law, in most cases, has no relevance to the application of the Convention. However, it is covered by the Convention in so far as it is exacted in the five cases specified in *Article 1* of the Convention, including punishment for breaches of labour discipline or participation in strikes.

The Committee therefore trusts that, in the light of the above considerations, the Government will reconsider its position and will take the necessary measures with a view to bringing legislation into conformity with the Convention on this point, e.g. by clearly limiting the application of sanctions involving compulsory labour to the situations where the safety of the vessel or the life or health of persons are endangered. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.

2. The Committee previously referred to section 213(1) and (2) of the Code of Public Maritime Law, 1973, under which collective insubordination by seafarers to a ship’s master, even in the absence of acts of violence or acts endangering the vessel or the life or health of persons, is punishable by deprivation of liberty (which involves compulsory labour). The Committee noted the Government’s indication in its previous report that the above section provides for the

imposition of penal sanctions on seafarers only in case of mutiny against the master. The Government reiterates in its latest report that such a mutiny may endanger the safety of the vessel, as well as the persons on board, not only when the vessel is in the open sea, but also when it is in the port.

The Committee has duly noted this indication, but recalls again that the prohibition established by the Convention from imposing sanctions involving compulsory labour in the event of the violation of labour discipline covers the punishment of acts of disobedience (including collective disobedience, which may be also connected with strikes) in relation to the master of the vessel, except for cases of acts tending to endanger the ship or the life or health of persons (e.g. acts of violence). The Committee previously observed in this connection that offences punishable under section 213(1) and (2) do not necessarily jeopardize the safety of the vessel in certain cases (e.g. when the ship is not at sea, but securely moored in a safe berth) and may be made punishable by other kinds of sanctions (e.g. not involving compulsory labour).

The Committee therefore trusts that the necessary measures will at last be taken with a view to amending the above provisions of the Code of Public Maritime Law, either by repealing sanctions involving compulsory labour or by clearly restricting their application to the situations where the ship or the life or health of persons are endangered.

3. In its earlier comments concerning section 15 of Act No. 299 of 25 October 1936 on the settlement of collective disputes in the merchant marine, which relates to violations of executory decisions concerning pay punishable with sanctions of imprisonment (which involves compulsory labour), the Committee expressed the hope that, in the context of modernization of the legislative framework in the area of seafarers' freedom of association, this provision would be repealed or amended, so that no penalties involving compulsory labour could be imposed as a means of labour discipline. The Committee previously noted the Government's indication in its report that Act No. 299 of 25 October 1936 should not be considered to be in force, as a consequence of the adoption of Act No. 3276 of 26 June 1944, which provides in section 1(2) that collective labour agreements determine, inter alia, the manner in which disputes among the crew members, the master and the shipowner are settled through arbitration committees. The Government states in its latest report that the consultation with the social partners constitutes a standards policy, especially in shipping, and refers in this context to joint committees considering various issues, such as the Merchant Marine Council, the Administrative Board of Maritime Employment Agency and the Administrative Boards of social insurance bodies of seafarers, in which representatives of the social partners participate.

While having noted this indication, the Committee reiterates its hope that the Government will provide, in its next report, information on measures taken or envisaged to formally repeal Act No. 299 of 25 October 1936 referred to above, in order to bring legislation into conformity with the Convention and the indicated practice.

Article 1(a). Punishment for expressing political views. For many years, the Committee has been making comments calling for the repeal of Legislative Decree No. 794 of 1970, which contains provisions allowing the imposition of restrictions on freedom of assembly and expression, in private as well as in public, and give the police discretionary powers to forbid or disperse meetings, such restrictions being enforceable with sanctions of deprivation of liberty. The Committee noted that under sections 40 and 41 of the Penitentiary Code (Act No. 2776 of 1999) persons sentenced to imprisonment have an obligation to work. The Committee also noted that sections 131 and 132 of Presidential Decree No. 141/91 relating to assemblies and meetings give the police discretionary powers allowing it to prohibit and disperse meetings and assemblies, in accordance with the Regulations relating to the dispersion of public assemblies approved by Royal Decree No. 269 of 15/29.94.1979 (O.G.59A). Paragraph 1(a) of these Regulations refers to the sanctions provided for in the above Legislative Decree No. 794 of 1970.

The Committee has noted the Government's repeated statement in its reports that the provisions of Legislative Decree No. 794 of 1970 are opposed to articles 9 and 11 of the Constitution and consequently do not apply in practice. In its latest report, the Government indicates that the Ministry of Interior, on its own initiative and in cooperation with the competent bodies, intends to proceed to the amendment or repeal of the said Legislative Decree.

While noting these indications with interest, the Committee takes note of the Government's commitment to formally repeal or amend Legislative Decree No. 794 of 1970 in the near future, in order to bring the legislation into conformity with the Convention and the indicated practice.

Guatemala

Forced Labour Convention, 1930 (No. 29) (ratification: 1989)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. *Obligation to work overtime under threat of a penalty.* The Committee notes the comments made by the Indigenous and Rural Workers Trade Union Movement of Guatemala, dated August 2008, containing information on the obligation to work overtime under the threat of a penalty in certain cases raised in its previous observations, as well as new allegations on the same subject in cases in the Office of the Attorney-General, the Directorate of Criminal Investigations and the National Forensic Science Institute (INACIF).

In its previous observation, the Committee indicated that, for the purposes of the Convention, the expression "forced or compulsory labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily. The Committee observed, in relation to the allegations

made previously by the Trade Union Confederation of Guatemala (UNSITRAGUA), that in certain cases refusal by workers in the public sector to work hours in excess of the normal working day can result in the loss of their job and that in the private sector there are cases of enterprises which set production targets for workers who have to work in excess of the ordinary hours of the working day in order to earn a survival wage. The Committee observed that in both cases the common denominator is the imposition of work or a service and the worker has the possibility to “free her or himself” from such imposition only by leaving the job or accepting dismissal as a sanction for refusing to perform such work. In theory, workers have the choice of not working beyond normal working hours, but their choice is not real in practice in view of their need to earn at least the minimal wage and to retain their employment, or for both reasons. The Committee considered that in such cases the work or service is imposed under the menace of a penalty. The Committee requested the Government to provide information on the measures adopted or envisaged to ensure compliance with the Convention in this respect.

The Committee notes the Government’s report in reply to the various questions raised and the Committee’s requests, which are addressed below.

1. *Public sector: Justices of the peace – judicial bodies; national civil police; municipal water company (EMPAGUA) – municipality of the capital City of Guatemala.*

(a). *Justices of the peace.* According to UNSITRAGUA, “in most of the towns of the country, there is only one justice of the peace who has to be on duty 24 hours a day, every day of the year. The auxiliary staff of justices of the peace have to cover shifts by rotation as additional work supplementing their ordinary day. The shifts worked on public holidays, Saturdays and Sundays are compensated with time off, but the shifts worked after the completion of the ordinary working day are not compensated in time off, nor are they paid. Failure to perform such shifts constitutes an offence liable to be punished by dismissal”.

The Committee requested the Government to provide information on the case, cited by UNSITRAGUA by way of illustration, of a worker dismissed for refusing to work 24 hours continuously (ruling No. 25-04, which found against the Supreme Court of Justice). The Committee also requested information on the other case cited by UNSITRAGUA (ruling identified as No. 566-2003, which found against the Ministry of Public Health and Social Assistance). In this latter case, the worker was dismissed for failure to turn up on three complete working days in the same month. The Fifth Chamber of the Labour and Social Insurance Court found that the worker had incurred dismissal “by failing to turn up for work on 23 September 2001 when he was due to work 24 hours in the day consecutively, with such failure being equivalent to three full working days”. The Committee noted the Government’s indication that both cases were awaiting a final ruling. The Committee requested the Government to provide copies of the rulings when they have been issued.

The Government indicates that it has requested the relevant information from the Supreme Court of Justice and will send it in due time. However, the Committee notes the information provided by the Indigenous and Rural Workers Trade Union Movement of Guatemala according to which, in the case of ruling No. 25-04, the Constitutional Court set aside the claim for the reinstatement of the worker and for payment of the overtime hours worked.

The Committee hopes that the Government will take the necessary measures to ensure that the requirement is not imposed to perform work in excess of the limits imposed by the legislation, with refusal being punished by the loss of employment. Such conditions constitute forced labour under the terms of the Convention. The Committee hopes that the Government will provide information on the progress achieved in ensuring compliance with the Convention.

(b). *Employees of EMPAGUA.* According to UNSITRAGUA, employees of EMPAGUA have to work for 24 consecutive hours, followed by 48 hours rest, with this work arrangement avoiding the payment of hours worked in excess of the normal working hours. Refusal to work under these conditions may give rise to dismissal and penal prosecution in view of the status of these workers as public employees. The Committee noted the comments made by the Union of Operators of Plants and Wells, Guardians of the Municipal Water Company and Allied Workers (SITOPGEMA) and requested the Government to provide information on the measures adopted in this respect.

The Government indicates that in June 2008 an arbitration award was handed down by the Sixth Labour and Social Insurance Court establishing a working week of 48 hours and that overtime hours shall be paid in accordance with the law. The Government adds that EMPAGUA has been warned that “working days may not exceed 12 hours in the day”.

In relation to this case, the Committee notes the information provided by the Indigenous and Rural Workers Trade Union Movement of Guatemala according to which the demand made by 103 EMPAGUA employees for failure to pay overtime hours was set aside in a ruling issued on 16 April 2008 by the Fifth Labour Court, and that an appeal was lodged against this ruling with the Third Chamber of the Labour and Social Appeal Court, under case No. J-371-2008.

The Committee hopes that the Government will provide information on developments relating to the case that is before the Court of Appeal and on the application of the working conditions envisaged in the arbitration award so that the performance may not be required of overtime hours under the threat of dismissal or penal persecution.

(c). *Office of the Attorney-General, Directorate of Criminal Investigations and National Forensic Science Institute (INACIF).*

The Indigenous and Rural Workers Trade Union Movement referred in its comments to cases of the imposition of shifts of 32 continuous hours of work. Furthermore, according to the organization, in view of the volume of work, workers

are required to work during rest days to be able to meet requirements to hand in reports. The workers are placed under pressure through the threat of dismissal in order to work shifts and complete tasks that it would be impossible to carry out within normal working hours. The Government has not replied to these new allegations.

The Committee hopes that the Government will provide information on the measures adopted or envisaged to protect this category of workers against the imposition of compulsory work outside normal working hours.

2. *Private sector: Plantations.* In its previous observations, the Committee noted UNSITRAGUA's comments relating to cases of enterprises which set production targets for workers who, to earn a minimum wage, have to work in excess of the ordinary hours of the working day, with the additional hours being unpaid.

In its report, the Government indicates that the objective of fixing the minimum wage on the basis of productivity is to give enterprises an incentive to pay more than the minimum wage. It adds that in banana plantations as a result the minimum wage is broadly exceeded and that the General Labour Inspectorate has intervened in banana ranches in cases denounced by the workers.

The Committee notes the statistics on the denunciations made to the labour inspectorate concerning the payment of the minimum wage. The Committee observes that all of the 11 denunciations made in 2007 were set aside. It further notes the effect that can be produced in terms of the application of the Convention by the relationship between the extension and duration of the working day, the payment of the minimum wage based on productivity and the threat of dismissal. ***The Committee hopes that the Government will provide information on the outcome of the denunciations made in 2008 (which were under examination when the report was sent) and that the Government will continue to provide information on the measures adopted to ensure that in the plantations sector work is not imposed in excess of normal working hours under the threat of dismissal.***

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1959)

Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour imposed for expressing political views, for breaches of labour discipline and for participation in strikes. In previous comments, the Committee noted the Government's indication that some provisions of the Penal Code that may affect the application of the Convention, particularly *Article 1(a), (c) and (d)*, are still in force but are not applied. The provisions in question are the following sections of the Penal Code: "Any person who seeks to organize or operate, or who participates in, associations which act in collaboration with, or in obedience to, international bodies that promote the communist ideology or advocate any other totalitarian system, or associations whose purposes offend against the law, shall be punished with imprisonment of from two to six years" (section 396); "Any public servant or employee who fails or refuses to carry out, or delays carrying out, any duty pertaining to his position or office, shall be punished with imprisonment of from one to three years" (section 419); "Anyone committing an act intended to paralyze or disrupt an enterprise that contributes to the economic development of the country shall be punished with imprisonment of from one to five years" (section 390(2)); and "Public servants, public employees and other employees or members of the staff of public service enterprises who collectively abandon their jobs, work or service, shall be punished with imprisonment of from six months to two years. The penalty shall be doubled where such stoppage harms the public interest, and in the case of leaders, promoters or organizers of a collective stoppage" (section 430). The Committee also noted that under section 47 of the Penal Code labour is compulsory for prisoners.

The Committee has pointed out repeatedly that, in breach of the Convention, these provisions allow the imposition of prison sentences involving compulsory labour as a punishment for the expression of certain political opinions, as a means of labour discipline or for participation in a strike, and it requested the Government to repeal them. In its report, the Government indicates that, according to the opinion issued by the Technical and Legal Advisory Council of the Ministry of Labour and Social Insurance, sections 396, 419, 390(2) and 430 of the Penal Code can be applied without involving the violation of any ILO Convention, and furthermore prison labour is voluntary and there is no initiative to amend the above provisions of the Penal Code. Nevertheless, the Government indicates that, irrespective of these considerations, this subject will be placed on the agenda of the Tripartite Commission on International Labour Affairs.

The Committee hopes that the Government will provide information on the outcome of this issue in the Tripartite Commission on International Labour Affairs and that the necessary measures will be taken to repeal or amend the provisions referred to above. In the meantime, the Committee requests the Government to provide information on the application in practice of the above provisions of the Penal Code, including copies of any rulings handed down under these provisions.

With reference to the participation in strikes of public employees and in public services that are declared essential, the Committee refers to its comments on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in which it has also called for these provisions to be repealed.

Guyana

Forced Labour Convention, 1930 (No. 29) (ratification: 1966)

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

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Trafficking in persons. In its earlier comments, the Committee referred to observations concerning the application of the Convention by Guyana received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) in 2003 and forwarded to the Government on 13 January 2004, which contained allegations that there was evidence of trafficking for forced prostitution and reports of child prostitution in cities and remote gold mining areas.

The Committee notes the adoption of the Combating of Trafficking in Persons Act, 2005, as well as the Government's indication in the report that 300 volunteers have been trained to identify cases of trafficking. *The Committee would appreciate it if the Government would provide information on the following matters:*

- *the activities of the task force to develop and implement a national plan for the prevention of trafficking in persons, to which reference is made in section 30 of the above Act, supplying copies of any relevant reports, studies and inquiries, as well as a copy of the National Plan;*
- *statistical data on trafficking which is collected and published by the Ministry of Home Affairs in virtue of section 31 of the Act;*
- *any legal proceedings which have been instituted as a consequence of the application of section 3(1) of the 2005 Act on penalties, supplying copies of the relevant court decisions and indicating the penalties imposed, as well as the information on measures taken to ensure that this provision is strictly enforced against perpetrators, as required by Article 25 of the Convention.*

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

Haiti

Forced Labour Convention, 1930 (No. 29) (ratification: 1958)

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Exploitation of children employed as domestic servants known as “restaveks” in conditions of forced labour. For many years, the Committee has been commenting on the situation of hundreds of thousands of child domestic workers (300,000 according to the estimates provided in 2002 by the International Confederation of Free Trade Unions (ICFTU) now the International Trade Union Confederation (ITUC)), who are known in Creole as “restaveks”, who are often exploited in conditions of forced labour within the meaning of the Convention. The Committee's comments are based on concordant information originating from various sources, which has been confirmed by the Government in its reports. These sources include a report of the Working Group on Contemporary Forms of Slavery of the United Nations High Commissioner for Human Rights, communications received from the ICFTU and the Coordination Syndicale Haïtienne (CSH), as well as the concluding observations of the United Nations Committee on the Rights of the Child concerning Haiti. According to this information, “restaveks” who are from poor families, are placed with families that are generally more affluent to work as domestic servants, in theory in exchange for room and board, and education. In reality, many of these children, some of whom are only 4 or 5 years old, are victims of exploitation, forced to work long hours without remuneration, discriminated against and subjected to all forms of bullying, poorly housed, poorly fed, and often victims of physical, psychological and sexual violence. Very few of them receive any schooling (according to the ICFTU, only 20 per cent of “restaveks” go to school and less than 1 per cent reach secondary school level).

In its previous observation, the Committee noted that the Government reaffirmed its commitment to protect vulnerable children, in particular those working as domestic servants. It also noted the action undertaken by the Government, such as the validation of a national protection plan in October 2006, the implementation of training activities for officials of the Ministry of Social Affairs and Labour and the development of the “Education for All” programme which aims to ensure the school attendance of vulnerable children. Furthermore, the Committee noted the repeal of Chapter IX of Title V of the Labour Code on children in service by the Act on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill-treatment or Inhuman Treatment Against Children of 2003. It noted that this Act prohibits the exploitation of children, including servitude, forced or compulsory labour, forced services, as well as work which by its very nature or because of the conditions in which it is carried out is likely to harm the health, safety or morals of the child. The Committee noted that the repealed provisions include those of section 341 of the Labour Code, which allowed a child from the age of 12 onwards to be entrusted to a family for the purposes of carrying out domestic work. The Act has also repealed the provisions relating to the host family's obligation to obtain a permit and comply with the conditions required by the Social Welfare and Research Institute (IBESR).

With regard to the provisions of the Act of 2003, the Committee noted that under section 4 of the Act, any report of an abused or ill-treated child shall be addressed to the Ministry of Social Affairs which may refer the matter to the competent judicial authority. Noting that the Act of 2003 did not provide for penalties against persons responsible for the abuse, violence or ill-treatment that it prohibits, the Committee requested the Government to provide detailed information on the measures taken to ensure that penalties are imposed in the case of exploitation of children working in domestic

services. It recalled that under *Article 25* of the Convention, the penalties imposed for the illegal exaction of forced labour shall be really adequate and strictly enforced.

The Committee notes that in its latest report, the Government indicates that the national protection plan, which the Committee understood had been adopted in 2006, is still awaiting validation by the Council of Ministers. According to the Government, this national protection plan for children in vulnerable situations, once validated, will bind the State and serve as a basis for drawing up a national policy on children.

The Committee also notes the information provided by the Government concerning the reintegration programmes for child “restaveks” established by the IBESR in conjunction with various international and non-governmental organizations. The Committee notes that these programmes favour reintegration into the family environment in order to promote the psychological and social development of the children concerned. The Committee also notes the information concerning the measures taken to ensure that children placed in host families are properly monitored. The Government refers to a university training course designed to enable young graduates to help children who have been victims of abuse. Social workers have also been recruited to intervene directly to assist children placed with host families and establish a system of regular monitoring.

With regard to the steps taken to ensure that penalties are imposed in the event of the exploitation of child domestic workers, the Committee notes that the Government merely indicates that the IBESR is constantly working to admonish all persons accused of abusing children. Furthermore, the Government indicates that crackdowns have been carried out by the Youth Protection Unit with a view to apprehending persons who have been reported for exploiting child domestic workers and subjecting them to ill-treatment. According to the Government’s report, the children concerned have been returned to their families, who have in turn benefited from assistance from the IBESR and from various associations.

The Committee once again reiterates its concern at the exploitative conditions of which children employed as domestic servants within the framework of a relationship of total dependency are victims. Taking into account the conditions in which such work may be carried out, their young age and the fact that it is impossible to leave their work and the family in which they have been placed, the Committee once again draws the Government’s attention to the fact that this work comes under the definition of forced labour given in the Convention. The Committee considers that, in view of the extent and gravity of the situation, the prohibition of the exploitation of children, established by the Act of 2003, should be accompanied by adequate penalties that are strictly enforced. ***In these circumstances, the Committee urges the Government to take the necessary steps as a matter of urgency so that the prohibition of the exploitation of child domestic workers, which often amounts in reality to forced labour within the meaning of the Convention, is accompanied by adequate penalties, as required by Article 25 of the Convention.***

The Committee also requests the Government to continue providing information on the steps taken to combat the exploitation of which many child domestic workers are victims, as well as on the national plan on the protection of children in vulnerable situations, which is awaiting validation by the Council of Ministers. Please provide a copy of the plan as soon as it has been adopted. The Committee also requests the Government to continue providing information concerning the steps taken or envisaged to protect, assist and reintegrate children who have been the victim of exploitation.

Furthermore, given that the Government has not provided information on the following points raised in its last observation, the Committee requests it to provide the following information in its next report:

- ***measures taken to assess the extent and characteristics of the phenomenon (indicating the estimated number of child domestic workers placed in host families and their ages);***
- ***measures taken to ensure that, in practice, host families do not exploit the children entrusted to them (besides visits from social workers and denunciations); and***
- ***measures taken to ensure that penalties are imposed in the event of the exploitation of child domestic workers. The Committee would like the Government to specify the extent to which the violations observed result in an investigation being carried out and whether the persons suspected of these violations are brought before the competent judicial authority as required under section 4 of the Act of 2003. If applicable, the Committee would like the Government to provide information on the penalties imposed and the provisions of the criminal legislation on which these penalties are based.***

Trafficking in persons, including children. In its previous comments, the Committee noted that the Act of 2003 on the Prohibition and Elimination of All Forms of Abuse, Violence, Ill-treatment or Inhuman Treatment Against Children refers, among other examples of ill-treatment, the inhuman treatment or exploitation, sale and trafficking of children and the offering, recruitment, transfer, harbouring, receipt or use of children for the purposes of sexual exploitation, prostitution or pornography. It noted that the United Nations Committee on the Rights of the Child had expressed deep concern at the high incidence of trafficking in children from Haiti to the Dominican Republic. The UN Committee noted that these children, once separated from their families, are forced to beg or work in the Dominican Republic (see document CRC/C/15/Add.202, 18 March 2003, concluding observations, paragraph 60). The Committee requested the Government to provide information on this phenomenon and on the steps taken to combat it. The Committee also noted the report by the Research Mission of the General Secretariat of the Organization of American States (OAS) on the

situation regarding the trafficking in persons in Haiti, dated September 2006, which emphasized a trend towards the systematic organization of trafficking in persons in Haiti, which can be explained by the deterioration of the socioeconomic and political situation in the country over recent years which precludes an effective response to the basic needs of the population and paves the way for an increase in all forms of human exploitation and unlawful economic activity.

In its latest report, the Government mentions the implementation of a plan which includes increasing the number of police officers at the border with the Dominican Republic with a view to preventing illegal crossings and at the same time reducing the trafficking of children and persons in general. The Government also mentions the drafting of two bills aimed at protecting the victims of trafficking, in particular children. The Government indicates that the National Migration Office assists Haitians who have been turned away at the border in returning to their community with the help of public aid. Finally, the Government indicates that the Ministry of Social Affairs and Labour, together with the Ministry of Foreign Affairs, is currently studying the problem of the exploitation of persons in the Dominican Republic on sugar cane plantations and the reduction of children to begging in that country and intends to hold bilateral talks aimed at solving this problem.

The Committee notes the concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (see document CEDAW/C/HTI/CO/7, 10 February 2009, paragraph 27) urging the Government “to intensify its efforts to combat all forms of trafficking in women and girls”. It notes that the UN Committee also asks the Government “to expedite adoption of the draft bill on all forms of trafficking and to ensure that the new law allows prosecution and punishment of perpetrators, effective protection of victims and adequate redress”. Finally, it notes that the UN Committee encourages the Government “to conduct research on the root causes of trafficking and to enhance bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic, to prevent trafficking and bring perpetrators to justice”.

The Committee requests the Government to provide information on the draft laws mentioned in the Government’s report, in particular the draft law on trafficking. Please provide a copy of the texts concerned as soon as they have been adopted. In addition to the legislative measures taken, the Committee requests the Government to continue to provide information on other measures taken to combat the trafficking in persons, in particular: repressive measures (including statistics on the number of cases of trafficking examined by the authorities and the number of sentences imposed by the courts); public awareness raising, with a special emphasis on those most vulnerable; and assistance for victims. Please also provide information concerning the measures taken and results achieved with regard to bilateral and multilateral cooperation with neighbouring countries, in particular the Dominican Republic. Given that the Government has not provided substantial information on this matter, the Committee once again requests the Government to indicate the measures taken or envisaged to find a solution to the specific problem of child trafficking to the Dominican Republic which involves children being separated from their families and forced to beg or work in the Dominican Republic.

Hungary

Forced Labour Convention, 1930 (No. 29) (ratification: 1956)

The Committee notes that the Government’s report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 2, paragraph 2(c), of the Convention. Work of prisoners for private companies. In its earlier comments, the Committee referred to the national provisions allowing the law enforcement authorities to conclude agreements concerning the employment of prisoners not only with public bodies or institutions, but also with private companies (section 101(3) of Order No. 6/1996 (VII 12) of the Ministry of Justice on the implementation of provisions concerning prison sentences and detention). It noted that Law-Decree No. 11 of 1979 on the execution of prison sentences provides for an obligation of convicts to work (section 33(1)(d)). The Committee also noted that the employment-related rights of prisoners are governed by the general provisions of labour law (subject to certain deviations), but their minimum remuneration corresponds only to one third of the general minimum wage (section 124(2) of the above Order No. 6/1996 (VII 12)) and they do not acquire pension rights under the existing legislation.

The Committee noted the Government’s repeated statement in its reports that prisoners are in a legal relationship with a penitentiary institution and are not directly employed by a third party, and perform labour under the supervision and control of the law enforcement bodies. It also noted the Government’s statement that the principal goal of employing inmates is to promote their rehabilitation and reintegration into society, as well as the Government’s view (also reiterated in its latest report) that the work performed by convicts (including the “public utility labour”) is covered by the exception provided for in *Article 2(2)(c)*, and therefore should not be considered as forced or compulsory labour.

The Committee recalled, however, that *Article 2(2)(c)* of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in a sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private companies, even under public supervision and control. Under this provision of the Convention, work or service exacted from any person as a consequence of a conviction in a court of law is excluded from the scope of the Convention only if two conditions are met, namely: (i) that the said work or service is carried out under the supervision and control of a public authority; and (ii) that the said person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee has always made it clear that the two conditions are applied cumulatively; i.e. the fact that the prisoner remains at all times under the supervision and control of a public authority does not in itself dispense the Government from fulfilling the second condition,

namely that the person is not hired to or placed at the disposal of private individuals, companies or associations. The Committee therefore asked the Government to take the necessary measures to ensure observance of the Convention, such as, for example, to provide that any prisoners working for private companies offer themselves voluntarily without being subjected to pressure or the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free employment relationship.

The Government reiterates in its report that, in national law and practice, contracts exist only between the economic organizations of penal authorities and private companies, while prisoners, who are under an obligation to perform prison labour, are in relation solely with the economic organizations of penal authorities; however, general labour legislation is applicable with regard to their conditions of work (with certain differences). It follows from the sample contracts concluded between the economic organizations of penal authorities and private companies, supplied by the Government, that the economic organization of penal authorities is responsible for providing prison workforce for the production, which will be organized under the job description and instructions as well as regular quality control of the private company, which will also supply all the necessary raw materials and tools and provide training for the workers; the private company will also pay a rental fee for the premises provided for the production and the “fee for the leased work”. It is specifically mentioned that the private company shall continuously control the production through its technical specialists, that the economic organization of penal authorities shall obey the instructions given by the private company, and that the contracting parties agree that they will cooperate during the term of the “lease work agreement”. The Government reiterates, however, that prisoners remain at all times under the supervision and control of the staff of the economic organization of penal authorities, in accordance with the provisions of the Convention.

In this connection, the Committee draws the Government’s attention to the explanations concerning the scope of the terms “hired to or placed at the disposal of” in paragraphs 56–58 and 109–111 of the Committee’s 2007 General Survey on the eradication of forced labour and observes that these terms cover not only situations where prisoners are “employed” by the private company or placed in a position of servitude in relation to the private company, but also situations where the companies do not have absolute discretion over the work performed by the prisoner, since they are limited by the rules set by the public authority. The Committee also refers to paragraph 106 of its 2007 General Survey, where it considered that the prohibition for prisoners to be placed at the disposal of private parties is absolute and not limited to work outside penitentiary establishments, but applies equally to workshops operated by private undertakings inside prisons.

While noting the Government’s indication that, in conformity with the first condition set out in *Article 2(2)(c)* of the Convention, the work is carried out “under the supervision and control of a public authority”, the Committee observes that, as regards the second condition, namely, that the person “is not hired to or placed at the disposal of private individuals, companies or associations”, contracts for the use of prison labour concluded with private companies in Hungary correspond in all respects to what is expressly prohibited by *Article 2(2)(c)*, namely, that a person is “hired to” a private company. It is in the very nature of such hiring agreements (or “lease work agreements”, as they are called in the sample contracts supplied by the Government) to include mutual obligations between the prison authorities (or their economic branches) and the private company.

Referring to the explanations in paragraphs 59–60 and 114–120 of its 2007 General Survey referred to above, the Committee points out once again that work by prisoners for private companies can be held compatible with the explicit prohibition of the Convention only where the necessary safeguards exist to ensure that the prisoners concerned offer themselves voluntarily, without being subjected to pressure or the menace of any penalty, as required by *Article 2(1)* of the Convention. In such a situation, work of prisoners for private companies does not come under the scope of the Convention, since no compulsion is involved. The Committee has considered that, taking into account their captive circumstances, it is necessary to obtain prisoners’ formal consent to work for private enterprises both inside and outside prisons. Further, since such consent is given in a context of lack of freedom with limited options, there should be indicators which authenticate this free and informed consent. The Committee recalls that the most reliable indicator of the voluntariness of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health. In addition, there may also be other factors that can be regarded as objective and measurable advantages which the prisoner gains from the actual performance of the work and which could be considered in determining whether consent was freely given and informed (such as the learning of new skills which could be deployed by prisoners when released; the offer of continuing the work of the same type upon their release; or the opportunity to work cooperatively in a controlled environment enabling them to develop team skills).

Noting the Government’s indication in the report that, in the course of the preparation of the comprehensive amendment of Law-Decree No. 11 of 1979 on the execution of prison sentences, the provisions of the Convention are being taken into account, the Committee expresses the firm hope that the necessary measures will be taken to ensure that free and informed consent is required for the work of prisoners for private companies both inside and outside prison premises, so that such consent is free from the menace of any penalty and authenticated by the conditions of work approximating a free labour relationship, as well as by other objective and measurable factors referred to above. The Committee requests the Government to supply a copy of the revised penitentiary legislation, as soon as it is adopted.

“Public utility labour” performed by convicted persons placed at the disposal of private parties. In its earlier comments, the Committee referred to the Penal Code provisions concerning “public utility labour”, which shall be performed, as a penal sanction, without deprivation of a person’s freedom and without remuneration, but may be replaced by confinement in prison, if the convicted person fails to fulfil his or her labour obligations (sections 49 and 50 of the Penal Code). The Committee noted the Government’s indications that the work to be performed as public utility labour must be of public interest and that the employer (which may not only be a public institution, but also a private business organization) shall observe the safety provisions and ensure the same working conditions as those enjoyed by workers employed on the basis of a contract.

The Committee notes the Government’s indications concerning the National Strategy of Civil Crime Prevention and the adoption of Government decision No. 1036/2005 (IV.21) on tasks to be implemented in 2005–06 in this connection, including the organization of special programmes for persons sentenced to public utility labour.

The Committee previously noted the Government’s indication in its report that convicted persons comply with their working obligations voluntarily and can choose freely between the two kinds of punishment. ***Referring to the above considerations in point 1 of the present observation concerning the prohibition contained in Article 2, paragraph 2(c), as well as to the explanations in paragraphs 123–128 in its 2007 General Survey on the eradication of forced labour, the Committee hopes that the Government will indicate, in its next report, how free choice between the two kinds of punishment is guaranteed and whether, in the course of drafting the new penitentiary legislation, a requirement of the voluntary consent of convicts to work for a private employer is taken into account. Please also provide information on the practical implementation of special***

programmes for carrying out public utility labour referred to above, including a list of authorized associations or institutions using such labour and giving examples of the type of work involved.

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

India

Forced Labour Convention, 1930 (No. 29) (ratification: 1954)

The Committee has noted the Government's reports received in September 2008 and August 2009. It has also noted the communication dated 29 August 2008 received from the International Trade Union Confederation (ITUC), as well as the Government's response to this communication. The Committee has also noted the discussion that took place in the Conference Committee on the Application of Standards during the 97th Session of the Conference in June 2008.

Articles 1 (paragraph 1), 2 (paragraph 1) and 25 of the Convention. Bonded labour; magnitude of the problem. In its 2008 report, the Government indicated that, since the enactment of the Bonded Labour System (Abolition) Act, 1976 (BLSA), 287,555 bonded labourers had been identified, of whom 267,593 had been rehabilitated. The Government also stated that it would "reserve comment" about estimates of the total number of bonded labourers reported by other sources. However, the Committee notes, from the ITUC communication referred to above, the findings from survey research studies that bonded labour in agriculture and in industries like mining, brick kilns, silk and cotton production, and bidi making, was likely to be affecting millions of workers across the country. The Committee, in its previous observation, urged the Government to undertake a comprehensive national survey on bonded labour as a matter of priority, using appropriate statistical methods. The Government, in its report and through the statements by the Government representative during the discussion in the Conference Committee, reiterated its previous indications that statistical tools or methodologies used to collect macro or aggregated data were inappropriate for a survey of bonded labour. The Government also reiterated that it had provided grants to state governments for conducting district-level surveys of bonded labour, and that a large number of such surveys had been conducted by the state governments. *Given the wide disparities in assessments of the overall prevalence of bonded labour in the national economy and the importance of this question to the process of supervision by the Committee of the application of the Convention in India, the Committee once again urges the Government to explore ways to undertake a national survey of bonded labour with the involvement of the social partners and stakeholder organizations, using any appropriate statistical methods and, as far as practicable, all existing data from the district-level surveys referred to above. The Committee hopes that the Government's next report will contain information on the measures taken or envisaged in this regard. In the meantime, it asks the Government to provide copies of all available reports of the district-level surveys conducted by State governments.*

Vigilance committees

With regard to the functioning and effectiveness of the vigilance committees established under the BLSA, inter alia, to assist the courts in monitoring and ensuring the proper implementation of the Act, the Government reiterates that all state governments have confirmed that vigilance committees have been constituted at the district and subdivisional levels and that the meetings are being held regularly. However, the Committee notes, from the ITUC communication referred to above, the research findings by the Centre for Education and Communication (CEC) and the National Human Rights Commission (NHRC), which indicate that in many states the committees remain ineffective bodies; do not meet regularly; have not been functional; and are improperly constituted, and thereby the occurrence of bonded labour goes undetected. *The Committee urges the Government to take the necessary measures to address the shortcomings in the vigilance committees, with a view to ensuring their proper functioning and effectiveness. It hopes the Government will provide, in its next report, information on the progress of such measures, including copies of any relevant reports, studies and enquiries.*

Release and rehabilitation

With regard to the Government's policies and programmes for the release and rehabilitation of identified bonded labourers, the Committee notes, from the Government's reports, the indications that a special group chaired by the Union Labour and Employment Secretary has been monitoring implementation of the BLSA and the Centrally Sponsored Scheme (CSS) for the rehabilitation of bonded labourers, and had held a series of 15 region-level meetings with state government participation between 2004 and 2009; that the Ministry of Labour and Employment has taken concrete measures to improve the planning process and strengthen the monitoring mechanism; and that state governments have been issued detailed guidelines for implementing the CSS and advised to integrate the scheme into other ongoing poverty alleviation schemes.

While noting these positive developments, the Committee also notes, however, from the ITUC communication, the research findings of the NHRC, which has a court-ordered mandate to monitor the implementation of the BLSA, that some state governments are an obstacle to the eradication of bonded labour; that many continue to deny the existence of bonded labour; that state officials often have a poor understanding of how bonded labour is legally defined; that state governments are failing to compile data on the number of bonded labourers; and that consequently the identification and release of bonded labourers in recent years has been extremely low. The Committee also notes the research findings by the CEC that

bonded labourers who are rehabilitated do not always receive the full rehabilitation amount; that corruption and delays in the issuing of rehabilitation packages are prevalent; that delays occur that can effectively force families back into debt bondage; and that rehabilitation assistance has not proved to be very effective.

The Committee hopes that the Government will ensure that the measures noted above to implement release and rehabilitation programmes at the state level have as their central focus the serious problems identified in the communication of the ITUC and are effectively implemented, and that the monitoring mechanisms it has put into place are fully functional and serving their intended purpose. It requests the Government to provide, in its next report, detailed information in this regard, as well as the most recent information the NHRC has called for on identification, release and rehabilitation of bonded labourers.

Law enforcement

With regard to the issue of enforcement of the penalty provisions of the BLSA and the Child Labour (Prohibition and Regulation) Act 1986 (CLPRA), the Committee notes the statement of the Government representative during the discussion in the Conference Committee that the Government's main priority was the identification, release and rehabilitation of bonded labourers, but that nevertheless, 5,893 cases of prosecution and 1,289 convictions had been reported by the states so far under the BLSA, and that the NHRC had organized state-level sensitization workshops in collaboration with the Ministry of Labour and Employment. However, the Committee notes with **concern** the findings by the NHRC, referred to in the ITUC communication, that state governments were neglecting to prosecute offenders under the bonded labour system, and that it was clear from statistical evidence that the law was poorly enforced and employers were rarely prosecuted successfully.

The Committee urges the Government to take effective measures to further strengthen its law enforcement mechanisms, including measures recommended by the NHRC or other official bodies, and that such measures address the problems identified in the communication of the ITUC. The Committee hopes that the Government will provide, in its next report, detailed information in this regard and repeats its request for statistical data and other information that indicate, not only numbers of prosecutions and convictions, but the specific criminal penalties which have actually been imposed on employers of bonded labourers convicted under the BLSA, as well as copies of any relevant court judgements.

Child labour

With regard to implementation of the CLPRA, which was amended in October 2006 to encompass a series of additional occupations, the Committee notes the Government's indications that it has carried out awareness-raising meetings and media campaigns and has also initiated and issued guidance to state governments on the effective implementation of this prohibition and on the preparation of state-level action plans. The Committee notes that, while the annex to the Government's report includes state-level statistics on inspections, investigations, prosecutions, convictions and acquittals in relation to enforcement of the CLPRA, the information supplied does not include any statistics on the nature of the sanctions or sentences imposed in cases of convictions.

The Committee hopes that the Government will continue and further expand its efforts to raise public awareness about the CLPRA, and that the act will be fully implemented through the state-level action plans. It requests the Government to provide, in its next report, detailed information in this regard, as well as statistics and other information on the specific penalties and sentences imposed in cases of convictions under the CLPRA, including copies of any relevant court judgements. Please also provide information on the status of the Draft Offences against Children Bill, 2006.

With regard to the National Child Labour Project (NCLP), an action programme under which working children are withdrawn from employment in hazardous occupations and placed into special schools for a maximum period of three years, the Committee notes the statistics provided by the Government concerning the schools involved and the student enrolments. *It hopes that the Government will expand and strengthen this programme under the Eleventh Plan (2007–12), and that it will provide information in this regard, including information from the monitoring committees set up to supervise, monitor and evaluate the NCLP.*

Prostitution and commercial sexual exploitation

The Committee notes the indications of the Government that the Immoral Traffic Prevention Bill, 2006, amends the Immoral Traffic (Prevention) Act, 1956 (ITPA), by, inter alia, increasing the age of majority from 16 to 18; repealing section 8, which penalizes solicitation for purposes of prostitution, and section 20, which concerns removal of prostitutes from any public place; redefines the offence of "trafficking in persons" to align it with the definition of trafficking contained in the optional protocols on trafficking in the UN Convention against Transnational Organized Crime; and criminalizes conduct of persons who frequent brothels for the purpose of sexual exploitation. *The Committee hopes that the Bill will soon be adopted and requests the Government to supply a copy of the new legislation, as soon as it is promulgated.*

The Committee notes the reference to Ujjawala, a "Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation", a federal scheme launched on 4 December 2007 which comprises five components: prevention, rescue, rehabilitation, reintegration,

and repatriation. The Government also refers to the Central Advisory Committee (CAC) for preventing and combating trafficking of women and children for commercial sexual exploitation, which was established by the Ministry of Women and Child Development, and to the proposed establishment of central and state-level nodal authorities. *The Committee considers that these measures represent positive developments and hopes they will continue to evolve and be effective. It hopes the Government will supply updated information about the work of Ujjawala, the CAC and nodal authorities, including any official reports assessing the effectiveness of their work and its impact in practice on trafficking in women and children for purposes of commercial sexual exploitation.*

Kenya

Forced Labour Convention, 1930 (No. 29) (ratification: 1964)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Compulsory labour in connection with the conservation of natural resources. For many years, the Committee has been referring to sections 13 to 18 of the Chief's Authority Act (Cap. 128), as amended by Act No. 10 of 1997, according to which able-bodied male persons between 18 and 50 years of age may be required to perform any work or service in connection with the conservation of natural resources for up to 60 days in any year. The Committee expressed the firm hope that the necessary measures will be taken to repeal or amend these provisions, in order to bring legislation into conformity with the Convention.

The Committee previously noted the Government's indication in its report that the task force on the review of labour laws had addressed the issue of compulsory labour required by the Chief's Authority Act (Cap. 128). The Government also indicated that the Chief's Authority Act was to be replaced by the Administrative Authority Act. In its latest report, the Government undertakes to send a copy of the Administrative Authority Act, as soon as it is adopted.

While noting this information, the Committee trusts that the Administrative Authority Act, which is intended to replace the Chief's Authority Act, will be adopted in the near future and that the legislation will be brought into conformity with the Convention. It asks the Government to supply a copy of the Administrative Authority Act as soon as it is adopted.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1964)

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

Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for the participation in strikes. Since many years, the Committee has been referring to certain 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 sentences of imprisonment (involving compulsory 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 organization, for various breaches of discipline in the merchant marine and for participation in certain forms of strikes.

The Committee has noted the Government's repeated statement in its reports that it is committed to bring the national legislation into conformity with the Convention. *It notes from the Government's latest report that the Merchant Shipping Act, 1967, has been reviewed and is looking forward to receiving a copy of the revised legislation. The Committee expresses the firm hope that all the abovementioned provisions will soon be brought into conformity with the Convention and that the Government will report on the progress achieved in this regard. It also asks the Government to provide information on various points raised in a more detailed request addressed directly to the Government.*

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

Liberia

Forced Labour Convention, 1930 (No. 29) (ratification: 1931)

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 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Forced labour and captivity practices in connection with armed conflict. In its earlier comments, the Committee referred to the allegations concerning forced labour and captivity practices which took place in the south-eastern part of the country in connection with armed conflict, where children were allegedly held hostage by adults and used as a source of forced and captive labour. The Committee previously noted the Government's indication in its report that the special investigation committee sent by the Government to investigate the alleged forced labour practices in the south-eastern region recommended that a national committee be established to trace and reunite displaced women and children taken captive during the war and that, in order to enhance the National Reconciliation and Reunification Programmes, "local authorities should be directed to encourage their citizens to report any acts of alleged forced labour, intimidation, harassment, maltreatment for appropriate investigation and corrective measures".

While having noted that the south-eastern part of the country was in a grave humanitarian crisis and an extreme state of poverty and that any reported situations of forced labour exploitation were due to the consequences of the war, the Committee expressed the hope that the Government would encourage joint efforts and cooperation between governmental bodies and non-governmental organizations at all levels with a view to the effective elimination of all forms of compulsory labour, including that of children, and requested the Government to supply full information on measures taken to this end.

The Committee notes the Government's brief indication in its report supplied in May 2008 that a tripartite national committee is being considered to investigate the complaints of forced labour and hostage situation in the south-eastern region, that consultations for this investigation have already begun and the committee is expected to start its work in the near future. ***The Committee reiterates the firm hope that the Government will provide, in its next report, full information on the activities of the abovementioned tripartite national committee and on the specific action taken to investigate the situation in the South-East as regards the alleged practices of forced labour, as well as on the measures taken to eliminate such practices. The Committee also hopes that the Government will supply information on the results achieved in this regard by the Liberian Truth and Reconciliation Commission (TRC), which was set up to investigate human rights violations and was empowered to recommend for prosecution the most serious offenders, as well as information on the progress achieved in the establishment of an Independent National Human Rights Commission and drawing up of a national human rights action plan.***

Recalling also that, under Article 25 of the Convention, the illegal exaction of forced labour shall be punishable as a penal offence and it shall be an obligation of the State to ensure that the penalties imposed are really adequate and are strictly enforced, the Committee hopes that the necessary action to give effect to this Article will be taken in the near future, by imposing penal sanctions on persons convicted of having exacted forced labour, and that the Government will provide, in its next report, information on any legal proceedings which have been instituted for that purpose and on any penalties imposed.

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

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

Article 1(a) of the Convention. Imposition of prison sentences involving the obligation to work as a punishment for expressing political views. Referring to its earlier comments, the Committee notes with **satisfaction** that the Electoral Reform Law of 2004, which amended certain provisions of the Elections Law, 1986, has repealed provisions punishing the participation in certain activities related to political parties (such as, e.g., activities that seek to continue or revive certain political parties) with penalties of imprisonment involving compulsory prison labour.

In its earlier comments, the Committee observed that prison sentences (involving an obligation to work by virtue of Chapter 34, section 34-14, paragraph 1, of the Liberian Code of Laws) might be imposed in circumstances falling within ***Article 1(a)*** of the Convention under section 52(1)(b) of the Penal Law, punishing certain forms of criticism of the Government. ***The Committee again requests the Government to indicate whether section 52(1)(b) of the Penal Law is still in force and, if so, to indicate the measures taken with a view to ensuring observance of the Convention.***

Article 1(c). Disciplinary measures applicable to seafarers. In its earlier comments, the Committee noted that, under section 347(1) and (2) of the Maritime Law, local authorities shall apprehend and deliver a seafarer who deserts from a vessel with the intention of not returning to duty and who remains unlawfully in a foreign country. Referring to paragraph 171 of its 2007 General Survey on the eradication of forced labour, the Committee pointed out that 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) constitute forced or compulsory labour as a means of labour discipline and are thus incompatible with the Convention.

The Committee notes the Government's indication in its report that section 347 has not been repealed, but due consideration is being given to this section. ***The Committee trusts that section 347(1) and (2) of the Maritime Law will soon be repealed and that the Government will supply, in its next report, information on the measures taken to this end.***

The Committee also noted that under section 348 of the Maritime Law various other offences against labour discipline by seafarers such as incitement to neglect duty, assembling with others in a tumultuous manner, may be punished with imprisonment of up to five years (involving an obligation to work). The Committee referred to paragraph 179 of its 2007 General Survey on the eradication of forced labour where it pointed out that sanctions relating to acts tending to endanger the ship or the life or health of persons on board do not fall within the scope of the Convention. However, as regards more generally breaches of labour discipline, such as desertion, absence without leave or disobedience, all sanctions involving compulsory labour should be abolished under the Convention. In a great number of maritime nations, similar penal provisions have been repealed, restricted in scope to cases involving a danger to the ship or the life or health of persons, or otherwise amended so as to provide for a fine or some other penalty not falling within the scope of the Convention.

The Committee notes the Government's indication in its report that section 348 has not been repealed, but due consideration is being given to this section. ***The Committee therefore expresses the firm hope that measures will soon be taken to bring section 348 of the Maritime Law into conformity with the Convention, and that the Government will provide information on the action taken to this end.***

Libyan Arab Jamahiriya

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(a), (c) and (d) of the Convention. Sanctions for expressing political views, for breaches of labour discipline or participation in strikes. Since many years, the Committee has been referring to various provisions of the Publications Act of 1972, under which persons expressing certain political views or views ideologically opposed to the established political, social or economic system may be punished with penalties of imprisonment (involving, under section

24(1) of the Penal Code, an obligation to perform labour). The Committee also referred to sections 237 and 238 of the Penal Code, under which penalties of imprisonment (involving compulsory labour) may be imposed on public servants or employees of public institutions as a punishment for breaches of labour discipline or for participation in strikes, even in services the interruption of which would not endanger the life, personal safety or health of the whole or part of the population.

The Committee notes the Government's indication in its report that the abovementioned Publications Act No. 76 of 1972 will be amended and the Committee's comments have been taken into account in the draft new Act under consideration. The Government also indicates that the draft amended Act has been submitted to the 2008 session of the Basic People's Congresses. The Committee notes, however, that no new information has been supplied as regards the amendment of sections 237 and 238 of the Penal Code referred to above, though the Government has repeatedly expressed its intention to amend them in its earlier reports.

The Committee trusts that Publications Act No. 76 of 1972, as well as the provisions of the Penal Code referred to above, will be amended in the near future, in order to bring legislation into conformity with the Convention, so as to ensure that no penalties involving compulsory labour may be imposed as a punishment on persons who have expressed certain political or ideological opinions or who have committed breaches of labour discipline or participated in strikes. The Committee asks the Government to supply copies of the amended texts, as soon as they are adopted.

Supply of legislation. The Committee asks the Government once again to provide copies of the legislative texts governing the establishment, functioning and dissolution of associations and political parties and hopes that the Government will not fail to supply such copies with its next report.

Mauritania

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Slavery and slave-like practices. In its previous comments, the Committee noted that the fact-finding mission which visited Mauritania in 2006, at the request of the Committee on the Application of Standards of the International Labour Conference, had noted a number of positive measures which illustrated the Government's commitment to combat slavery and its vestiges. It observed that the Government had undertaken to take into account the recommendations made by the fact-finding mission in the formulation of the national strategy to combat slave-like practices. In this respect, the Committee noted the adoption, on 9 August 2007, of Act No. 2007/48 criminalizing and penalizing slave-like practices. It requested the Government to take the necessary measures to ensure the effective application of the Act and the implementation of the national strategy to combat slave-like practices.

Effective application of the legislation. The Committee recalls that Act No. 2007/48 defines, criminalizes and penalizes slave-like practices and makes a distinction between the crime of slavery and offences of slavery. Such offences include "any person who appropriates the goods, products and earnings resulting from the labour of any person claimed to be a slave or who forcibly takes that person's monies who shall be punished by a sentence of imprisonment of from six months to two years and a fine of from 50,000 to 200,000 ouguiyas" (section 6). Offences of slavery also include prejudicing the physical integrity of a person claimed to be a slave and denying a child claimed to be a slave access to education (sections 5 and 7). Furthermore, the Walis, Hakems, local chiefs and officers of the criminal investigation police who do not follow up cases of slave-like practices that are brought to their knowledge shall be liable to a sentence of imprisonment and a fine (section 12). Finally, human rights associations are empowered to denounce violations of the Act and to assist victims, with the latter benefiting from free judicial proceedings (section 15).

The Committee considered that the adoption of the Act constituted an important first step in combating slavery and that the challenge would henceforth lie in the effective application of the legislation so that victims can assert their rights effectively and those responsible for the persistence of slavery are convicted and punished. It requested the Government to take steps to publicize the new Act among the forces of order and the judicial authorities, as well as the population at large, and to ensure that investigations are conducted rapidly and are effective and impartial when cases are brought to the knowledge of the authorities.

With regard to the first point, the Government indicates in its report that the Act criminalizing slavery and penalizing slave-like practices has been the subject of intense awareness-raising activity and that every measure has been taken to ensure that publicity is given to the provisions of the Act with a view to promoting an understanding of the criminal nature of slavery. The Committee notes this national awareness-raising campaign on the contents of the Act, which was carried out in February 2008. It notes that it was undertaken in many regions of the country. Missions to supervise the campaign at the regional level organized meetings and assemblies during which the provisions of the Act were explained to the population. These missions were generally composed of representatives of the Government, the local authorities, the religious authorities, the National Human Rights Commission and NGOs active in this field. The Committee observes that this campaign, which was carried out immediately following the entry into force of the Act, certainly provided an important signal to civil society as it benefited from the presence of members of the Government and of various authorities who were able to proclaim their will to combat slavery. ***The Committee hopes that the Government will take all the appropriate measures to continue carrying out awareness-raising activities on the Act and on the problem of***

slavery in general, targeting more particularly the most vulnerable groups and those who are in the first line of contact with victims.

The Committee stresses the particular importance of following up and further enhancing the process of awareness raising since, according to the information available, it would not appear that victims are able to assert their rights effectively. The Committee notes that the Government has not provided any information on the complaints lodged by victims or the NGOs representing them, the investigations carried out or the commencement of judicial proceedings. The Committee is also **concerned** about the absence of information on the measures adopted by the Government to encourage and assist victims in their action. It had already expressed concern in the past about the fact that victims encountered difficulties in being heard and in asserting their rights, both with regard to the authorities responsible for the forces of order and the judicial authorities. In this respect, it considered that sections 12 and 15 of the Act (assistance to victims, the prosecution of authorities which do not follow up cases of slave-like practices that are brought to their knowledge) could contribute to removing the obstacles preventing access to justice.

The Committee recalls that, under the terms of *Article 25* of the Convention, States which ratify the Convention are under the obligation to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and strictly enforced. It considers that the absence of court action by victims may reveal ignorance of the recourse procedures available, the fear of social reprobation or reprisals, or a lack of will by the authorities responsible for taking legal action. ***The Committee requests the Government to take the appropriate measures to ensure that victims are effectively in a position to turn to the police and the judicial authorities with a view to asserting their rights and that investigations are conducted in a rapid, effective and impartial manner. The Committee requests the Government to provide information in its next report on the number of cases of slavery reported to the authorities, the number of cases in which an investigation has been conducted and the number of cases which have resulted in judicial action. Please indicate whether prosecutions have been initiated as a result of action by the victim or the Office of the Attorney-General and provide copies of any judgements handed down.***

The Committee notes that a technical assistance mission visited Mauritania in February 2008, in the course of which the follow-up to the recommendations of the fact-finding mission was discussed. The Committee notes that the mission was informed that the National Human Rights Commission (CNDH) which has as its mandate to examine situations of the violation of human rights that are reported or brought to its knowledge and to take all appropriate action, has received allegations of slavery. In such cases, the CNDH sends one of its members to the scene and, following investigation, sends a report with recommendations to the President of the Republic. ***The Committee requests the Government to provide information on the cases referred to the CNDH, the recommendations made and the action taken as a result of these recommendations.***

National strategy to combat the vestiges of slavery. Recalling that in 2006 the Council of Ministers adopted the principle of formulating a national strategy to combat the vestiges of slavery and that an inter-ministerial committee was established for that purpose, the Committee previously requested the Government to indicate whether such strategy had effectively been adopted and to provide detailed information on the measures taken in this context.

In its report, the Government indicates that the national strategy to combat slave-like practices has not been adopted. However, the Commissariat for Human Rights, Humanitarian Action and Relations with Civil Society has established a national plan to combat the vestiges of slavery, with a budget of 1 billion ouguiyas, covering the fields of education, health and income-generating activities in the area known as “the triangle of poverty”. The Government adds that it has still not reached agreement with the United Nations Development Programme (UNDP) and the European Union (EU) concerning the terms of reference for the study on slavery that these institutions were proposing to finance.

The Committee notes the budgetary allocation for the national plan to combat the vestiges of slavery and observes that the plan, by focusing on education and income-generating activities, is designed to act on poverty in the region identified by the Government as being the “geographical zone concerned”. The Committee nevertheless observes that the Government still does not have at its disposal reliable data enabling it to evaluate the extent of the phenomenon of slavery and to identify its characteristics (social, geographical, etc.). Consequently, certain victims or populations at risk could be excluded from the measures envisaged in the context of the national plan. ***The Committee requests the Government to provide a copy of the national plan to combat slavery and to supply further information on the practical action adopted in the context of the plan. The Committee also draws the Government’s attention to the importance of a global strategy to combat slavery. By addressing poverty, the national plan covers one of the aspects of the action required to combat slavery, although it should also encompass other measures, such as those outlined above, namely raising the awareness of society, the police and the judicial authorities, and measures to combat the impunity of those responsible for these practices. In this context, the Committee requests the Government to indicate the measures adopted or envisaged with a view to the adoption of a global strategy to combat slavery and to indicate whether it intends, to that effect, to carry out a quantitative and qualitative study of the issue of slavery in Mauritania.***

The Committee also considers that, once they have been identified, it is important to envisage measures to support and reintegrate victims. It is necessary to provide material and financial support to victims so that they can lodge complaints, on the one hand, and to avoid them reverting to a situation of vulnerability in which their labour would once again be exploited. The objective is for the victims to be in a position to reconstruct their lives outside the household of their masters. ***The Committee requests the Government to indicate whether the national plan of action envisages the***

creation of structures intended to facilitate the social and economic reintegration of victims. The Committee asks the Government to indicate whether victims have access to compensation procedures for the personal and material damages suffered.

Mauritius

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

Article 1(d). Sanctions for participation in strikes. The Committee notes with **satisfaction** that the Employment Relations Act, 2008, has repealed the Industrial Relations Act, 1973, which contained provisions which punished the participation in strikes that violated compulsory arbitration procedures with sentences of imprisonment involving compulsory prison labour.

Article 1(c) and (d) of the Convention. Disciplinary measures applicable to seafarers. In its earlier comments, the Committee referred to provisions of the Merchant Shipping Act of 1986, under which certain breaches of discipline by seafarers (such as desertion, neglect or refusal to join the ship, absence without leave, neglect of duty) were punishable by imprisonment (involving compulsory prison labour), and seafarers could be forcibly conveyed on board ship for the purpose of proceeding to sea. Referring to paragraph 180 of its 2007 General Survey on the eradication of forced labour, the Committee recalled that, in order to be compatible with the Convention, provisions imposing penalties of imprisonment on seafarers for breaches of labour discipline should be restricted to actions that endanger the safety of the ship or the life or health of persons on board.

The Committee notes the adoption of the Merchant Shipping Act, No. 26 of 2007, which has repealed the Merchant Shipping Act of 1986. The Committee notes that the Act no longer contains a separate provision on offenses by seafarers, nor does it contain any provision making explicit reference to such breaches of discipline by seafarers as desertion, neglect or refusal to join the ship, or absence without leave. It notes, however, that under section 217(16)(n), the Act continues to treat disobedience as a criminal offence, punishable by imprisonment (involving the imposition of compulsory labour), in penalizing a seafarer who refuses to obey the master's order or neglects his duty.

The Committee hopes that the Government will take measures to further amend the Merchant Shipping Act, 2007, e.g., by limiting the scope of section 217(16)(n) to situations where the safety of the ship or the life or health of persons is endangered, so as to bring its provisions into conformity with the Convention, and that in its next report it will provide information about the progress made in this regard.

Mexico

Forced Labour Convention, 1930 (No. 29) (ratification: 1934)

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Trafficking in persons. Further to its previous comments on the trafficking of persons both in and outside the country for the purpose of forced prostitution, the Committee notes with **interest** the promulgation of the Act of November 2007 to prevent and punish the trafficking of persons, and its Regulations of February 2009.

The Committee notes that the Act has established an Inter-Ministerial Committee for the purpose of coordinating and following up the National Programme to prevent and punish the trafficking of persons and the standing programmes drawn up to combat such trafficking. The Inter-Ministerial Committee is a standing body and its members are the Ministers of the Interior, Communications and Transport, External Relations, Public Security, Labour and Social Security, Health and Social Development, Public Education, Tourism and Public Prosecution. Other institutions also participate, such as the National Institute for Women and the Committee for the Development of Indigenous Peoples.

The Committee hopes that the application of the Act will enable human trafficking to be combated effectively, since it constitutes a grave violation of the Convention. It hopes that the Government will provide information on the application of the Act and on any other measures taken with a view to the eradication of human trafficking. It requests the Government to provide a copy of the National Programme and the standing programmes created by the Inter-Ministerial Committee.

Adequate and strictly enforced penalties

In view of the fact that *Article 25* of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable as a criminal offence by penalties that are adequate and strictly enforced, the Committee sought information on the penalties imposed on persons condemned for human trafficking.

The Committee takes note of section 6 of the Act to prevent and punish human trafficking which lays down prison sentences ranging from 9 to 18 years for persons committing the offence of human trafficking. It also notes that pursuant to section 12(IX) of the Act, the Inter-Ministerial Committee shall compile statistical data on human-trafficking offences with a view to publishing them periodically. Statistics must include disaggregated information on the number of arrests, judicial proceedings, number of convictions of human traffickers and persons guilty of offences relating to human

trafficking in its various forms; the number victims, their sex, age, nationality, the type of victimization, their migratory status.

The Committee hopes that the Government will provide a copy of the report containing these statistics, together with a copy of relevant court decisions indicating the sentences imposed.

Participation of public employees in human trafficking

The Committee previously asked the Government for information on the measures taken or envisaged to ensure exhaustive investigation of complaints of complicity or direct participation by public employees in the trafficking of persons and on the penalties imposed.

The Committee notes that section 6 of the Act to prevent and punish the trafficking of persons establishes that the penalty of 9 to 18 years' imprisonment for trafficking in persons shall be increased by half where the offender is a public employee.

The Committee notes that in 2006, in its Concluding Observations, the United Nations Committee on the Protection of the Rights of all Migrant Workers and Their Families expressed concern at the cases of trafficking that involved public employees. *The Committee observes that the key role played by the forces of order in enforcing the law and the Convention is distorted in the event of corruption among their members, and hopes that the provisions of the new Act will allow the effective punishment of the intimidation of victims, complicity and direct participation of members of the forces of order in human trafficking. The Committee hopes that the Government will take the necessary steps to investigate properly the cases in which law enforcement personnel have been involved and that it will provide relevant statistical data.*

Protection of victims

The Committee takes note of sections 17 and 18 of the Act to prevent and punish human trafficking which concern protection and assistance for victims. Under these provisions, victims must be provided with facilities to remain in the country for the duration of the judicial proceedings. Advance programmes for immediate assistance must also be drawn up during and after the proceedings and they are to include training, guidance and, in the case of nationals, assistance in seeking employment.

The Committee notes section 9 of the Act which provides that when someone condemned for committing the offence of human trafficking is held penally responsible, the court's sentence shall include payment of compensation for damage to the victim to cover inter alia, medical treatment, transport including return to the place of origin, loss of income, and material and moral damages. Section 32 of the Regulations to the Act provides that the public prosecutor shall seek and compile sufficient evidence to justify and quantify the compensation referred to in section 9 of the Act. The Committee observes that this provision is important for the protection of victims since it establishes that the courts shall also decide on the compensation for which the offender is liable.

The Committee requests the Government to provide information on the application of these provisions indicating the number of victims who have benefited from the protection and compensation measures provided for therein.

Republic of Moldova

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1993)

The Committee notes that the Government's report contains no reply to previous comments. It must therefore repeat its previous observation which read as follows:

Article 1(b) of the Convention. Mobilizing of labour for purposes of economic development. In its earlier comments, the Committee noted a communication received in February 2004 from the Confederation of Trade Unions of the Republic of Moldova (CSRM), which contains observations concerning the application of the forced labour Conventions Nos 105 and 29, ratified by the Republic of Moldova. The CSRM referred, in particular, to certain provisions of the Law on mobilization, No. 1192-XV of 4 July 2002, the Law on the requisitioning of goods and services in the public interest, No. 1352-XV of 11 October 2002, and the government decision to approve regulations on the mobilization at the workplace, No. 751 of 24 June 2003, under which the central and local authorities, as well as military bodies, can exact compulsory labour from the population under certain conditions as a means of mobilizing and using labour for purposes of the development of the national economy. Thus, section 3(b) of the Law on the requisitioning of goods and services in the public interest referred to above stipulates that one of the aims of such requisitioning is to create conditions for the good functioning of the national economy and public institutions.

The Committee recalls that *Article 1(b)* of the Convention prohibits the use of any form of forced or compulsory labour "as a method of mobilizing and using labour for purposes of economic development" and expresses the hope that the Government will provide, in its next report, information on measures taken or envisaged in order to bring legislation into conformity with the Convention.

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

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

Myanmar

Forced Labour Convention, 1930 (No. 29) (ratification: 1955)

Historical background

1. In its previous comments the Committee has discussed in detail the history of this extremely serious case, which has involved gross, methodical and pervasive breaches of the Convention enduring for many years, and which is also manifested by the long-standing failure of the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

2. The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was being violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the Commission's report of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, an outcome which required concrete action to be taken immediately for each and every of the many fields of forced labour and to be accomplished through public acts of the Executive, promulgated and made known to all levels of the military and to the whole population; and
- that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

Developments since the Committee's previous observation

3. There have been numerous discussions and conclusions reached by ILO bodies, as well as further documentation received by the ILO, which have been considered by the Committee. These include the following:

- the report of the ILO Liaison Officer (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.C) submitted to the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009, as well as the discussions and conclusions of that Committee (ILC, 98th Session, *Provisional Record* No. 16, Part Three, A and Doc. D.5.B);
- the documents submitted to the Governing Body at its 304th and 306th Sessions (March and November 2009), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication by the International Trade Union Confederation (ITUC) received in September 2009 which includes an appendix of 74 documents amounting to more than 1,000 pages, a copy of which was transmitted to the Government for comments on the matters raised therein;
- the Agreement of 26 February 2009 to extend the trial period of the Supplementary Understanding of 26 February 2007; and
- the reports of the Government of Myanmar received on 10 and 24 March, 1 and 4 June, 27 August, 6 and 21 October 2009.

4. *The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism.* The Committee notes that the trial period of the complaints mechanism under the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO was extended on 26 February 2009 for one year, until 25 February 2010 (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.F., Appendix II). The SU supplements the Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar and has as its object to “formally offer the possibility to victims of forced labour to channel their complaints of forced labour through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. Information about the functioning of this important mechanism is discussed below in the sections on monitoring and enforcement.

5. *Discussion and conclusions of the Conference Committee on the Application of Standards.* The Committee on the Application of Standards once again discussed this case in a special sitting during the 98th Session of the Conference in June 2009. The Conference Committee, inter alia, acknowledged some limited steps on the part of the Government of Myanmar: the further extension of the SU for another year; certain activities concerning awareness raising of the complaints mechanism established by the SU; certain improvements in dealing with under-age recruitment by the military; and the distribution of publications relating to the SU. The Committee was however of the view that those steps were totally inadequate, and it strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry.

6. *Discussions in the Governing Body.* The Governing Body also continued its discussions of this case during its 303rd and 306th Sessions in March and November of 2009 (GB.304/5(Rev.), GB.306/6). Following the discussion in November 2009 the Governing Body, inter alia, reconfirmed the continuing validity of its previous conclusions and those

of the International Labour Conference. It noted the Government's cooperation regarding complaints of forced labour submitted under the SU, as well as the joint Government–ILO awareness-raising activities. However, it called on the Government to strengthen the capacity of the ILO in the framework of the SU to deal with complaints throughout the country and, in particular, to facilitate adjustments to the staff capacity of the Office of the Liaison Officer, as provided for in article 8 of the SU, so that an increased workload could be met. It also called for the immediate release of all persons currently detained being complainants, facilitators and others associated with the SU complaints mechanism. It further called for particularly accessible material in local languages for awareness raising, and it reiterated the need for an authoritative statement by the senior leadership against the continued use of forced labour and the need to respect freedom of association.

7. *Communication received from the International Trade Union Confederation.* The information contained in the communication from the ITUC received in September 2009, referred to in paragraph 3, is discussed below in the section on current practice.

8. *The Government's reports.* The reports received from the Government, referred to in paragraph 3, include replies to the Committee's previous observation. They include information, inter alia, about joint ILO–Ministry of Labour (MOL) publicity, awareness-raising and training activities on forced labour; the Government's continued cooperation with the various functions of the ILO Liaison Officer including monitoring and investigating the forced labour situation, the operation of the SU complaints mechanism, and the implementation of technical projects; and ongoing efforts the Government is making to enforce the prohibitions of forced labour. The reports also include a reply to the ITUC communication of September 2008 by way of a categorical dismissal of the allegations of forced labour contained therein. The Government also indicates that no action was being contemplated to amend or repeal the Village Act and Towns Act or to amend section 359 of the New State Constitution. Further references to the Government's reports are made in the discussion below.

Assessment of the situation

9. Assessment of the information available on the situation of forced labour in Myanmar in 2009 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

I. Amendment of legislation

10. With regard to the Village Act and the Towns Act, referred to in paragraph 2, the Committee notes the statement of the Government in its report received on 27 August 2009 that these laws “have been put into dormant [sic] effectively and legally” by Order No. 1/99 (Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907, and the Village Act, 1907) as supplemented by the Order of 27 October 2000. In its previous comments, the Committee has observed that the latter orders have yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the indication of the Government representative, during the discussion in the Governing Body at its 306th Session in November 2009, that these Acts were under review by the Ministry of Home Affairs, the Committee urges the Government to take the long overdue steps to amend or repeal them and thereby to bring its law into conformity with the Convention. The Committee hopes that in its next report the Government will provide information confirming that such steps have been taken.***

11. In its previous observation the Committee noted that the Government has included in section 359 of the New State Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens) a prohibition of forced labour containing an exception for “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with *regret* the statement of the Government in its report received on 27 August 2009, that section 359 of the New State Constitution “adequately captures the spirit” of the Convention. ***The Committee once again urges the Government to take steps to amend section 359 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.***

II. Measures to stop the exaction of forced or compulsory labour in practice

12. *Information available on current practice.* The Committee notes from the ITUC's communication referred to above, the well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2009 by military and civil authorities and to have occurred in all but one of the country's states and divisions. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, and to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities such as village heads, and has taken a wide variety of forms and involved a variety of tasks, including: construction of bridges and roads; forced portering for military personnel; prison labour, construction and maintenance of army camps; confiscation of food supplies and extortion of money; forced recruitment of child soldiers; forced sentry duty; and human minesweeping. The appendices also include translated copies

of more than 100 Order documents and Order “letters” for the requisition of forced (and uncompensated) labour issued between December 2008 and June 2009 to villagers and village heads in Chin, Karen, Mon, and Rakhaing States and in Irrawaddy, Pegu, and Tenasserim Divisions. The tasks and services demanded by these call-up orders involved, inter alia, portering for the military; road repair and other infrastructure projects, and on paddy plantations; production and delivery of thatch shingles and bamboo poles; recruitment of children as soldiers; attendance at meetings; provision of money and alcohol; provision of information on individuals and households; registration of villagers in State-controlled NGOs; and restrictions on travel and use of muskets. *Noting the conspicuous absence of any comment from the Government on such Order letters forwarded by the ITUC in previous years, the Committee requests that in its next report the Government respond in detail to the entirety of the September 2009 communication of the ITUC, and in particular to the Order letters referred to above which constitute conclusive evidence of the continued systematic imposition of forced labour by military and civil authorities throughout the country in 2009.*

13. The Committee notes the observations of the ILO Liaison Officer that the SU mechanism continues to function, yet “the overall forced labour situation remains serious in the country”. (GB.304/5/1(Rev.), paragraph 2). Victims of under-age military recruitment with substantiated complaints are regularly discharged from the military, yet the “continued and repeated illegal recruitment of children by military personnel” is also confirmed (GB.306/6, paragraphs 5 and 7). In terms of the experience with the SU complaints mechanism, the Liaison Officer refers to action taken by the authorities “to ensure that the practice of forced labour does not continue and further complaints are not received from that area” from which they originate (GB.306/6, paragraph 10). However, he also refers to the behaviour of local authorities, both civil and military, as well as judicial, who refuse to accept the validity of settlement agreements reached under the SU process, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law (GB.306/6, paragraph 15).

14. In its previous observations the Committee, recalling the Commission’s recommendation that concrete action needed to be taken immediately for each and every of the many fields of forced labour, identified four types of “concrete action” the Government needed to take, without which an end to imposition of forced labour in practice could not be achieved: issuing specific and concrete instructions on forced labour and on its prohibitions to civilian and military authorities; giving wide publicity to the prohibitions on forced labour; making adequate budgetary provisions for replacing forced labour with free wage labour; and monitoring the practice of forced labour and efforts to enforce its prohibitions.

15. *Issuing specific and concrete instructions.* In its previous observations the Committee has emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee has noted that, with one exception (namely, the “Additional Instruction” issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005 and noted by the Committee in its 2005 observation), the series of instructions and letters issued by Government authorities in 2000, 2004 and 2005, which were intended to secure compliance with the prohibition of forced labour under Order No. 1/99 and its supplementing Order of 27 October 2000, were not shown to have met these criteria.

16. The Committee notes that in its report received on 1 June 2009 the Government states only that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. The document submitted to the Governing Body in March 2009 (GB.304/5/1(Rev.)) includes an indication, without a date specified, that the General Administration Department had issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour; and that this instruction had been transmitted to township and village tract levels (paragraph 6). The Government indicates in its report received on 27 August 2009 that all instructions and directives “contain the details [sic] necessary measures for the implementation of the Orders”. The Committee also notes the observation of the ILO Liaison Officer that a number of forced labour complaints, particularly involving confiscation of farmers’ croplands, result from the improper application of economic and agricultural policies not directly concerned with the practice of forced labour, yet the Government has not agreed to consider policy-application training designed to stop the application of such policies in a way that leads to the imposition of forced labour (Report to the Conference Committee, paragraph 14; GB.304/5/1(Rev.), paragraph 9). The Committee notes that once again the information provided by the Government is grossly deficient. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and by which any other relevant government policies are to be implemented, without recourse to forced labour or forced contributions from the population, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. *The Committee requests the Government to provide in its next report information about the measures of this nature it is taking, including a translated and dated copy of the text of the instructions it states have been issued reconfirming the prohibition of forced labour and of the “necessary details” it states are contained in its directives and instructions.*

17. *Making adequate budgetary provisions for the replacement of forced and unpaid labour.* The Committee recalls that in its recommendations the Commission of Inquiry drew attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its

report received on 27 August 2009, the Government has reiterated previous indications in stating that it “provides the budget allotment including labour costs for all Ministries to implement their respective projects”. In previous observations the Committee, noting the information available on actual practice which shows that forced labour continues to be imposed in many parts of the country, particularly in those areas with a heavy military presence, has considered it obvious that any budgetary allocations that are specifically designated for the recruitment of free wage labour have not been adequate or adequately utilized. ***The Committee once again urges the Government to use state budget allotments to provide civil and military authorities at all levels the financial means for utilizing voluntary paid labour for needed tasks and services, and which are adequate enough to eliminate the material incentives for recourse to forced and unpaid labour, and that it report in detail on the steps taken to that end and on the effect of such measures in actual practice.***

18. *Giving publicity to and raising awareness about forced labour and its prohibitions.* The Committee notes from the Government’s reports and the documents submitted to the Governing Body and to the Conference Committee, the indications that a number of activities to give publicity to and raise awareness about the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2009. These included, inter alia, a joint ILO–MOL awareness-raising seminar for civil and military personnel held in Karen State and Northern Shan State in April and May of 2009; a joint seminar held in Rhakine State with participants representing both the civil and military authorities; and a joint presentation to a refresher training programme for senior township judges. A booklet comprised of the texts of the SU and related documents and translated into the Myanmar language, was prepared (GB.304/5/1(Rev.), paragraph 4) and distributed to civilian and military authorities nationwide, to civil society groups, and the general public for awareness-raising purposes (Report to the Conference Committee, paragraph 18). Some 16,000 copies had been circulated as of November 2009; however, the Government had yet to agree to the production of a simply-worded brochure, translated into local languages, which outlined the law against forced labour and the procedures available to victims to exercise rights under the law (GB.306/6, paragraph 10). The Government, in its reports received on 6 and 21 October 2009, refers to a number of activities carried out in May and August of 2009 by the Committee for the Prevention of Military Recruitment of Under-Age Children, including law lectures for officer trainees at military camps; supervision of training on recruitment procedures at military training schools and basic training units; and informational visits to numerous regiments and recruitment centres. A rural infrastructure project in the cyclone-affected area of the Irrawaddy Delta implemented by the Office of the ILO Liaison Officer with cooperation from the MOL, a second phase of which was carried out through September of 2009 but with a further extension declined by the Government, included awareness-raising seminars (GB.306/6, paragraph 22) and was reported to have played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour (GB.304/5/1(Rev.), paragraph 23). The Committee notes the indication of the Liaison Officer in November 2009 of an increase in new complaints filed under the SU complaints mechanism during the five-and-a-half-month period from mid-May through 28 October 2009, which he considered to be due to heightened awareness generally of citizens’ rights, the maturing and expansion of the facilitators’ network, and an increased readiness to present complaints. The Liaison Officer further observed, however, that awareness levels, particularly in rural areas, remained low (GB.306/6, paragraph 4). The Government had also yet to issue an authoritative public statement at the highest level, as called for by ILO supervisory organs, to clearly reconfirm its policy prohibiting all forms of forced labour throughout the country and its intention to prosecute perpetrators, both civilian and military (Report to the Conference Committee, paragraph 24, GB.306/6, Conclusions).

19. The Committee considers the publicity and awareness-raising activities noted above to represent a step forward, and the recent increase in new complaints received under the SU and partly attributed to such activities to be a positive sign; however, these measures continue to be largely ad hoc, partial and piecemeal in nature. The Committee reiterates the need for the Government to commit itself more fully to publicity and awareness-raising activities, to conceive and undertake them in a more coherent and systematic way, and with a view to the tangible effect they have on the observance in practice by civil and military authorities and personnel at all levels, and in all areas of the country, of their legal obligation not to exact forced labour, and on the efforts of victims of forced labour throughout the country to seek legal recourse. ***The Committee hopes that in its next report the Government will supply information on measures of this nature being taken or contemplated, including information about their practical effect, observed or anticipated.***

20. *Monitoring the situation of forced labour including efforts to enforce its prohibitions.* The Committee notes the important role in assisting the Government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour, which has been accorded to the ILO Liaison Officer, both under the broad mandate of the Understanding of 2002 and in the framework of the SU complaints mechanism. The Committee notes that several ad hoc investigation missions and inspection tours were carried out by the Liaison Officer and the Ministry of Labour in late 2008 and early 2009, and that presentations were made to NGOs and civil society groupings, in part, to seek their support in forced labour observation and reporting (GB.304/5/1(Rev.), paragraphs 5 and 6). A small sub-unit of the Office of the Liaison Officer has been established for dealing with under-age recruitment complaints and for monitoring and reporting on the child soldier situation nationwide (GB.306/6, paragraph 21). The Committee considers these to be positive steps. At the same time, however, the reach of the SU mechanism in a country the size of Myanmar is still very limited (GB.304/5/1(Rev.), paragraph 10); the ILO Liaison Officer is based in Yangon and is provided meagre facilities and a small staff (paragraph 12); he does not have the

authority to initiate complaints on the basis of his own observation or information (GB.306/6, paragraph 6) or his own investigations of under-age military recruitment (GB.304/5/1(Rev.), paragraph 7); and there are continuing practical impediments to the physical ability of victims of forced labour or their families to complain, such that a network of complaints facilitators remains a necessity (Report to the Conference Committee, paragraph 12). The complaints mechanism of the SU is being undermined (GB.306/6, paragraph 4) by the continued imprisonment of labour activists with a record of support in the facilitation of complaints under the SU (GB.306/6, paragraphs 14 and 16), by serious cases of apparent harassment and judicial retaliation against complaining victims, facilitators and other persons associated with complaints filed with the ILO (GB.306/6, paragraphs 11–14; Report to Conference Committee, paragraph 10), and by the refusal of local civil and military authorities, as well as local courts, to respect the terms of formal complaint settlements, notably the agreements in several land-confiscation cases that resulted from joint ILO–MOL investigative missions carried out in Magwe Division in December 2008 and March 2009 (GB.306/6, paragraphs 13 and 15). In this regard notations in the Register of cases under the SU mechanism indicate a number of cases, including Cases Nos 149, 150, 151, 204, 205 and 206, in which complainants chose not to pursue their claims out of fear of reprisals (GB.306/6, Appendix IV). A formal proposal of the ILO Liaison Officer to the Working Group for joint action to address these issues with a view to achieving lasting solutions has not been accepted by the Government (GB.306/6, paragraph 15). ***Noting the obligation of the Government under the 2002 Understanding and the 2007 SU to take appropriate steps to enable the ILO Liaison Officer to effectively discharge the work and responsibilities arising therein, including extending to his Office the requisite facilities and support, the Committee strongly urges the Government to take immediate steps to address the serious problems noted above, and it requests information from the Government in its next report on the progress of those steps. More generally, the Committee urges the Government to take necessary measures to ensure that a climate exists for a monitoring and investigation process that is effective, national in its reach and scope, and fully respected by all elements and all levels of society. It requests that in its next report the Government supply information on the progress of measures so taken or contemplated.***

III. Enforcement of penalties

21. The Committee recalls that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will, and that Order No. 1/99 and its supplementing Order of 27 October 2000, as well as the series of instructions and letters, issued by Government authorities in 2000, 2004 and 2005 with a view to securing the enforcement of those orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code or other applicable provisions of law. The Committee notes that none of the complaints under the SU mechanism assessed and forwarded by the ILO Liaison Officer to the Working Group for investigation and appropriate action resulted, in 2009, in a decision to prosecute perpetrators of forced labour. The notations in the Register of cases under the SU mechanism (as of 23 October 2009) indicate that in at least 14 of the closed cases, the Liaison Officer considered the penalties or punishment imposed or disciplinary actions taken to be inadequate, and that the Working Group has routinely rejected recommendations made for more serious sanctions to be applied (GB.306/6, Appendix IV). Recent cases involving complaints of under-age military recruitment have resulted in the discharge of the child victims but with only administrative sanctions, if any, imposed on the perpetrators; there have been no prosecutions under criminal law (GB.304/5/1, paragraph 7). In Case No. 127 an explicit recommendation by the Liaison Officer for criminal prosecution was rejected. The Committee notes the observation of the Liaison Officer that the need for the imposition of meaningful penalties on perpetrators “continues to be a concern, particularly in respect of cases involving military personnel” (GB.306/6, paragraph 7), and that in the most serious cases of under-age military recruitment the penalties remained inadequate (Report to the Conference Committee, paragraph 15). ***The Committee urges the Government once again to take measures to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and it requests the Government to supply information in its next report on the progress of measures taken to that end. The Committee hopes that fulfilment of the Government’s commitments as a party to the SU will be better reflected in the processing of cases forwarded to the Working Group by the ILO Liaison Officer, in terms of greater weight being accorded to the preliminary assessments of the Liaison Officer and a greater number of investigations leading to prosecutions, convictions and the imposition of criminal penalties rather than to case closures, and it requests information on progress being made in that vein.***

Concluding comments

22. In summary, the Committee observes that the Government has yet to implement the recommendations of the Commission of Inquiry; to wit: it has failed to amend or repeal the Towns Act and the Village Act; it has taken no concrete actions shown to have brought about in any significant and lasting way an end to the exaction of forced labour in practice; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code or other relevant provisions of law have been strictly enforced against civil and military authorities and personnel who are responsible for it. While the Office of the ILO Liaison Officer, by virtue of the broad mandate set forth under the Understanding of 19 March 2002, and the procedures and mechanisms provided for under the SU, has been accorded a critical role in assisting the Government in its efforts to bring about the elimination of forced labour, the robust and fully fledged cooperation of the Government that is vital to the fulfilment of that role, including the cooperation needed in extending the

requisite facilities and support and in engendering full respect for, and trust in, these special organs by the society at large, leaves much room for improvement. ***The Committee once again urges the Government to give credence to its expressed commitment to eliminate the use of forced labour in Myanmar and take the long overdue steps that are required to implement the recommendations of the Commission of Inquiry and achieve compliance with the Convention in law and in practice.***

Nicaragua

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1967)

Article 1, paragraphs (a) and (d) of the Convention. Penal sanctions for expressing political views and participating in strikes. In its previous comments the Committee referred to sections 522 and 523 of the Penal Code, by virtue of which penalties of imprisonment, which involve the obligation to work, could be imposed as punishment for the expression of political views (inciting non-observance of the Constitution, organizing or joining communist parties or parties with another name that support the same or similar ideas), or participation in strikes declared illegal.

The Committee notes with **satisfaction** that the provisions mentioned are not contained in the new Penal Code promulgated in May of 2008.

Nigeria

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

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

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views. In its earlier comments, the Committee referred to the Public Order Act, Cap. 382, Laws of the Federation of Nigeria, 1990, which contains provisions imposing certain restrictions on the organization of public assemblies, meetings and processions (sections 1–4), offences being punishable with imprisonment (sections 3 and 4(5)), which involves compulsory prison labour. The Committee recalled that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.

The Committee also refers in this connection to paragraphs 154 and 162 of its General Survey of 2007 on the eradication of forced labour, where it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the peaceful expression of views or of opposition to the established political, social or economic system. Since opinions and views opposed to the established system are often expressed at various kinds of meetings and assemblies, restrictions affecting the organization of such meetings and assemblies may give rise to similar problems of the application of the Convention, if such restrictions are enforceable with penalties involving compulsory labour.

While noting the Government's statement in the report that the Public Order Act, Cap. 382, does not impose restrictions on the organization of public assemblies by workers for trade union activities and there is therefore no conviction for violation, the Committee observes, however, that the above Act still imposes restrictions on the freedom of expression enforceable with sanctions involving compulsory labour, which is incompatible with the Convention.

The Committee therefore expresses the firm hope that the necessary measures will be taken in order to bring the provisions of the Public Order Act into conformity with the Convention. While having noted the Government's indication in its previous report that there was no record of the violation of the provisions of the Act, the Committee reiterates its hope that, pending the amendment, the Government will continue to provide information on its application in practice, including information on convictions for violation of its provisions and on penalties imposed.

In its earlier comments, the Committee referred to the Nigerian Press Council (Amendment) Act, 2002, which imposes certain restrictions on journalists' activities enforceable with penalties of imprisonment (section 19(1) and (5)(a)), which involves compulsory prison labour. ***While having noted the Government's repeated indication in its reports that no conviction has been made under the Act, and referring also to the explanations in point 1 of this observation, the Committee reiterates its hope that measures will be taken to repeal or amend these provisions in order to bring the legislation into conformity with the Convention and the indicated practice. Pending the amendment, the Government is requested to continue to provide information on the application of these provisions in practice, indicating, in particular, any convictions under the above Act and penalties imposed.***

Article 1(c) and (d). Punishment for breaches of labour discipline and for participation in strikes. In its earlier comments, the Committee referred to the following provisions enforceable with sanctions of imprisonment (which involves compulsory prison labour):

- section 81(1)(b) and (c) of the Labour Decree, 1974, under which a court may direct fulfilment of a contract of employment and posting of security for the due performance of so much of the contract as remains unperformed, and a person failing to comply with such direction may be committed to prison;
- section 117(b), (c) and (e) of the Merchant Shipping Act, under which seafarers are liable to imprisonment for breaches of labour discipline even in the absence of a danger to the safety of the ship or of persons;
- section 17(2)(a) of the Trade Disputes Act, Cap. 432, of 1990, under which participation in strikes may be punished with imprisonment.

The Committee previously noted the Government's indications that all these provisions were under consideration by the National Labour Advisory Council. It also noted the Government's indication in its 2005 report that the review of the labour laws had been completed and submitted to the federal Government for further action. In its latest report, the Government states that the

provisions referred to above have been addressed in the Collective Labour Relations Bill. *The Committee expresses the firm hope that all of the legislative provisions referred to above will soon be amended, so as to bring legislation into conformity with the Convention, and that the Government will indicate, in its next report, the progress achieved in this regard.*

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

Pakistan

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

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

The Committee notes with *regret* that no comments have been received from the Government in reply to the following communications received from the organizations of workers, which contain observations concerning the application of the Convention by Pakistan: communications dated 31 August and 19 September 2006 received from the International Confederation of Free Trade Unions (now – the International Trade Unions Confederation (ITUC)), communication dated 30 March 2007 received from the All Pakistan Federation of United Trade Unions (APFUTU) and communication dated 2 May 2007 received from the Pakistan Workers Federation (PWF). The Committee previously noted that the above communications were sent to the Government, in September and October 2006 and in May and June 2007, for any comments it might wish to make on the matters raised therein. The Committee also notes two new communications received from the ITUC (dated 29 August 2008) and PWF (dated 21 September 2008), which were sent to the Government, in September and October 2008, for any comments it might wish to make on the matters raised therein. *The Committee hopes that the Government will not fail to supply its comments in its next report, so as to enable the Committee to examine them at its next session.*

I. Articles 1, paragraph 1, and 2, paragraph 1, of the Convention

A. Debt bondage

In its earlier comments, the Committee noted the difficulties in the implementation of the Bonded Labour System (Abolition) Act (BLSA), 1992. The Committee notes the communications from the All Pakistan Federation of Trade Unions (APFTU) and the All Pakistan Trade Union Federation (APTUF) dated 26 April 2005 and 14 May 2005, respectively, which contain comments on the observance of the Convention and which were forwarded to the Government in June and July 2005 for any comments it might wish to make on the matters raised therein. Among other things, the APTUF observed that the BLSA was not being implemented, and the APTUF similarly observed that laws, including those concerning bonded labour, were not being enforced due to the absence of adequate labour inspection machinery. *Since no comments from the Government on these communications have been received to date, the Committee hopes the Government will provide them in its next report.*

The Committee notes the National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers of 2001, which the Government communicated in its latest report. The Committee notes that under the plan of action, a National Committee for the Abolition and Rehabilitation of Bonded Labour was to be established to coordinate the implementation of the plan, with the specific functions of:

- reviewing the implementation of the BLSA and of the action plan;
- monitoring the work of the district-level vigilance committees set up under section 15 of the BLSA and the Bonded Labour System (Abolition) Rules, 1995; and
- addressing concerns of national and international bodies on bonded and forced labour issues.

The Committee notes the statement by the Ministry of Labour in its 2005 draft Labour Protection Policy, that the 2001 National Policy and Plan of Action “clearly establishes the intentions and commitment of Government to implement in full” the Convention. The Committee further notes, however, the statement of the Ministry of Labour in its document, “Labour Policy, 2002”, dated 23 September 2002, that the targets and activities set out in the 2001 National Policy and Plan of Action “need to be actively implemented”.

Implementation of National Policy and Plan of Action for the Abolition of Bonded Labour

The Committee notes that in its latest report the Government specifies recent initiatives against bonded labour it is taking or contemplating, apparently within the framework of its 2001 National Policy and Plan of Action, including:

- establishment of a Legal Aid Service Unit in the Labour Departments of Punjab and NWFP with a toll free help line to provide legal advice and assistance to needy bonded labourers, with a plan envisaged to hire legal experts to provide legal assistance;
- launching a scheme to construct low-cost housing for freed bonded labour families in the agricultural sector of Sindh, which will provide shelter to these families and contribute to their rehabilitation;
- organizing training workshops for key district government officials and other concerned stakeholders to enhance their capacity and enable them to draw up district-level plans to identify bonded labourers and activate the district vigilance committees; and
- incorporating the issue of bonded labour into the syllabi of judicial, police and civil service academies, in order to help sensitize judicial, law enforcement, and civil service officials to the problem, and holding capacity-building seminars.

The Committee notes the Government's indication that, under the BLSA, inspection functions in the area of bonded labour have been assigned to the regular labour inspectorate, as well as to local government heads/officials and police departments. The Committee also notes from the 2001 action plan document, that the fund mandated by the BLSA Rules had been established and an initial deposit of 100 million rupees had been made. The Government, in its report received in January 2005 (on the application of the Abolition of Forced Labour Convention, 1957 (No. 105)), indicates that work has started on making the Bonded Labour Fund functional, and that a project manual was being prepared to provide guidelines to executing agencies for preparing project proposals for financing.

While recognizing these government initiatives to try and combat bonded labour, the Committee hopes that necessary measures are being taken or envisaged to ensure the effective implementation of the 2001 National Policy and Plan of Action

for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers. The Committee hopes that in its next report the Government will provide detailed information on progress made and practical results achieved, including copies of relevant reports on all of the activities, projects, institutions and mandates referred to in the action plan. The Committee further asks that the Government provide information clarifying the present status of the district vigilance committees as well as their role in, and relationship to, the labour inspection process, and that it supply information about actions that both the district magistrates and vigilance committees are taking to ensure the effective implementation of the BLSA and the fulfilment of their other functions as mandated under the BLSA and the 1995 rules, such information to include copies of monitoring/evaluation reports prepared by the National Committee for the Abolition and Rehabilitation of Bonded Labour.

Special programme of action to combat forced/bonded labour

The Committee in its report (on the application of Convention No. 105), received in January 2005, the Government indicates that since mid-2002 it has been carrying out a special Programme of Action to Combat Forced/Bonded Labour with technical assistance from the ILO. The Government indicates that under the programme the ILO was, among other things, to provide training on human rights and bonded labour concerns to the District Nazims, members of the vigilance committees, and judicial and law enforcement officials; to assist the Government in developing partnerships with stakeholders, employers, and workers; to provide advice on the creation of a high-level national body to combat forced labour; and to assist it in launching demonstration projects to test the feasibility of approaches adopted to tackle the problem. **The Committee asks that, in its next report, the Government provide more detailed and comprehensive information concerning this programme and its implementation, including copies of the most recent reports evaluating programme activities and outcomes.**

Debt bondage: Data-gathering measures to ascertain the current nature and scope of the problem

The Committee notes that under the 2001 National Policy and Plan of Action a national survey to ascertain the extent of bonded labour was to have been undertaken by January 2002, yet it notes the Government's indication in its latest report that no such quantitative survey has yet been carried out to measure the quantum of the problem in the country.

The Committee notes a 2004 report of an initiative of the Ministry of Labour and the ILO, entitled "Rapid Assessment Studies of Bonded Labour in Different Sectors in Pakistan", which contains findings and conclusions from a series of rapid assessment studies conducted from October 2002 to January 2003 by teams of social scientists and researchers under the auspices of the Bonded Labour Research Forum (BLRF), the aim of which was to explore the existence and nature of bonded labour in ten sectors – namely, agriculture, construction, carpet weaving, brick making, marine fisheries, mining, glass bangles, tanneries, domestic work, and begging – and to seek preliminary conclusions. The project represented the first phase of a larger research programme and was intended to lay the groundwork for detailed sector studies and a national survey to determine the incidence of bonded labour across the country, as foreseen in the Government's National Plan of Action. The rapid assessment studies focused primarily on debt bondage but also explored other forms of bonded and forced labour without debt.

The Committee notes the conclusion in the report that the findings in "the sectors covered ... yield fresh insights into the workings of the *peshgi* (advance payments) system and its possible relationship with bonded labour and other coercive labour arrangements". The correlation was found to be "relatively weak" in some sectors but present in others. The report also emphasizes the findings that there exist "other forms of labour bonding and coercion ... not clearly associated with the *peshgi* system".

The Committee reiterates its hope that the Government, as a follow-up to the preliminary part of the research programme noted above and in accordance with the mandate of its 2001 National Policy and Plan of Action, will undertake a statistical survey on bonded labour throughout the country, using a valid methodology in cooperation with employers' and workers' organizations and with human rights organizations and institutions, and that it will supply information on the progress achieved in this connection.

Bonded labour in agriculture

In its previous observation, the Committee noted the Government's view that there are built-in deficiencies in its labour laws on dealing with labour engaged in the agricultural sector. **The Committee asks once again that the Government supply further information on the issue, as well as information on measures taken or envisaged to remedy the situation, in the context of the eradication of bonded labour in agriculture.**

B. Trafficking in persons

The Committee notes the promulgation of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO), which entered into force in October 2002. Among other things, the ordinance criminalizes "human trafficking", which it defines, in part, as trafficking that entails the use of coercion for the purpose of attaining any benefit or for the purpose of exploitative entertainment, slavery or forced labour (sections 2(h) and 3); makes trafficking offences punishable by sanctions involving sentences of imprisonment of up to seven years and, in cases of trafficking of women, of up to ten years, as well as fines (section 3); provides for special sentences for trafficking offences committed by organized criminal groups (section 4) and for repeated offences (section 5); provides for the payment of compensation and expenses to victims (section 6); and makes trafficking in persons cognizable by the courts as a prosecutable offence (sections 8 and 10). **The Committee asks that in its next report the Government supply a copy of the most recent rules and regulations that have been promulgated to implement the PCHTO.**

Trafficking in persons. Data-gathering measures to ascertain the current nature and scope of the problem

The Committee notes the 2005 report of the International Organisation for Migration (IOM) entitled, "Data and research on human trafficking: A global survey", which indicates that Pakistan continues to be a major destination country for trafficked women as well as a major transit country of persons trafficked from Bangladesh to Middle Eastern countries, where women are exploited for sexual exploitation. The report indicates that men are seldom viewed as "victims of trafficking" and more often in the context of irregular migration, and that this shortcoming has limited the availability of knowledge and data on trafficking in men in South Asia. The report emphasizes that, while available studies contribute to an understanding of the causes, sources, destinations, and consequences of trafficking, current statistics on trafficking in persons are outdated or anecdotal, and there is an urgent need to carry out comprehensive national baseline surveys with the aim of developing a South Asian database on trafficking in persons. **In light of these indications, the Committee hopes that the Government will undertake a national baseline survey on trafficking in persons, in cooperation with employers' and workers' organizations as well as other societal organizations and institutions, and that it will supply information on the progress achieved in this connection.**

Practical measures aimed at the effective elimination of trafficking in persons

The Committee notes the information concerning the Government's collaboration with the IOM in an action programme on migration issues which includes, as a significant component, the problem of trafficking in persons. The Committee notes that, at the 12th Summit of the South Asian Association for Regional Cooperation (SAARC) in Islamabad in January 2004, the Government agreed to the Islamabad Declaration, which among other things calls on member States to "move towards an early ratification" of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted in 2002 (paragraph 19). The Committee also notes that in May 2005, representatives of the Government and other participants at the Fifth South Asia Ministerial Conference adopted the "Islamabad Declaration: Review and Future Action", in which, among other things, they "recognize the gaps and challenges in implementation" in a number of areas, including an inadequate commitment, awareness, measures, and resources to combat violence against women (paragraph 5(g)); and the lack of regional cooperation and partnership initiatives to address problems of regional concerns such as trafficking in women (paragraph 5(q)). ***The Committee hopes that the Government will continue to develop policies and take measures that are aimed at the effective elimination of trafficking in persons in both law and practice, in conformity with the Convention, and that in its next report it will supply detailed information in this connection.***

II. Restrictions on voluntary termination of employment

In its earlier comments, the Committee referred to the information supplied by the Government representative to the Conference Committee in June 1999, according to which an amendment to the Essential Services (Maintenance) Act of 1952, under which government employees who unilaterally terminate their employment without consent from the employer are subject to a term of imprisonment, was to be considered by the tripartite Commission on the Consolidation, Simplification and Rationalization of Labour Laws. The Government indicated in its report of 2000 that the Commission's final report was expected at the end of September 2000. ***As the Government's latest report contains no new information on this subject, the Committee once again requests the Government to supply a copy of the Commission's report. The Committee expresses its firm hope that the Government will take the necessary steps to bring the federal and provincial essential services Acts into conformity with the Convention and will report on the progress achieved in this regard.***

The Committee also repeats its request for copies of the full texts of the following Ordinances enacted in 2000: the Removal from Service (Special Powers) Ordinance, No. XVII of 27 May 2000; the Civil Servants (Amendment) Ordinance, No. XX of 1 June 2000; and the Compulsory Service in the Armed Forces (Amendment) Ordinance, No. LXIII of 6 December 2000.

III. Article 25. Adequacy and enforcement of penalties for the exaction of forced or compulsory labour. Enforcement of Bonded Labour System (Abolition) Act, 1992

The Committee previously noted the allegations of the ICFTU, contained in its communications of 2001, according to which the Bonded Labour System (Abolition) Act, 1992 (BLSA) had not been applied in practice, as few officials were willing to implement it for fear of incurring the wrath of the landlords, thus allowing the latter to use forced labour with impunity. ***Recalling that Article 25 of the Convention provides that the illegal exaction of forced or compulsory labour shall be punishable by penalties that are really adequate and strictly enforced, the Committee once again requests information on the number of inspections under the BLSA, as well as information about any legal actions taken against employers of bonded labourers, including copies of any court rulings in such cases.***

Enforcement of Prevention and Control of Human Trafficking Ordinance

With regard to enforcement of the Prevention and Control of Human Trafficking Ordinance, 2002 (PCHTO), the Committee notes a press statement by the Minister of the Interior in June 2005 that, during the period from 2003 to May 2005, 888 trafficking-related complaints under the PCHTO were registered with the Federal Investigation Agency; that as many as 737 suspected traffickers were arrested; that in 336 of these cases investigations subsequently led to court prosecutions; and that these prosecutions resulted in 85 convictions and four acquittals, with the remaining cases still pending in trial. The Committee also notes from the report of the Prime Minister Secretariat, "One year performance of the Government, August 2004 August 2005", dated 29 August 2005, a section on "Curbing human trafficking" in a chapter entitled "Improving law and order", which states:

The Government through the Federal Investigation Agency has adopted stringent measures to curb human trafficking ... For sustained action against human trafficking, Anti-Trafficking Units (ATUs) have been set up at FIA HQ and in zonal directorates. These outfits are dedicated units for the enforcement of laws relating to prevention of human trafficking to and from Pakistan. To solicit support from the Civil Society, leading NGOs have also been co-opted for information and assistance.

The Committee also notes the indication in the 2005 Annual Report of the Law Division of the Ministry of Law, Justice and Human Rights that, while the Government has promulgated an ordinance to criminalize human trafficking, "a lot needs to be done for effective implementation of that ordinance".

The Committee asks that in its next report the Government provide updated information on the enforcement of the PCHTO, including statistics concerning the numbers of trafficking-related complaints registered, individuals arrested, court proceedings initiated, convictions obtained, penalties imposed, and victim compensation awarded, including copies of all relevant court rulings. More generally, it hopes that the Government, in accordance with Article 25 of the Convention, will endeavour to both assess whether and ensure that the penalties provided under the PCHTO that punish trafficking are really adequate and will strive to ensure that the PCHTO is strictly enforced, and that it provide information in this connection, including updated information concerning the evolution of the system of anti-trafficking units and assessing its strengths and shortcomings.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1960)

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

I. The Committee notes with *regret* that the Government has not yet responded to the observations made in 2001 by the International Confederation of Free Trade Unions (now the International Trade Union Confederation, ITUC), and in 2005 by the All Pakistan Federation of Trade Unions (APFTU) concerning the application of the Convention, which were forwarded to the Government in 2001 and 2005 respectively. The Committee also notes a new communication received from the Pakistan

Workers' Federation (dated 21 September 2008), which was sent to the Government in October 2008 for any comments it might wish to make on the matters raised therein. ***The Committee hopes that the Government will not fail to supply its comments concerning all the abovementioned communications of workers' organizations in its next report, so as to enable the Committee to examine them at its next session.***

II. *Article 1(c) and (d) of the Convention. Forced or compulsory labour as punishment for breach of contract or participation in strikes in non-essential services.* In earlier comments made under the present Convention and the Forced Labour Convention, 1930 (No. 29), the Committee has noted that the Pakistan Essential Services (Maintenance) Act (ESA), 1952, and corresponding provincial Acts, prohibit employees from leaving their employment, even by giving notice, without the consent of the employer, as well as from striking, subject to penalties of imprisonment that may involve compulsory labour. The Committee has also noted previous comments, made under the Convention by the APFTU, according to which the Government has applied provisions of the ESA to workers employed in non-essential services, including various public utilities such as the Water and Power Distribution Authority (WAPDA), the Karachi Port Trust, and Sui Gas, as well as railways and telecommunications, and these workers cannot resign from their service and cannot go on strike.

The Committee notes the indication of the Worker member of Pakistan, in the Conference Committee at the 90th Session of the International Labour Conference in June 2002, that management in the Karachi Electric Supply Corporation, and in the telecommunications and railway industries generally, had been making use of the provisions of the ESA to prevent workers from presenting their legitimate demands and to refuse any type of social dialogue. He referred in particular to workers in Quetta who had gone on strike and been arrested. The Committee also notes, from the APFTU communication dated 26 April 2005, the indication that the provisions of the ESA continue to be applied to ban strikes in non-essential services.

The Committee notes the indications by the Government representative in the Conference Committee in June 2002 that, while that the Act has remained on the books, that most public sector organizations to which the ESA was applied were undergoing privatization, including WAPDA and the telecommunications and oil and gas sectors, and that the Act would therefore no longer be applicable when those organizations had been fully privatized. The Committee notes from its latest report the Government's indication, which it has repeated for a number of years, that the provisions of the ESA are applied restrictively.

The Committee points out once again, with reference to the explanations provided in paragraphs 110 and 123 of its General Survey of 1979 on the abolition of forced labour, that the Convention does not protect persons responsible for breaches of labour discipline or strikes that impair the operation of essential services in the strict sense or in other circumstances where life and health are in danger; however, in such cases there must exist an effective danger, not mere inconvenience. Furthermore, all the workers concerned – whether in any employment under the federal and provincial governments and local authorities or in public utilities, including essential services – must remain free to terminate their employment by reasonable notice; otherwise, a contractual relationship based on the will of the parties is changed into service by compulsion of law, which is incompatible with both the present Convention and the Forced Labour Convention, 1930 (No. 29), likewise ratified by Pakistan. The Committee also recalls that, in its comments to the Government on its application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has observed that the ESA includes services which cannot be considered essential in the strict sense of the term, including, among others, oil production, postal services, railways, airways, and ports, and it has for some time requested that the Government amend the ESA so as to ensure that its scope is limited to essential services in the strict sense of the term. The Committee refers the Government to its comments under Convention No. 87 on this point. ***It reiterates its firm hope that the ESA, and corresponding provincial Acts, will be repealed or amended in the near future so as to ensure the observance of the Convention, and that the Government will report on the action taken to this effect.***

Forcible return of seafarers on board ship. The Committee has, from the time of the Government's ratification of the Convention in 1960, referred to sections 100 to 103 of the Merchant Shipping Act, 1923, under which penalties involving compulsory labour may be imposed in relation to various breaches of labour discipline by seafarers, and seafarers may be forcibly returned on board ship to perform their duties. The Committee notes the promulgation of the Pakistan Merchant Shipping Ordinance (PMSO), 2001 (No. LII of 2001). It observes that the PMSO still contains provisions, particularly sections 204, 206, 207, and 208, which would permit, in respect of various breaches of labour discipline, such as absence without leave, wilful disobedience, or combining with the crew in "neglect" of duty, the imposition of sanctions involving the forcible conveyance of seafarers on board ship, as well as imprisonment (which may involve compulsory labour by virtue, inter alia, of section 3(26) of the General Clauses Act, 1897). ***The Committee regrets that, after decades of comments addressed to the Government on this point, the Government has promulgated new legislation without eliminating the divergences between its national legislation and the Convention. The Committee hopes that the Government will amend or repeal without delay those provisions of the 2001 Ordinance that prescribe penalties for breaches of labour discipline under which seafarers may be imprisoned or forcibly returned on board ship to perform their duties. The Committee asks the Government to provide information on the progress made in this regard. The Government is also asked to provide a copy of the implementing rules or regulations promulgated under section 603 of the 2001 Ordinance.***

Article 1(a) and (e). Forced labour as a means of political coercion. In comments made for many 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, 23, 24, 27, 28, 30, 36, 56 and 59) 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 the promulgation of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, which repeals the West Pakistan Press and Publications Ordinance, 1963 (section 45). Under the registration provisions of the 2002 Ordinance, a District Coordination Officer must deny authentication of a declaration, which must be made as a prerequisite for publication of a newspaper, in cases where the declaration has been filed by a person convicted of a criminal offence involving moral turpitude or for wilful default of public dues (section 10(2)(c)). Where the District Coordination Officer fails to take action to authenticate or to pass an order denying authentication of a declaration within a period of 30 days, the declaration is deemed to be authenticated (section 10(4)). Anyone who, among other things, edits, prints, or publishes a newspaper in contravention of the Ordinance – for instance, without having made a declaration or without having a declaration authenticated – is liable to punishment involving a sanction of imprisonment (which may involve compulsory labour) for a term of up to six months (sections 5 and 28). ***Referring to paragraph 133 of the General Survey of 1979 on the abolition of forced labour, the Committee asks the Government in its next report to indicate in relation to the abovementioned provisions of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, the measures taken or envisaged to ensure, in accordance with Article 1(a) of the Convention, that no form of forced or compulsory labour (including labour exacted as a consequence of a sentence of imprisonment) may be imposed as a means of political coercion or as a punishment for***

expressing political views or views ideologically opposed to the established political, social or economic system. The Committee also asks the Government to provide information on the application in practice of sections 5, 10(2)(c), 28 and 30 of the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002, including the number of persons arrested and convicted under these provisions, as well as the particulars of any judicial decisions which may serve to define or clarify the effect of the abovementioned provisions. The Government is also requested to supply a copy of the text of any rules promulgated under section 44 of the Ordinance to implement it.

As regards the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, the Committee notes the indications by the Government representative in the Conference Committee in June 2002 that the application of these statutes was extremely restrictive. The Committee also notes from the Annual Reports of 2003 and 2005 of the Government's Law and Justice Commission, as well as its Report No. 56, that the Commission, in response to a Supreme Court ruling, had approved and drafted legislative proposals for certain amendments to be made to the Security of Pakistan Act, 1952, and that proposed reforms to other legislation, including the Political Parties Act, 1962, were under consideration. *The Committee hopes that the concerns of the Committee will be taken into consideration in the work of the Law and Justice Commission. More generally, the Committee hopes that the Government will soon take the necessary measures to bring the abovementioned provisions of the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, into conformity with the Convention, and that it will report on progress achieved. Pending action to amend these provisions, the Government is requested to supply updated information on their practical application, including the cases registered, the number of convictions, and copies of any relevant court decisions.*

The Committee notes that, in its latest report, the Government has indicated, with reference to the non-conformity with the Convention of the Pakistan Essential Services (Maintenance) Act, 1952, that "Pakistan is serving in the front line of the war against terrorism and in retaliation the unscrupulous elements off and on try to disrupt the supply chain of oil as well as natural gas to make stand still the whole economy of the country". It notes the similar indication by the representative of the Government in the Conference Committee in June 2002, with reference to the Security of Pakistan Act, 1952, and the Political Parties Act, 1962, that Pakistan "was in the forefront of the fight against terrorism and faced very difficult political circumstances", and that under the present circumstances any change to the existing laws might not be feasible, particularly those related to the security of the country. The Committee observes that these laws, as well as the Merchant Shipping Act, 1923, have been the subject of comments by the Committee ever since the Government ratified the Convention in 1960, and that they have also been the subject of numerous discussions in the Conference Committee. The Committee would also like to point out that, if counter-terrorism legislation responds to the legitimate need to protect the security of the public against the use of violence, it can nevertheless become a means of political coercion and a means of punishing the peaceful exercise of civil rights and liberties, such as the freedom of expression and the right to organize. The Convention protects these rights and liberties against repression by means of sanctions involving compulsory work, and the limits which may be imposed on them by law need to be properly addressed.

The Committee hopes that, as a matter of urgency, the Government will at long last take the necessary measures to bring the provisions of the national legislation mentioned above into conformity with the Convention, and that it will report on progress achieved.

The use of forced or compulsory labour as a means of religious discrimination. In its earlier comments, the Committee referred to sections 298B(1) and (2) and 298C of the Penal Code, inserted by the Anti-Islamic Activities of Qadiani Group, Lahori Group and Ahmadi (Prohibition and Punishment) Ordinance, No. XX of 1984, under which any person of these groups who uses Islamic epithets, nomenclature and titles is subject to punishment with imprisonment (which may involve compulsory labour) for a term that may extend to three years.

The Committee has noted the Government's repeated statements in its reports that religious discrimination does not exist and is forbidden under the Constitution, which guarantees equal citizenship and fundamental rights to minorities living in the country. The Government states that subject to law, public order and morality, the minorities have the right to profess, propagate their religion and establish, maintain and manage their religious institutions. In the Government's view, the Penal Code imposes equal obligations on all citizens, whatever their religion, to respect the religious sentiments of others, and an act that impinges upon the religious sentiments of other citizens is punishable under the Penal Code. The Government indicates that religious rituals referred to in Ordinance No. XX are prohibited only if exercised in public, whereas if they are performed in private without causing provocation to others, they do not fall under the prohibition.

While noting this information, the Committee points out once again, that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence. But where punishment involving compulsory labour is aimed at the peaceful expression of religious views, or where such punishment (for whatever offence) is meted out more severely, or even exclusively, to certain groups defined in social or religious terms, this falls within the scope of the Convention. *The Committee therefore reiterates that it firmly hopes the necessary measures will be taken in relation to sections 298B and 298C of the Penal Code, so as to ensure the observance of the Convention. Pending action to amend these provisions, the Committee requests that in its next report the Government provide updated and detailed factual information on the practical application of the provisions of sections 298B and 298C of the Penal Code, including a record of cases registered, the number of persons convicted, and copies of court decisions.*

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

Papua New Guinea

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1976)

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

Article 1(c) and (d) of the Convention. Penal sanctions applicable to seafarers for various breaches of labour discipline. In comments it has been making since 1978, the Committee has been referring to certain provisions of the Seamen (Foreign) Act, 1952, under which a seafarer belonging to a foreign ship who deserts or commits certain other disciplinary offences is liable to imprisonment which involves an obligation to perform labour (section 2(1), (3), (4) and (5)). The Committee also referred to section 1 of the same Act and section 161 of the revised Merchant Shipping Act (chapter 242) (consolidated to No. 67 of 1996), which stipulate that foreign seafarers deserting their ship may be forcibly returned on board ship.

As the Committee repeatedly pointed out, referring also to the explanations in paragraph 179 of its General Survey of 2007 on the eradication of forced labour, sanctions of imprisonment (involving an obligation to perform labour) would only be compatible with the Convention where they are clearly limited to acts endangering the safety of the ship or the life or health of the persons, but not where they relate more generally to breaches of labour discipline, such as desertion, absence without leave or disobedience; similarly, provisions under which seafarers may be forcibly returned on board ship are not compatible with the Convention.

The Committee notes the Government's indication in the report that numerous requests concerning the Committee's comments have been communicated to the Department of Transport, which is responsible for administering and applying the above legislation, with a view to amending these provisions. It also notes the Government's renewed commitment to review these provisions in connection with the overall revision of the labour legislation being undertaken with ILO technical assistance, as well as the Government's indication that it is hopeful the amendment of these provisions will take place in 2005–06.

While noting these indications, the Committee expresses firm hope that the above provisions of the Seamen (Foreign) Act and the Merchant Shipping Act will soon be brought into conformity with the Convention and asks the Government to report the progress achieved in this regard.

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

Paraguay

Forced Labour Convention, 1930 (No. 29) (ratification: 1967)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. *Debt bondage of indigenous communities in the Chaco.* In its previous observation the Committee once again expressed its concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. It noted the report *Debt bondage and marginalization in the Chaco of Paraguay*, carried out under the technical cooperation project called “Forced labour, discrimination and poverty reduction among indigenous peoples”, which is part of the Special Action Programme to combat Forced Labour (SAP-FL) of the ILO. The investigation summarized in the report confirms the existence of forced labour practices, specifying a number of factors that lead to situations of forced labour encountered by many indigenous workers on the estates of Chaco: the payment of wages to workers that are below the legal minimum; providing them with insufficient quantities of food; charging excessive prices for those provisions available for purchase, there being no access on the estates to other markets or means of subsistence (hunting and fishing); and the payment of partial or total wages in kind. All of these lead to the indebtedness of workers which obliges them, and in many cases their families as well, to work permanently on the estates. The report was confirmed during workshops conducted separately with organizations of employers and workers as well as for the inspection services.

The Committee also noted the comments of the International Trade Union Confederation (ITUC) concerning violations of section 47 of the Labour Code, which provides that a contract will be void when it fixes a salary under the minimum wage or if it involves direct or indirect obligations to buy goods or food from shops, businesses or a place determined by the employer. Articles 231 and 176 of the Labour Code provide that only 30 per cent of wages can be paid in kind, and the value of these goods must be the same as those at the nearest urban settlement. The ITUC asserts that such provisions are not being enforced in practice, thus creating conditions of indebtedness leading the indigenous workers of the Chaco into situations of forced labour.

The Committee observed that debt bondage constituted forced labour within the meaning of the Convention and a serious violation of the same, and it hoped that in its next report the Government would communicate information on the various measures taken or envisaged to combat practices by which forced labour is imposed on the indigenous workers of Chaco.

The Committee notes the discussion which took place in the Committee on the Application of Standards of the Conference in 2008 and its conclusions, in which it manifested its concern about the consequences for the indigenous workers of their situation as landless peasants, as well as the vulnerability of these workers. The Conference Committee considered that measures of an urgent nature needed to be taken.

Measures taken by the Government

Decent Work Country Programme. The Committee notes that the Government, through a tripartite initiative, has concluded a Decent Work Country Programme with the ILO, of which the objectives include better compliance with labour standards, through programmes to eradicate forced labour and the worst forms of child labour as well as strengthening labour inspection and the adaptation of Paraguayan laws to the ILO Conventions ratified by the country.

Commission on Fundamental Rights at Work and the Prevention of Forced Labour. *Action plan concerning forced labour.* The Committee notes that by Resolution of the Minister of Labour and Justice No. 230 of March 2009 a Commission on Fundamental Rights at Work and the Prevention of Forced Labour was established. The action plan developed by the Commission includes, besides actions of awareness raising among sectors of workers and employers, a radio campaign of one month to raise awareness among the society at large and a training activity for labour inspectors followed by a visit to rural establishments. An investigation concerning indigenous women and discrimination is also planned. In addition, an Office of Labour Administration in the locality Teniente Irala Fernández (Chaco) has been established.

The Committee takes due note of the actions undertaken by the Government with a view to the eradication of forced labour of the indigenous communities of Chaco; however, the measures taken so far, although they are a first step, must be reinforced and lead to systematic action which is commensurate with the dimensions and gravity of the problem, if the latter is to be solved.

The Committee hopes that the Government will provide information about the mandate and functioning of the Office of Teniente Irala Fernández (Chaco), and the mechanisms foreseen for reporting cases of forced labour (procedures, competent authorities, judicial assistance). Given the principal role in the fight against forced labour played by the inspection services, the Committee hopes that the Government will provide information about the activities of these services and the measures taken to reinforce them.

The Committee further hopes that the Government will provide information about the number of cases in which the inspection services have detected infringements of sections 47, 176, and 231 of the Labour Code and refers it to the comments made on the application of the Protection of Wages Convention, 1949 (No. 95), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Article 25. Penalties for the exaction of forced labour. The Committee recalls that by virtue of Article 25 of the Convention, criminal sanctions shall be imposed, and strictly enforced, upon those found guilty of having imposed forced labour. *The Committee requests the Government to communicate information about the measures taken or envisaged to ensure the application of Article 25 of the Convention, including information about provisions of national legislation which prescribe penalties to those responsible for the exaction of forced labour and copies of relevant judgements.*

Article 2, paragraph 2(c). Obligation to work imposed on non-convicted detainees. The Committee notes that the Government has not provided the information requested with regard to the amendment of section 39 of Act No. 210 of 1970, which provides that work shall be compulsory for detainees. Section 10 of the above Act defines detainees as not only convicted persons, but also persons subjected to security measures in a prison establishment. The Committee recalled that persons who have been detained but not convicted shall not be obliged to carry out any type of work.

The Committee had noted the Draft Code on the Execution of Sentences, communicated by the Government in its report of 2006. Sections 127, 68 and 69 of the Draft Code, read together, provide for the obligation to work of convicted persons, those sentenced to a term of imprisonment pursuant to a final judgement rendered by a competent court. If these provisions are adopted they would be in compliance with Article 2(2)(c) of the Convention under which work or service can only be imposed on an individual by virtue of a conviction in a court of law. The Committee noted, however, that section 34 of the Draft Code states: "Provided they are compatible with the status of persons as detainees, do not contradict the principle of presumption of innocence, and are more favourable and useful for protecting said persons, the provisions relating to the living conditions and standards of conduct of Title III shall apply". The Committee observed in this respect that Title III, Chapter 7, of the Draft Code contains provisions relating to compulsory work by convicted persons which, by virtue of section 34, could be applied to detainees. It would therefore be necessary, in order to eliminate the possibility of imposing work upon those who are in preventive detention, that this be explicitly prohibited, with the clarification that the detainee could work if he so requested.

The Committee hopes that in its next report the Government will be able to indicate that the national legislation has been brought into conformity with the Convention, and that it will communicate a copy of the Code on the Execution of Sentences once it has been adopted.

Saint Vincent and the Grenadines

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1998)

The Committee notes with *satisfaction* the adoption of the Shipping Act, 2004, which has repealed the Merchant Shipping Act of 1982, which contained provisions punishing various breaches of discipline by seafarers with imprisonment (involving an obligation to perform labour), even in circumstances where the ship or the life or health of persons were not endangered.

Saudi Arabia

Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

Article 25 of the Convention. Penalties for the illegal exaction of forced or compulsory labour. In its previous comments, the Committee has expressed its concern about the application of Article 25 of the Convention, which requires that the illegal exaction of forced or compulsory labour be punished with penal sanctions, and that these sanctions be really adequate and strictly enforced. The Committee notes that the Government refers in this connection to section 61 of the Labour Code, which prohibits employers from using workers to exact labour without the payment of wages. The Committee observes, however, that section 61 does not contain a general prohibition of forced labour but merely lays down an obligation to remunerate the performance of work within the framework of a normal employment relationship. While relevant to the protection of normal conditions of employment, it is insufficient for purposes of the Convention.

Furthermore, section 239 provides for penalties that are limited to monetary fines and, therefore, does not meet the requirements of Article 25.

The Committee hopes that the Government will take steps to adopt a provision which prohibits the exaction of forced labour more generally, so as to cover all situations of the illegal exaction of forced or compulsory labour, including the situations which do not relate to the normal employment relationship, and to make violations punishable with penal sanctions, which should be really adequate and strictly enforced, as required by Article 25 of the Convention.

Articles 1 (paragraph 1), 2 (paragraph 1) and 25. Trafficking in persons. The Committee notes with **interest** the promulgation by the Council of Ministers of Order No. 244 of 20/7/1430 H (2009) prohibiting trafficking in persons, which was communicated by the Government with its report. The Committee notes that this law prohibits all forms of trafficking in persons, including trafficking that involves the imposition of forced labour and slavery-like practices (section 2), and that it provides for criminal penalties including a sentence of imprisonment of up to fifteen years and/or a fine of one million Rials (section 3).

The Committee hopes that the Government will provide information on the application of this legislation in practice, including information about all cases in which perpetrators have been prosecuted, convicted and sentenced. Please also provide information on the various measures taken to combat trafficking, including measures of prevention and victim protection, as well as information on the work of any special bodies established to coordinate the implementation of such measures.

Articles 1 (paragraph 1) and 2 (paragraph 1). Vulnerable situation of migrant workers with regard to the illegal exaction of forced labour. The Committee previously referred to the vulnerable situation of migrant workers, particularly migrant domestic workers, who are often confronted with employment policies such as the visa “sponsorship” system and subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse, which cause their employment to be transformed into situations that could amount to forced labour. The Committee previously noted Council of Ministers Decision No. 166 of 12/7/1421 AH (2000) regulating relations between migrant workers and their employers, which stipulates, inter alia, that employers shall not retain the passports of migrant workers or the passports of members of their families, and which provides for the establishment of a special committee to resolve any problems arising from its application. However, the Committee notes the indications of the Government in its report that lawsuits brought in disputes arising under this regulation do not terminate within reasonable deadlines, and that there are no data as to any cases in which the penalties provided therein have been applied. The Committee also notes that section 7 of the Labour Code provides for regulations to be promulgated that pertain specifically to the employment conditions of migrant domestic workers.

The Committee hopes that the Government will take steps to promulgate new regulations under section 7 of the Labour Code, and that they will provide for a protective framework of employment relations that is specially tailored to the difficult circumstances faced by migrant domestic workers and in particular to the problems caused by the visa sponsorship system, and will ensure that domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour. The Committee hopes that in its next report the Government will be able to provide information to this effect and to supply the text of the regulations, once adopted.

Senegal

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

Article 1(c) of the Convention. Imposition of sentences of imprisonment involving an obligation to work for breaches of labour discipline. In its previous comments, the Committee noted with regret that the Government had not taken the opportunity afforded by the adoption of the new Merchant Shipping Code (Act No. 2002-22 of 16 August 2002) to amend the provisions which it had been commenting on for many years. Under sections 624, 643 and 645 of the new Merchant Shipping Code, unapproved absence from the vessel, verbal insults, gestures or threats towards a superior and a formal refusal to obey a service order are still punishable by imprisonment, involving compulsory prison labour, in accordance with section 692 of the Code of Penal Procedure and section 32 of Decree No. 2001-362 of 4 May 2001 concerning the implementation and organization of penal sanctions. In view of the fact that the scope of these provisions of the Merchant Shipping Code is not confined to cases in which the breach of discipline would endanger the ship or the persons on board, the Committee considered these provisions to be contrary to the Convention, which prohibits recourse to forced labour, including in the form of compulsory prison labour, as a means of labour discipline.

In its last but one report, the Government recognized that these provisions were not in conformity with the Convention. It indicated that, in practice, no prison sentence involving compulsory labour was applied and that the merchant navy had itself considered as excessive the penalties provided for and the violations penalized. For this reason, according to the Government, penal sanctions were always discarded in cases of breaches of discipline. The merchant navy had received instructions to take steps to find a definitive solution to this situation. In view of this information, the Committee considered that the Government should have no difficulties in making the necessary changes to the Merchant Shipping Code so that the legislation reflects the practice already established and is in conformity with the Convention.

The Committee notes that, in its latest report, the Government indicates that the measures announced are indeed being considered with a view to making the necessary changes to the Merchant Shipping Code. *In view of the above, and considering that it has been commenting on this point for more than 40 years, the Committee trusts that the Government will be able to provide information, in its next report, on the steps taken to amend sections 624, 643 and 645 of the new Merchant Shipping Code and therefore ensure conformity with the Convention in law and practice.*

Article 1(d). Imposition of prison sentences involving an obligation to work as a punishment for participation in strikes. In its previous comments, the Committee drew the Government's attention to section L.276 of the Labour Code which allows the administrative authority to requisition workers from private enterprises and public services and establishments who are engaged in jobs that are essential for the security of persons and property, the maintenance of public order, the continuity of public services and the satisfaction of the essential needs of the nation. Any worker who does not comply with the requisition order is liable to a fine and/or imprisonment ranging from three months to one year (section L.279(m)). The Committee requested the Government to supply a copy of the decree implementing section L.276 containing the list of jobs concerned as well as information on the cases in which the competent administrative authority had had recourse to section L.276. In reply, the Government indicated that the requisition of workers is certainly justified in essential services, that it is a measure of public security and that it is on no account designed to constitute a penalty. The Government pointed out that the decree implementing section L.276 was in the process of being adopted and that, pending this, it was Decree No. 72-017 of 11 March 1972 establishing the list of posts, jobs and functions of which the occupants may be subject to requisition which continued to apply. The Committee noted this information, as well as the comments of the National Confederation of Workers of Senegal (CNTS), sent in November 2006 by the Government, that the requisition of certain workers in certain situations constituted an abuse of authority intended to break strikes initiated by workers. According to the CNTS, certain employers in the private sector used this process to force workers to remain in their posts when there was no need to do so.

The Committee notes that, in its latest report, the Government merely indicates that the requisition only concerns jobs that are essential for the security of persons and property, the maintenance of public order, the continuity of public services or the satisfaction of the essential needs of the nation. The Committee refers to the comments that it has been making on this matter since 1998 in relation to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In these comments, the Committee has recalled on many occasions that recourse to this type of measure should be limited exclusively to the maintenance of essential services in the strict sense of the term (those the interruption of which would endanger the life, safety or health of the whole or part of the population), to public servants exercising authority in the name of the State or to acute national crises.

Noting that, firstly, workers who do not comply with a requisition order are liable to imprisonment involving the obligation to work (section L.279(m) of the Labour Code) and, secondly, powers of requisitioning may be exercised with regard to workers whose posts, jobs or functions are not essential services in the strict sense of the term, the Committee expresses the firm hope that the Government will take the necessary steps to ensure that the Decree implementing section L.276 of the Labour Code, which is in the process of being adopted, is in conformity with the Convention. To that end, the list of posts, jobs and functions whose occupants may be subject to requisitioning should be limited to the posts, jobs and functions which are strictly necessary to ensure the operation of essential services in the strict sense of the term, to public servants exercising authority in the name of the State and to acute national crises, and workers who do not comply with a requisitioning order should not be liable to imprisonment involving the obligation to work.

In its previous comments, the Committee drew the Government's attention to the need to amend the provisions of the last paragraph of section L.276 of the Labour Code, which states that any exercise of the right to strike accompanied by occupation of the workplace or its immediate surroundings is liable to the penalties provided for by sections L.275 and L.279, namely: loss of entitlement to the payments and benefits provided for in the event of termination of the contract (section L.275); and imprisonment ranging from three months to one year and/or a fine (section L.279). The Government indicated that the restrictions concerning the occupation of workplaces in the event of a strike were actually limited to cases in which strikes cease to be non-violent and that the penalties provided for had never been applied, such situations having always been settled by means of negotiation. The Committee notes that, in its latest report, the Government indicates that it will take all the necessary steps to ensure that the legislation is in conformity with the Convention.

The Committee hopes that in its next report, the Government will be able to report on the steps taken to amend sections L.276, last paragraph, and L.279 of the Labour Code by removing the provisions imposing prison sentences involving the obligation to work on striking workers who occupy the workplace or its immediate surroundings and by ensuring that this right is guaranteed as long as the strike remains non-violent, therefore ensuring conformity with the Convention in law and practice.

Sierra Leone

Forced Labour Convention, 1930 (No. 29) (ratification: 1961)

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

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Compulsory cultivation. Over many years, the Committee has been referring to section 8(h) of the Chiefdom Councils Act (Cap. 61), under which compulsory cultivation may be imposed on “natives”. On numerous occasions, it requested the Government to repeal or amend this provision. The Committee also noted the Government’s statement that the abovementioned section is not in conformity with article 9 of the Constitution and would be held unenforceable.

The Committee takes due note of the Government’s repeated indication that section 8(h) is not applicable in practice and that information on any amendment of this section would be communicated to the ILO in the near future.

As the Government has repeatedly indicated since 1964 that this legislation would be amended, the Committee reiterates firm hope that the necessary measures will at last be taken in order to bring section 8(h) of the Chiefdom Councils Act into conformity with the Convention and the indicated practice. It requests the Government to provide, in its next report, information on the progress made in this regard.

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

Singapore

Forced Labour Convention, 1930 (No. 29) (ratification: 1965)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Legislation concerning destitute persons. For many years the Committee has been referring to certain provisions of the Destitute Persons Act, 1989, under which destitute persons may be required, subject to penal sanctions, to reside in a welfare home (sections 3 and 16) and to engage in any suitable work for which the medical officer of the home certifies them to be capable, either with a view to fitting them for employment outside the welfare home or with a view to contributing to their maintenance in the welfare home (section 13).

The Committee points out once again that the imposition of labour under the Destitute Persons Act, 1989, comes under the definition of “forced or compulsory labour” in *Article 2(1)* of the Convention, and that the Convention makes no exception for labour imposed “in the context of rehabilitation” of destitute persons.

The Committee has noted the Government’s repeated indications in its reports that, in practice, residents in the welfare home are not compelled to work and are only assigned chores after they have given their written consent; they also receive payment for their participation. While noting these indications, the Committee drew the Government’s attention on several occasions to the necessity to bring the legislative provisions into conformity with the Convention, so as to ensure compliance both in law and in practice.

The Committee previously noted the Government’s statement in its 2006 report that it would be reviewing the necessity to amend section 13 of the Act to better articulate the voluntary nature of the activity, and that this exercise was expected to be completed in 2008. However, the Committee notes from the Government’s latest report that there has been no developments in this field during the reporting period.

The Committee reiterates the firm hope that section 13 of the Act will at last be amended so as to provide clearly that any work in a welfare home is to be performed voluntarily, thus bringing the abovementioned legislation into conformity with the Convention and the indicated practice, and that the Government will soon be in a position to provide information on the progress achieved in this regard.

Sudan

Forced Labour Convention, 1930 (No. 29) (ratification: 1957)

The Committee has noted the Government’s report dated 27 April 2008, received in May 2008, and the report of activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) annexed to it, as well as the discussion that took place in the Conference Committee on the Application of Standards in June 2008. It has also noted the observations dated 29 August 2008 received from the International Trade Union Confederation (ITUC) concerning the application of the Convention by the Sudan, as well as the Government’s reply to these observations dated 2 November 2008, which was sent to the Office by means of communications dated 12 and 20 November 2008 and copied once again in a communication dated 9 January 2009.

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Abolition of forced labour practices. For many years, the Committee has been referring, in relation to the application of the Convention, to the continuing existence of the practices of abduction and forced labour exploitation, which affected thousands of women and children in the regions of the country where an armed conflict was under way. The Committee recalls that this case has been discussed repeatedly over the years in its own observations and on numerous occasions by the Conference Committee on the Application of Standards. The Committee has repeatedly pointed out that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, and in combination with ill treatment which may include torture and death. The Committee has considered that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic. The Government has been therefore requested to provide detailed information on

the measures taken to combat the practice of forced labour through abduction of women and children and to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators.

Conference Committee on the Application of Standards. The Committee has noted that, in its conclusions adopted in June 2008, the Conference Committee once again observed the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. The Conference Committee noted the measures taken by the Government, such as the progress achieved by the CEAWC in the liberation of abductees, as well as the Government's efforts to improve the human rights situation in the country. However, it expressed the view that there was no verifiable evidence that forced labour was completely eradicated in practice and expressed concern at the reports relating to involuntary return of certain abductees, some of them being separated from their families, including cases of displaced and unaccompanied children. The Conference Committee also noted with concern that there was a lack of accountability of perpetrators. It urged the Government to pursue its efforts with vigour and to take effective and urgent action, including through the CEAWC, to completely eradicate the forced labour practices and to put an end to impunity by punishing perpetrators, particularly those unwilling to cooperate. The Conference Committee again invited the Government to avail itself of the technical assistance of the ILO and other donors to achieve this goal, bearing in mind that only an independent verification of the situation in the country could make it possible to determine that forced labour practices had been completely eradicated.

United Nations bodies. The Committee notes that, in the UN Security Council resolution 1881 (2009), the Security Council expressed concern at the continued seriousness of the security situation and deterioration of the humanitarian situation in Darfur and reiterated its condemnation of all violations of human rights and international humanitarian law in Darfur. The resolution emphasized the need to bring to justice the perpetrators of such crimes and urged the Government of Sudan to comply with its obligations in this respect. The Committee also notes a report of the Special Rapporteur on the situation of human rights in the Sudan (A/HRC/11/14, June 2009), in which it is observed that, despite some positive steps in the area of law reform, improvement of the human rights situation on the ground continues to remain a significant challenge. Thus, in Darfur, human rights violations and breaches of international humanitarian law continued to be committed by all parties; in southern Sudan, several hundred civilians were killed in tribal conflicts and attacks by the Lords Resistance Army (LRA) and a number of women and children were abducted. According to the report, impunity remains an ongoing and serious concern in all areas of Sudan, allegations of violations of human rights are not duly investigated, many perpetrators of serious crimes have not been brought to justice and reparations have not been provided to victims. The Special Rapporteur reiterated all previously unimplemented human rights recommendations contained in her reports, and in particular, a recommendation to ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are promptly brought to justice (paragraph 92(d)).

Comments from workers' organizations. In the observations dated 29 August 2008 referred to above, the ITUC pointed out that, despite the Government's statement at the Conference Committee in 2008 that there had been no further cases of abductions and forced labour in the country, information from various sources provided evidence that abductions had continued in Darfur in the context of the current conflict there, and the human rights violations taking place in Darfur showed a marked similarity to those that took place in southern Sudan during the 1983–2005 civil war, including many documented cases of abductions for sexual exploitation and forced labour. The ITUC referred, in particular, to the November 2007 report on the situation of human rights in Darfur by the UN group of experts, to the March 2008 report of the UN Special Rapporteur on the situation of human rights in the Sudan and to the findings of the research conducted in 2006–07 by Anti-Slavery International. While welcoming the fact that the Government had finally recognized the scale of the problem and had successfully resolved 11,300 cases of abductions, the ITUC expressed concern about the release and reintegration process. It referred, in particular, to the findings by UNICEF, according to which some of those being rescued were not genuine former abductees, some returnees were not going voluntarily and some families were being split with children being moved on unaccompanied. The ITUC also noted that, although the Government described 11,300 of the 14,000 cases of abductions as "resolved", reunification with the family had only happened in 3,394 cases, which meant that less than one third of those involved had been reunited with their families. The ITUC continued to believe that the impunity that those responsible for abductions have enjoyed – illustrated by the absence of any prosecutions for abductions in the last 16 years – was responsible for the continuation of this practice throughout the civil war of 1983–2005 and for the current continued abductions in Darfur. The ITUC therefore strongly supported a recommendation made by the Conference Committee in 2008 that "only an independent verification of the situation in the country could make it possible to determine that forced labour practices had been completely eradicated". It stated that the Government should accept ILO technical assistance for a mission which should be given a mandate to review the extent to which former abductees have been successfully reintegrated into their communities.

Government's response. In its 2008 report, the Government repeated the information already supplied to the ILO in May 2007 and provided the updated information on the activities of the CEAWC up to the end of April 2008. The Government confirmed once again its strong and continued commitment to completely eradicate the phenomenon of abductions and to provide continued support to CEAWC. The Government indicated in its report, as well as in its reply to the observations by the ITUC referred to above, that out of 14,000 documented cases of abductions, CEAWC had been

able to reunify abducted persons with their families in 6,000 cases. However, the Committee has noted from the report of activities of the CEAWC, dated 27 April 2008, annexed to the Government's report, that only in 3,708 cases abducted persons had been reunified with their families, including 310 new cases of reunification due to the recent funding by the Government of the Southern Sudan. The Government has confirmed once again its previous statement that abductions have stopped completely, which, according to the Government, has been confirmed also by the Dinka Chiefs Committee (DCC). For that reason, the Government has urged to dismiss this case and to stop its discussion in the ILO, since it has already been satisfactorily dealt with according to the reports of the UN specialized agencies. Concerning the situation in Darfur, the Government expressed the view that, since it was under examination by the UN Security Council and the African Union, the issues concerned should not be discussed in the ILO, in order to avoid duplication of work. Regarding the workers' concerns expressed by the ITUC in its observations referred to above about the release and reintegration process, and whether the return of abductees is voluntary, the Government stated that such concerns had no factual base. It referred to the above report of the CEAWC, which contained a reference to a letter by the UNICEF Representative in Sudan, according to which no cases of forced return had been identified and several cases of unaccompanied children had been dealt with effectively at field level in the North. The Government also indicated in its report that it committed itself to provide all funds required to complete the remaining work, despite the fact that many international agencies had claimed that the remaining abductees were no longer abductees in the strict sense of the word and called upon CEAWC to avoid forced returns. As regards the prosecution of perpetrators, the Government repeated its previous indications that CEAWC, which was initially of the view that legal action was the best measure to eradicate the abduction, had been requested by all the tribes concerned, including the DCC, not to resort to legal action, unless the amicable efforts of the tribes are not successful. The Government considered that legal action takes very long time and is very expensive, it could not build peace among the tribes concerned and did not correspond to the spirit of national reconciliation. The Government also stated that it was not in a position to force people to pursue legal action. It also rejected the recommendation that there should be an independent verification of the work of CEAWC.

While noting these views and comments, as well as the Government's renewed commitment to resolve the problem, the Committee urges the Government to redouble its efforts in order to completely eradicate the forced labour practices which constitute a gross violation of the Convention and, in particular, to resolve the cases of abductions in all the regions of the country and to provide the means for victims to be reunified with their families. While noting the new achievements by CEAWC in the liberation of abductees, the Committee hopes that the Government would continue to provide detailed information on the liberation and reunification process, supplying accurate and reliable statistics supported by CEAWC reports. Noting also with concern that the Government's statement according to which abductions have stopped completely is in contradiction with other sources of information available, the Committee refers again to the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. The Committee expresses the firm hope that the Government will take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations, which would help to create better conditions for the full observance of the forced labour Conventions. The Committee encourages the Government to avail itself of the technical assistance of the ILO, in accordance with the proposal of the Conference Committee.

Article 25. Penalties for the illegal exaction of forced or compulsory labour. The Committee previously noted the Criminal Code provisions punishing the offence of abduction with penalties of imprisonment, and requested the Government to take measures to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators. The Committee has noted the Government's repeated indication in its reports that CEAWC, which was initially of the view that legal action was the best measure to eradicate the abductions, has been requested by all the tribes concerned not to resort to legal action, unless the amicable efforts of the tribes are not successful. The Government reiterates its view that there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation. The Committee recalls again in this connection that, under *Article 25* of the Convention, "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced". The Committee therefore considers that the non-application of penal sanctions to perpetrators is contrary to this provision of the Convention and may have the effect of ensuring impunity for abductors who exploit forced labour.

The Committee expresses the firm hope that the necessary measures will at last be taken to ensure that legal proceedings are instituted against perpetrators, particularly against those unwilling to cooperate, and penal sanctions are imposed on persons convicted of having exacted forced labour, as required by the Convention. The Committee again requests the Government to provide, in its next report, information on the application in practice of the penal provision punishing the offence of abduction, as well as the provisions punishing kidnapping and the exaction of forced labour (sections 161, 162 and 163 of the Criminal Code), supplying sample copies of the relevant court decisions.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1970)

Article 1(a) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views and for having participated in strikes. For a number of years, the Committee has been referring to certain provisions of the Criminal Act and the Labour Code, under which penalties of imprisonment (involving an obligation to work under the Prison Regulations, Chapter IX, section 94, and the 1997 Regulations concerning the organization of work in prisons, Chapter XIII, section 38(6)) may be imposed in circumstances falling within the scope of the Convention.

The Committee previously noted the adoption of the Interim National Constitution of 2005, which contains the Bill of Rights promoting the human rights and fundamental freedoms. The Committee also noted the Government's indication in its previous report that a draft Labour Law had been finalized and prepared for submission to the competent authorities for adoption. The Government indicates in its latest report that the Sudanese Parliament is engaged at present in revising the whole body of the Sudanese legislation in order to bring it into conformity with the spirit and the letter of the Comprehensive Peace Agreement and the Interim National Constitution. It also indicates that, should any law or practice be contrary to the spirit of ratified Conventions and the National Constitution, the latter shall constitute the reference to be consulted, while continuous and sustained efforts shall be made to amend such law or abolish such practice.

The Committee notes a report of the Special Rapporteur on the situation of human rights in the Sudan (A/HRC/11/14, June 2009), in which the Special Rapporteur expressed concern about reform of the Criminal Act, the Criminal Procedures Act and the Press and Printed Materials Bill and urged the Government to guarantee their full compatibility with Sudan's international human rights obligations, the Interim National Constitution and the Comprehensive Peace Agreement. Thus, the Special Rapporteur noted that one of the amendments to the 1991 Criminal Procedures Act, passed by the National Assembly on 20 May 2009, gives powers to State Governors or Commissioners to issue orders prohibiting or restricting the organization of public meetings, which is not in conformity with the guarantees of freedom of assembly and association enshrined in the Interim National Constitution and the Comprehensive Peace Agreement.

The Committee also takes note of the situation regarding human rights in the Sudan as described in the report of the Special Rapporteur on the situation of human rights in the Sudan referred to above, in which the Special Rapporteur observed that, despite some positive steps in the area of law reform, improvement of the human rights situation on the ground continues to remain a significant challenge, particularly in Darfur, where human rights violations and breaches of international humanitarian law continued to be committed by all parties, but also in other parts of the country. The Special Rapporteur recommended, in particular, that the Government should ensure that human rights defenders, humanitarian workers, parliamentarians, members of political opposition, journalists and other civil society members were not arbitrarily detained or ill-treated by State agents on account of their work, opinions or peaceful assembly.

The Committee hopes that, as a result of the legislative reform, the national criminal and labour legislation will be brought into conformity with the Convention and asks the Government to keep the ILO informed about the progress made in this regard and to supply a copy of the new legislative acts, as soon as they are adopted. The Committee observes the importance for the effective respect of the Convention of the legal guarantees regarding freedom of assembly, expression, demonstration and association; it expresses the firm hope that the Government will take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations, which would help to create better conditions for the full observance of the forced labour Conventions.

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

Swaziland

Forced Labour Convention, 1930 (No. 29) (ratification: 1978)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Legislation concerning compulsory public works or services. In its earlier comments, the Committee observed that the Swazi Administration Order, Act No. 6 of 1998, which provided for the duty of Swazis to obey orders requiring participation in compulsory works, such as, for example, compulsory cultivation, anti-soil erosion works and the making, maintenance and protection of roads, enforceable with severe penalties for non-compliance, was in serious breach of the Convention. The Committee previously noted that the Swazi Administration Order had been challenged before the High Court of Swaziland which declared the Order null and void, and that the Swaziland Government did not appeal against that judgement.

The Committee notes with *interest* the text of the above decision of the High Court of Swaziland (Case No. 2823/2000), provided by the Government with its report. *It asks the Government to supply information on the practical consequences of this decision.*

Syrian Arab Republic

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Freedom of persons in the service of the State to leave their employment. For many years, the Committee has been referring to section 364 of the Penal Code (as amended by Legislative Decree No. 46 of 23 July 1974), under which a term of imprisonment from three to five years may be imposed for leaving or interrupting work as a member of the staff of any public administration, establishment or body, or any authority of the public or mixed sector before resignation has been formally accepted by the competent authority; or evading obligations to serve the same authorities, whether the obligation derived from a mission, a scholarship or a study leave.

The Committee has noted the Government's repeated indications in its reports that, in practice, a worker's right to submit a request for resignation at any time is fully respected, and the competent authority is bound to accept the resignation, provided the continuity of the service is ensured. The Government also stated in its earlier reports that the Committee's comments had been taken into account in the course of elaboration of the amendment to the Penal Code, in order to ensure conformity with the Convention.

The Government indicates in its latest report that the draft new Penal Code is still under discussion and that its adoption must go through a number of phases. ***The Committee trusts that the new Penal Code will be adopted in the near future and that legislation will be brought into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the new Penal Code, as soon as it is adopted.***

Legislation on vagrancy. For a number of years, the Committee has been referring to section 597 of the Penal Code, which provides for the punishment of any person who is reduced to seeking public assistance or charity as a result of idleness, drunkenness or gambling. The Committee recalled that while the punishment of gambling or the abuse of intoxicating liquor is outside the scope of the Convention, the possibility to impose penalties for mere refusal to work is contrary to the Convention.

The Committee previously noted the Government's indication in its earlier report that the proposed amendments to the Penal Code would accommodate the Committee's request. However, the Government's latest report does not contain any new information to that effect, but the Government states that the punishment of idleness is aiming at preventing begging and vagrancy, with a view to assisting the persons concerned to find decent employment. The Committee refers in this connection to the explanations in paragraph 88 of its 2007 General Survey *on the eradication of forced labour*, where it pointed out that provisions concerning vagrancy and similar offences, if defined in an unduly extensive manner, are liable to become a means of compulsion to work.

The Committee therefore reiterates the firm hope that the necessary measures will soon be taken, in the context of the revision of the Penal Code, with a view to clearly excluding from the legislation any possibility of compulsion to work, e.g. by limiting the scope of the provisions of section 597 to persons engaging in illegal activities, so as to bring legislation and practice into conformity with the Convention.

Article 2, paragraph 2(d). Work or services exacted in cases of emergency. In comments it has been making since 1964, the Committee has been referring to certain provisions of Decree No. 133 of 1952, under which compulsory labour could be exacted from the population in circumstances that go beyond the exception authorized by the Convention. The Committee referred, in particular, to the provisions of Chapter I (compulsory labour for purposes of health, culture or construction) and sections 27 and 28 (national defence work, social services, road work, etc.).

The Committee has noted the Government's repeated indication in its reports that Legislative Decree No. 15 of 11 May 1971, concerning local administration, under which certain kinds of work or services (national defence work, social services, road work) may be exacted in the event of war, emergencies or natural disasters, has repealed sections 27 and 28 of Decree No. 133 referred to above.

The Committee again requests the Government to communicate a copy of Legislative Decree No. 15 of 11 May 1971 concerning local administration, which, according to the report, has been already sent to the ILO, but has not been received.

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1958)

Article 1(a), (c) and (d) of the Convention. Penal sanctions involving compulsory labour as a punishment for expressing political views, for breaches of labour discipline and for participation in strikes. For many years, the Committee has been referring to certain provisions of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, under which prison sentences involving compulsory labour can be imposed as a punishment for expressing views opposed to the established political system, as a punishment for breaches of labour discipline and for participation in strikes.

The Committee previously noted from the Government's earlier report that a draft legislative decree to amend the Penal Code had been prepared by the Ministry of Justice. The Government reaffirmed its commitment to bring legislation into conformity with the ratified ILO Conventions, taking due account of the Committee's comments, and indicated, in particular, that the draft legislative decree was aiming at the elimination of all obligation to perform prison labour by

removing from the text of the Penal Code such terms as “imprisonment with labour”, “life imprisonment with hard labour” or “temporary hard labour”.

In its latest report, the Government indicates that it endeavours to resolve the problems identified in the Committee’s comments by way of the adoption of the new Penal Code, which is currently being discussed and is going through various legal channels and phases of adoption.

While noting this information, as well as the Government’s renewed commitment to bring legislation into conformity with the Convention, the Committee expresses the firm hope that, following the adoption of the new Penal Code, persons convicted for activities coming under the purview of the Convention, and, in particular, persons convicted under the provisions referred to of the Economic Penal Code, the Penal Code, the Agricultural Labour Code and the Press Act, would no longer be under an obligation to perform labour, although they might be allowed to engage in work. The Committee hopes that the new Penal Code will be adopted in the near future and that the Government will supply a copy of the new Code, as soon as it is promulgated.

United Republic of Tanzania

Forced Labour Convention, 1930 (No. 29) (ratification: 1962)

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Imposition of compulsory labour for purposes of economic development. For many years the Committee has been commenting on serious discrepancies between national law and practice and the provisions of the Convention. The Committee has referred in this connection to the following national provisions:

- article 25(1) of the Constitution, which provides that every person has the duty to participate in lawful and productive work and to strive to attain the individual and group production targets required or set by law; article 25(3)(d), of the Constitution, which provides that no work shall be considered as forced labour if such work forms part of (ii) compulsory national service in accordance with the law, or (iii) the national endeavour at the mobilization of human resources for the enhancement of the society and the national economy and to ensure development and national productivity;
- the Local Government (District Authorities) Act, 1982, the Penal Code, the Resettlement of Offenders Act, 1969, the Ward Development Committees Act, 1969, and the Local Government Finances Act, 1982, under which compulsory labour may be imposed, inter alia, by the administrative authority for purposes of economic development;
- several by-laws adopted between 1988 and 1992 under section 148 of the Local Government (District Authorities) Act, 1982, entitled “self-help and community development”, “nation-building” and “enforcement of human resources deployment”, which provide for an obligation to work.

On numerous occasions the Committee expressed its **concern** at the institutionalized and systematic compulsion to work established in law at all levels, in the National Constitution, Acts of Parliament and District by-laws, in contradiction both with the present Convention and Convention No. 105, likewise ratified by the United Republic of Tanzania, which prohibits the use of compulsory labour for purposes of economic development.

The Committee previously noted the adoption of the Employment and Labour Relations Act, 2004, which introduced a provision prohibiting the exaction of forced labour (section 6(1)) and repealed the Employment Ordinance (Cap. 366), under which compulsory labour could be imposed for public purposes.

The Government indicates in its latest report that the Law Reform Commission is currently carrying out legal research on laws that need amendments or repeal to reflect the current economic, social and political arrangements, including laws which are not compatible with the Convention.

While noting these indications, the Committee expresses the firm hope that the necessary measures will be taken to repeal or amend the provisions incompatible with the Convention and that the Government will soon be in a position to report on the progress made in this regard.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1962)

The Committee notes with **satisfaction** the adoption of the Merchant Shipping Act, 2003 (No. 21), which has repealed the Merchant Shipping Act of 1967, which contained provisions punishing various breaches of discipline by seafarers with imprisonment (involving an obligation to perform labour), even in circumstances where the ship or the life or health of persons were not endangered, as well as provisions, under which deserting seafarers could be forcibly returned on board ship to perform their duties.

Article 1(a) and (b) of the Convention. Penalties involving compulsory labour as a punishment for expressing political views and for failure to engage in socially useful work. For many years, the Committee has been referring to certain provisions of the Penal Code, the Newspaper Act and the Local Government (District Authorities) Act, under which penalties involving compulsory labour may be imposed in circumstances falling within the scope of the Convention. The Committee also asked the Government to provide information on the amendment or repeal of the

provisions of various legal instruments, to which it referred in its comments under Convention No. 29, likewise ratified by the United Republic of Tanzania, and which are contrary to *Article 1(b)* of this Convention.

The Committee previously noted the Government's repeated statements in its reports that the Committee's views and comments made on the provisions of the above laws had been duly taken into account, and that the identified laws had been addressed by the Task Force of the Labour Law Reform with a view to making appropriate recommendations to the Government. The Committee notes the Government's indication in its latest report that the Law Reform Commission is currently carrying out legal research on laws that need amendments or repeal to reflect the current economic, social and political arrangements, including laws which are not compatible with the Convention, with a view to making appropriate recommendations to the Minister responsible for Justice and Constitutional Affairs.

While noting these indications, the Committee trusts that the necessary action will at last be taken in order to repeal or amend all provisions incompatible with the Convention, and that the Government will soon be able to report the progress made in this regard.

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

Thailand

Forced Labour Convention, 1930 (No. 29) (ratification: 1969)

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

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Trafficking and sexual exploitation of children. In its earlier comments, the Committee requested the Government to take all the necessary measures to eradicate the trafficking of children for the purpose of exploitation and to punish those responsible. The Committee recalls that the Government has ratified the Worst Forms of Child Labour Convention, 1999 (No. 182). In so far as *Article 3(a)* of Convention No. 182 provides that the worst forms of child labour include "all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour", the Committee is of the view that the problem of trafficking of children for the purpose of exploitation may be examined more specifically under Convention No. 182. The protection of children is enhanced by the fact that Convention No. 182 requires States which ratify it to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. The Committee accordingly asks the Government to refer to its comments on the application of Convention No. 182.

Trafficking in persons for the purpose of exploitation – communication from an international workers' organization. The Committee has noted the comments on the application of the Convention by Thailand, made by the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC) – in its communication dated 31 August 2006. In this communication, the ICFTU expresses its concern about the persistence of the trafficking in persons from and into Thailand and refers to a report published by the UN Office on Drugs and Crime (April 2006), in which Thailand has been listed in the group of countries which have a very high level of trafficking, as a country of destination, origin and transit. According to the report, Cambodian and Lao women and girls are trafficked into Thailand for factory and domestic work and the sex trade; Burmese, Cambodian and Lao men are trafficked into Thailand for forced labour in such sectors as construction, agriculture and in particular the fishing industry. The ICFTU refers in this connection to first-hand information concerning Burmese fishermen and, in particular, six members of the Seafarers' Union of Burma, who had been tricked into abusive working conditions on board Thai fishing vessels in situations similar to forced labour, which included allegations of brutality and injury. The ICFTU expressed concern about the lack of legal protection of men subjected to forced labour, which leaves the problem of male victims unaddressed.

The communication from the ICFTU was forwarded to the Government, on 28 September 2006, for such comments as might be considered appropriate. The Government acknowledged that the current legislation was limited in its scope and that human trafficking had become more severe and complicated. It indicated that the Government was in the process of adopting the Prevention and Suppression of Human Trafficking Act and that it had been approved by the Cabinet and was now under the consideration of the National Assembly. ***However, the Committee notes that the Government's report contained no reference to the ICFTU communication referred to above. It requests the Government to respond to the allegations made by the ICFTU in its next report.***

Trafficking in persons for the purpose of exploitation – prevention and protection measures, law enforcement. The Committee has noted the Government's renewed commitment expressed in its reports to eradicate all manner of human trafficking. It has noted the positive steps taken by the Government, some of them in cooperation with ILO/IPEC and other international institutions, to adopt legislation and to put into place a coherent national policy framework for dealing with this problem.

The Committee has noted, in particular, the information on the application of the Prevention and Suppression of Prostitution Act 1996, including the information concerning the activities of welfare protection and vocational development centres set up under the Act, as well as statistical data with regard to the prosecution of offences under the Act. It has noted comprehensive information supplied by the Government on the activities of the Ministry of Labour concerning the promotion of employment opportunities among women and youth, including various training courses and specific projects for women. The Committee has also noted the information on the application of the Measures for the Prevention and Suppression of Trafficking in Women and Children Act 1997, which covers offences both in Thailand and abroad and also provides protection for victims from foreign countries, ensuring that they are placed in shelter and provided with the necessary assistance before they are repatriated. It has noted with interest the information on the activities of various committees and subcommittees related to human trafficking and sexual exploitation of women and children, covering both domestic and cross-border trafficking, with regard to prevention, protection, recovery and reintegration measures. The Committee has further noted the second Memorandum of Understanding on Common Guidelines of Practices for Agencies Engaged in Addressing Trafficking in Women and Children B.E. 2546 (2003), according to which the Ministry of Social Development and Human Security is working in collaboration with other concerned agencies such as the Royal Thai Police, the Office of the National Commission on Women's Affairs, the Immigration Bureau and

the International Organization for Migration (IOM), to assist trafficked women by providing them with temporary shelters before repatriating to their hometowns and by conducting recovery programmes which would enable them to reintegrate into society. The Committee has also noted the information concerning the Government's participation in multilateral cooperation in combating trafficking in the Mekong subregion.

The Committee encourages the Government to pursue its efforts with vigour and to take effective action to implement the anti-trafficking policies it adopts. It hopes that the Government will continue to supply detailed information on the application in practice of the above Memorandum of Understanding, as well as the information on the practical application of the Measures for the Prevention and Suppression of Trafficking in Women and Children Act 1997, including the information on any legal proceedings which have been instituted in connection with the offences related to human trafficking. In relation to the new draft Act on the prevention and suppression of human trafficking under consideration by the National Legislative Assembly, the Committee hopes that the Government will communicate a copy, as soon as it is adopted. Please also provide information on the activities of the Centre Against International Trafficking under the Office of the Attorney-General, to which reference is made in the report.

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1969)

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

Article 1(c) of the Convention. Sanctions involving compulsory labour as a means of labour discipline. In its earlier comments, the Committee referred to sections 131–133 of the Labour Relations Act B.E. 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed on any employee who violates or fails to comply with an agreement on terms of employment or a decision on a labour dispute under sections 18, 22–24, 29 and 35(4) of the Labour Relations Act. The Committee pointed out that sections 131–133 of the Labour Relations Act were incompatible with the Convention, which prohibits the use of compulsory labour as a means of labour discipline.

The Committee has noted the Government's statement that the above provisions have been applied in practice only in a few cases. It has also noted the Government's indication in its 2006 report that the Ministry of Labour is planning to conduct a study on the conformity of the Labour Relations Act B.E. 2518 (1975) with the Convention and that the Committee on the national policy for legal reform has been established, with the Prime Minister as the Chairperson.

While having noted this information, the Committee expresses the firm hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act B.E. 2518 (1975) into conformity with the Convention, either by repealing sanctions involving compulsory labour or by limiting their scope to acts endangering the life or health of persons.

Article 1(d). Sanctions involving compulsory labour as a punishment for having participated in strikes. The Committee previously referred to the following provisions of the Labour Relations Act B.E. 2518 (1975), under which penalties of imprisonment (involving compulsory labour) may be imposed for participation in strikes:

- (i) section 140 read in conjunction with section 35(2), if the minister orders the strikers to return to work, being of the opinion that the strike may affect the national economy or cause hardship to the public or endanger national security or be contrary to public order;
- (ii) section 139 read in conjunction with section 34(5), if the matter is awaiting the decision of the Labour Relations Committee or a decision has been given by the minister under section 23(1), (2), (6) or (8) or by the Labour Relations Committee under section 24.

The Committee has noted the Government's statement that the provisions of section 140 are applied only in a situation where the strike may affect the national economy or endanger national security or be contrary to public order, and that they have been applied in practice only in a few cases. *Having also noted the Government's indications in its 2006 report concerning a study to be conducted by the Ministry of Labour on the conformity of the Labour Relations Act B.E. 2518 (1975) with the Convention and the setting up of the Committee on the national policy for legal reform, the Committee reiterates its hope that the necessary measures will soon be taken with a view to bringing the above provisions of the Labour Relations Act into conformity with the Convention, by ensuring that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike.*

Over a number of years, the Committee has been referring to section 117 of the Criminal Code, under which participation in any strike with the purpose of changing the laws of the State, coercing the Government or intimidating the people is punishable with imprisonment (involving compulsory labour). The Committee has noted the Government's repeated statement in its reports that section 117 is essential for national peace and security and does not deprive workers of their labour rights or of the right to strike under the labour law, having no objective to impose any sanctions against workers who participate in strikes pursuing economic and social objectives affecting their occupational interests. The Committee also noted previously the Government's indication that this section had never been applied in practice. *While having noted these indications, the Committee refers to the explanations provided in paragraph 188 of its 2007 General Survey on the eradication of forced labour and reiterates its hope that the necessary measures will be taken, on the occasion of the next revision of the Criminal Code, to amend section 117 in such a way that it would be clear from the text itself that strikes pursuing economic and social objectives affecting the workers' occupational interests are removed from the scope of sanctions under this section, in order to bring this provision into conformity with the Convention and the indicated practice.*

In its earlier comments, the Committee referred to certain provisions under which workers of state enterprises were prohibited from striking, this prohibition being enforceable with sanctions of imprisonment (involving compulsory labour). The Committee noted, in particular, that the State Enterprise Labour Relations Act B.E. 2543 (2000) prohibits strikes in state enterprises (section 33), violation of this prohibition being punishable with imprisonment (involving compulsory labour) for a term of up to one year; this penalty is doubled in the case of a person who instigates this offence (section 77).

While having noted the Government's statement in its 2006 report concerning the role of state enterprises for the economic and social development of the country and the living standards of the population, the Committee recalls that a blanket prohibition of strikes in all state-owned enterprises, if enforced with penalties involving compulsory labour, is incompatible with the

Convention. *Having also noted the Government's indications in its report concerning a study to be conducted by the Ministry of Labour on the conformity of the State Enterprise Labour Relations Act B.E. 2543 (2000) with the Convention, the Committee reiterates its firm hope that the necessary measures will soon be taken with a view to amending the above provisions of the State Enterprise Labour Relations Act, so that no sanctions involving compulsory labour can be imposed for the mere fact of participating in a peaceful strike, in order to bring the legislation into conformity with the Convention. It asks the Government to provide, in its next report, information on progress made in this regard.*

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

Togo

Forced Labour Convention, 1930 (No. 29) (ratification: 1960)

The Committee notes with *regret* that, for the fifth consecutive year, the Government has not provided a report on the application of the Convention. However, the Government provided information orally to the Conference Committee on the Application of Standards (98th Session, June 2009), which is noted by the Committee of Experts.

Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Child labour in domestic service and apprenticeship under conditions similar to forced labour. In its previous comments, the Committee noted a communication dated 6 July 2006 from the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), and the World Confederation of Labour (WCL), containing observations on the existence of situations similar to forced labour affecting children in domestic service and in the context of apprenticeship. According to the information contained in this communication, many children from rural areas are employed as domestic workers in urban areas. These children work long days (often from 4 a.m. to 11 p.m.) seven days a week, and carry out their work under the constant threat of physical violence and dismissal. The communication also reported the exploitation of apprentices working in the informal economy under conditions amounting to debt bondage. The apprentices are entrusted by their parents to an employer with the objective of learning a trade. During their apprenticeship, they are subjected to the menial tasks of fetching water, washing and housework. In certain mechanical and woodworking workshops, they act as night guards under conditions described as being deplorable. The very high fee for apprenticeship demanded by certain employers prevent apprentices from freeing themselves at the end of their contracts, thereby obliging them to work for free for long periods. One year of free work is sometimes required from apprentices as a gesture of gratitude. During holiday periods, apprentices often work until the early hours of the morning without financial compensation, particularly in clothes-making workshops and hairdressing establishments.

The Committee notes that the Government has made no comment on this communication, which was forwarded to it on 20 July 2006. In the context of the Conference Committee on the Application of Standards in June 2009, the Government confined itself to indicating that two Bills were to be submitted to the National Council on Labour and Social Legislation in August 2009: a draft Code of apprenticeship clarifying the role, responsibilities and obligations of the various actors, and a draft order determining the conditions for the use of domestic work.

The Committee requests the Government to take all the necessary measures in law and practice on an urgent basis to bring an end to the situations of exploitation experienced by certain children in domestic service and apprenticeship, which are similar to forced labour within the meaning of the Convention, as their work is imposed under the menace of a penalty (ill-treatment) and they cannot validly give their consent to the performance of such work as, in view of the conditions under which it is carried out, it is likely to harm their health, safety and development. It also requests the Government to provide information on the progress made concerning the two Bills respecting apprenticeship and domestic work and to provide a copy of these texts to the Office once they have been adopted.

The Committee refers to its comments concerning the application of the Worst Forms of Child Labour Convention, 1999 (No. 182). Since the Government has not provided the information requested in reply to its comments made both under Convention No. 182 and under Convention No. 29, the Committee reiterates its comments on the application of Convention No. 29. In the future, these issues will be examined exclusively and more specifically under Convention No. 182, since the latter Convention provides that forced labour is one of the worst forms of child labour.

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

Turkey

Forced Labour Convention, 1930 (No. 29) (ratification: 1998)

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

Articles 1 (paragraph 1), 2 (paragraph 1), and 25 of the Convention. Trafficking in persons for the purpose of sexual exploitation. The Committee previously noted a communication received in December 2003 from the International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation). In that communication, the ICFTU focused its concern on the trafficking of women and children. It observed that:

- Turkey is both a transit and a destination country for trafficked persons;

- most women and girls whose destination is Turkey come from the Russian Federation, Republic of Moldova, Romania, Georgia, Ukraine, Armenia, Azerbaijan and Uzbekistan;
- Turkey provides transit mainly for women from Central Asia, Africa, the Middle East and former Yugoslavia to other countries in Europe; and
- most victims of trafficking find themselves forced into prostitution and some into debt bondage.

The Committee notes, under the new Penal Code (Act No. 5237 of 2004), that:

- trafficking in persons for the purpose of subjecting them to forced labour or to slave-like conditions is punishable with a sentence of imprisonment of eight to 12 years (section 80);
- the employment of homeless, helpless or dependent persons without payment or for substandard wages or forcibly subjecting them to inhumane working and living conditions is punishable by a term of imprisonment of six months to three years (section 117(2)); and
- trafficking for the purpose of prostitution is punishable by a term of two to four years' imprisonment (section 227(3)).

The Committee asks the Government in its next report to supply information concerning the application and enforcement of sections 80, 117(2), and 227(3) of the Penal Code, including statistical data and other information about investigations and prosecutions, as well as convictions and sentencing outcomes in cases of convictions.

The Committee notes the reference by the Government to other measures it has taken, including among other things:

- training and awareness-raising seminars for law enforcement officers, organized in collaboration with the International Organization for Migration (IOM);
- implementation, within the framework of financial cooperation between Turkey and the European Union and under the coordination of the General Directorate of Security, a "Project for enhancement of the institutional capacity with a view to combating trafficking in human beings";
- the conclusion on 24 September 2004 of a bilateral "Memorandum of Understanding for cooperation in the struggle against human trafficking and illegal migration" with the Republic of Belarus as a source country; and
- the launching of a national emergency hotline and call service for use by victims of trafficking, as well as initiatives to establish women's trafficking shelters in Ankara and other cities.

The Committee asks the Government to supply information in its next report on the progress of these measures and information on any more recent measures taken or contemplated to combat trafficking in persons for purposes of sexual exploitation or other forms of forced labour, including updated information on police training and other efforts to improve law enforcement capacity in relation to trafficking; as well as on efforts to strengthen intergovernmental cooperation on trafficking cases, particularly with source countries.

The Committee notes the indication of the Government that application of the regulations implementing the Work Permit for Foreign Workers Act (No. 4817 of 2003), particularly sections 7, 12, and 22 of the Act, has entailed the imposition of new obligations that are aimed at combating trafficking in persons. ***The Government indicated that copies of these provisions were attached to the report in an "Annex 2"; however, the annex does not appear to have been included, and the Committee asks the Government to supply a copy with its next report.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1961)

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

Article 1(a) of the Convention. Political coercion and punishment for holding or expressing views opposed to the established system. The Committee has previously noted that penalties of imprisonment (involving compulsory prison labour, under section 198 of the Regulations pertaining to the administration of penitentiaries and to the execution of sentences, adopted by decision of the Council of Ministers of 5 July 1967, No. 6/8517, as amended) may be imposed under various provisions of the Turkish Penal Code, including, among others, section 159 (insulting or vilifying, inter alia, "Turkism", various state authorities, the state laws or the decisions of the National Grand Assembly) and section 312 (publicly inciting hatred and enmity of the population with reference to distinctions of class, race, religion or region) and under section 8 (written or oral propaganda, assemblies, manifestations and demonstrations against the indivisibility of the State) of the Anti-Terrorism Law, No. 3713 of 12 April 1991, as amended on 13 November 1996, in circumstances falling within *Article 1(a)* of the Convention.

The Committee noted that, while certain of the provisions might appear to be aimed at acts of violence or incitement to the use of violence, armed resistance or an uprising, their actual scope, as shown through their application in practice, is not limited to such acts, but provides for political coercion and the punishment of the peaceful expression of non-violent views that are critical of government policy and the established political system, with penalties involving compulsory labour.

The Committee notes that section 159 of the Penal Code was amended by Act No. 4771, of 3 August 2002, and that section 159 now corresponds to section 301 of the new Penal Code (Act No. 5237 of 2004). The Committee notes that this provision, under its fourth subsection, protects expression directed at "Turkishness", the Republic, or organs and institutions of government, if intended only to criticize, while the prior subsections continue to penalize such expression if it "publicly denigrates" those institutions. ***The Committee asks that the Government supply information about the application of this provision in practice, including information about any prosecutions, convictions and sentences under the various subclauses of section 301 of the Penal Code, so as to assure the Committee that the expression of political views or views ideologically opposed to the established political, social or economic system are not sanctioned with penalties that involve the use of forced or compulsory labour.***

In its previous observation, the Committee noted that the amendment introduced in section 312 of the Penal Code by Act No. 4744 of 6 February 2002, which makes the inciting of hatred and enmity of the population punishable with imprisonment if such acts constitute a danger to public order, required further clarification. In its latest report the Government indicates that the new Penal Code replaced section 312 with sections 215–218. The Committee notes that, under section 215, a person who "praises a crime or a criminal" is liable to a sentence of imprisonment of up to two years; that under section 216 a person who

“deliberately incites one section of the population to hatred and hostility against another through discrimination based on race, region, or religion, shall be liable to a sentence of imprisonment of one to three years”; and that under section 217 a person who commits the crime of “inciting people to disobey laws” is liable to a term of imprisonment of six months to two years. ***The Committee asks that the Government supply information about the application in practice of sections 215–217 of the new Penal Code, including information about any prosecutions, convictions and sentences under these provisions and copies of court decisions which construe and define their scope, so as to enable the Committee to ascertain whether they are applied in a manner compatible with the Convention.***

In its previous observation, the Committee noted with regard to section 8 of the “Act on the Fight against Terrorism”, No. 3713 of 1991, that, by virtue of Act No. 4744 of 6 February 2002, a penalty of imprisonment in this section was replaced with fines, and it requested the Government to provide clarification of the phrase “unless such acts necessitate a heavier penalty” and to supply copies of the court decisions defining or illustrating the scope of this provision. The Committee notes that, in June 2006, the Grand National Assembly adopted amendments to the Act. ***The Committee asks that in its next report the Government clarify the provision for penalties in section 8 as earlier requested. It also requests the Government to provide a copy of the 2006 amendments to the Act, including the relevant penalty provisions, and to supply updated information relating to the application in practice of the Act, as amended, including copies of all relevant court decisions and information about prosecutions, convictions and sentencing outcomes.***

The Committee has previously referred to provisions of the 1965 Act concerning political parties, which prohibits political parties from asserting the existence in Turkey of any minorities based on nationality, culture, religion or language and from attempting to disturb national security by conserving, developing or propagating languages and cultures other than the Turkish language or culture. It noted that penalties of imprisonment (involving compulsory labour) could be imposed under sections 80–82, read in conjunction with section 117, of the Political Parties Act (No. 2820 of 1983) and sections 5 and 76 of the Associations Act (No. 2908 of 1983). In its previous observation the Committee noted the Government’s indication in its 2003 report that changes were to be made in the Political Parties Act, in accordance with the Emergency Action Plan published on 3 January 2003, with a view to ensuring that the whole population would be able to participate in political parties and to make possible the establishment of equity and justice in political representation.

The Committee notes the Government’s indication in its 2005 report that the penalties applicable to prohibited activities under sections 80–82 have been “re-regulated” under the new Penal Code, Act No. 5237 of 2004. It further notes the Government’s indication that the new Associations Act, No. 5253, no longer includes provisions corresponding to sections 5 and 76 of the former Act. ***The Committee asks the Government in its next report to indicate the specific provisions of the new Penal Code which it states “re-regulate” sections 80–82 of the Political Parties Act. The Committee defers its comments on the new Associations Act pending a translation of the text of that Act.***

Article 1(b). Use of conscripts for purposes of economic development. The Committee has previously noted, among other provisions, that section 10 of the Military Service Act, No. 1111, as amended by Act No. 3358, as well as section 5 of Council of Ministers resolution No. 87/11945 of 12 July 1987, adopted pursuant to section 10 of Act No. 1111, lay down procedures relating to the surplus reserves, including the procedures concerning the persons liable to perform military service who are assigned duties in public bodies and institutions. In its 2003 report, the Government confirmed its previous indication that Act No. 3358, which amended section 10 of the Military Service Act, No. 1111, was no longer applied after 1991, though no action has yet been taken to repeal its provisions. The Committee in previous comments asked that necessary measures be taken with a view to repealing the above provisions in order to bring legislation into conformity with the Convention and the indicated practice, and that the Government provide information on the progress made in this regard.

The Committee notes the Government’s reply on this point in both its 2005 reports on the application of Conventions Nos 105 and 29. The Government indicates that a new draft Military Service Bill that would bring Military Service Act No. 1111 into conformity with “current conditions” has been examined by special expert committees of the Turkish Grand National Assembly, and that it further indicates that the Bill has been drawn up in a way that embodies a policy of protecting persons conscripted into military service from being assigned duties in public bodies or undertakings without their consent. ***The Committee requests the Government to keep the ILO informed about the progress of the above Bill. The Committee reiterates its hope that the necessary measures will at last be taken with a view to repealing the provisions referred to above in order to bring legislation into conformity with the Convention and the indicated practice, and that the Government will soon be able to provide information on the progress made in this regard.***

Article 1(c) and (d). Disciplinary measures applicable to seafarers. In its earlier comments the Committee noted that, under section 1467 of the Commercial Code (Act No. 6762 of 29 June 1956), seafarers may be forcibly conveyed on board ship to perform their duties, and that, under section 1469 of the Commercial Code, various breaches of discipline by seafarers are punishable with imprisonment (involving, as previously noted, an obligation to perform labour). The Committee also noted that the Government had submitted to Parliament a Bill to amend section 1467 of the Commercial Code, which contains a provision limiting the powers of the master under section 1467 to circumstances jeopardizing the safety of the ship or endangering the lives of the passengers and the crew, and expressed the hope that section 1469 of the Commercial Code would likewise be amended to limit its scope to acts endangering the safety of the ship or the lives or health of persons.

The Committee notes the Government’s indication that a draft Turkish Trade Act, which has the aim of bringing sections 1467 and 1469 of the Commercial Code into conformity with the Convention, is now under elaboration in the specialized committees of the Parliament, and that, once the Bill is adopted, the Government will supply copies of the text of the new legislation. ***The Committee reiterates its hope that the Government will very soon be in a position to report the progress achieved in this matter.***

Article 1(d). Punishment for participation in strikes. The Committee has previously noted that Act No. 2822 of 1983, respecting collective labour agreements, strikes and lockouts, provides in sections 70–73, 75, 77 and 79 for penalties of imprisonment (involving compulsory labour) as a punishment for the participation in unlawful strikes, in circumstances not limited in scope to those described in paragraphs 182–189 of its 2007 General Survey on the eradication of forced labour. The Government indicated in its 2003 report that a tripartite “Science Board”, established with the objective of bringing Act No. 2822 into conformity with relevant ILO Conventions, had completed its work and submitted its report for consideration by the social partners. ***The Committee refers the Government to its comments on this point under the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and expresses the firm hope that amendments to Act No. 2822 addressing the Committee’s concerns under both Conventions will be adopted without further delay.***

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

Uganda

Forced Labour Convention, 1930 (No. 29) (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:

Articles 1, paragraph 1, and 2, paragraph 1 of the Convention. Legislation concerning compulsory placement of unemployed persons on agricultural enterprises in rural areas. For a number of years, the Committee has been referring to section 2(1) of the Community Farm Settlement Decree, 1975, under which any unemployed able-bodied person may be settled on any farm settlement and required to render service; section 15 of the Decree makes it an offence punishable with a fine and imprisonment for any person to fail or refuse to live on any farm settlement or to desert or leave such settlement without authorization. The Committee previously noted the Government's indication in its report that the abovementioned Decree was in the process of being repealed under the laws of Uganda revision exercise by the Uganda Law Reform Commission. The Committee has also noted from the statement of the Government representative before the Conference Committee on the Application of Standards in June 2006, that the 1975 Decree is a "dead law" which is not applied in practice, and that the current Parliament intends to repeal it. ***While having noted these indications, the Committee expresses the firm hope that the Community Farm Settlement Decree, 1975, will be repealed in the near future, in order to bring the legislation into conformity with the Convention and the indicated practice. It asks the Government to supply a copy of the repealing text, as soon as it is adopted.***

Freedom of career military officers to leave their service. The Committee previously noted the Government's indication that the Armed Forces (Conditions of Service) (Officers) Regulations, 1969, were replaced by the National Resistance Army (Conditions of Service) (Officers) Regulations, No. 6 of 1993 (now the Uganda Peoples' Defence Forces (Conditions of Service) (Officers) Regulations). The Committee has noted that section 28(1) of these Regulations contains a provision (which is similar to a corresponding provision of the repealed Regulations) under which the Board may permit officers to resign their commission in writing at any stage during their service. The Committee has noted the Government's repeated indication in its reports, which was also confirmed by the Government representative in his statement before the Conference Committee in June 2006, that the officer applying for the resignation must give his/her reasons for it, and the Board will consider these reasons and, if it finds them fit, will grant a permission to resign.

The Committee observes that it follows from the wording of section 28(1) that the application to resign may be either accepted or refused. It refers to the explanations provided in paragraphs 46 and 96–97 of its 2007 General Survey on the eradication of forced labour, where it pointed out that career military servicemen who have voluntarily entered into an engagement cannot be deprived of the right to leave the service in peacetime within a reasonable period, either at specified intervals, or with previous notice, subject to the conditions which may normally be required to ensure the continuity of the service. ***The Committee therefore expresses the firm hope that the necessary measures will be taken with a view to amending section 28(1) of the above Regulations, so as to bring it into conformity with the Convention. Pending such amendment, the Committee again requests the Government to provide information on the application of section 28(1) in practice, indicating in particular the criteria applied by the Board in accepting or rejecting a resignation, as well as the number of resignations accepted and refused.***

Military service of persons enrolled below the age of 18 years. The Committee previously noted the Government's indication in its report that the Armed Forces (Conditions of Service) (Men) Regulations, 1969, which provided that the term of service of persons enrolled below the age of 18 years might be extended until they are 30 years old, was repealed by the National Resistance Army (Conditions of Service) (Men) Regulations No. 7 of 1993. The Government indicated that section 5(4) of these Regulations prohibits a person below the age of 18 years or above 30 years to be employed in the armed forces. ***While having noted these indications, the Committee again requests the Government to supply a copy of Regulations No. 7, 1993, with its next report.***

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

Abolition of Forced Labour Convention, 1957 (No. 105) (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:

Article 1(a) of the Convention. Penal sanctions involving compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. For a number of years, the Committee has been referring to the following legislation:

- (i) the Public Order and Security Act, No. 20 of 1967, empowering the executive to restrict an individual's association or communication with others, independently of the commission of any offence and subject to penalties involving compulsory labour;
- (ii) sections 54(2)(c), 55, 56 and 56A of the Penal Code, empowering the minister to declare any combination of two or more people an unlawful society and thus render any speech, publication or activity on behalf of, or in support of, such combination illegal and punishable with imprisonment (involving an obligation to perform labour).

As the Committee repeatedly pointed out, any penal sanctions involving an obligation to perform prison labour are contrary to the Convention when imposed on persons convicted for expressing political views or views opposed to the established political system, or having contravened a widely discretionary administrative decision depriving them of the right to publish their views or suspending or dissolving certain associations (see, for example, paragraphs 152–166 of its 2007 General Survey on the eradication of forced labour).

The Committee expresses the firm hope that the necessary measures will at last be taken to repeal or amend the abovementioned provisions of the Public Order and Security Act, No. 20 of 1967, and of the Penal Code, in order to bring the

legislation into conformity with the Convention, and that the Government will provide, in its next report, information on progress made in this regard.

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

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

United Kingdom

Forced Labour Convention, 1930 (No. 29) (ratification: 1931)

Articles 1, paragraph 1, and 2, paragraphs 1 and 2(c), of the Convention. Privatization of prisons and prison labour. Work of prisoners for private companies. In comments it has been making for a number of years concerning the privatization of prisons and work of prisoners for private companies in the United Kingdom, the Committee has pointed out that *Article 2(2)(c)* of the Convention expressly prohibits that convicted prisoners are hired to or placed at the disposal of private individuals, companies or associations, in the sense that the exception from the scope of the Convention provided for in this Article for compulsory prison labour does not extend to work of prisoners for private employers (including privatized prisons and prison workshops), even under public supervision and control. The Committee recalled that compulsory work or service exacted from any person as a consequence of a conviction in a court of law is compatible with the Convention only if two conditions are met: namely, “that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations”. Both these conditions are necessary for compliance with the Convention: if either of the two conditions is not observed, the situation is not excluded from the scope of the Convention, and compulsory labour exacted from convicted persons under these circumstances is thus prohibited. The Committee asked the Government to take the necessary measures in order to ensure that, with regard to contracted-out prisons and prison industries, any work by prisoners for private companies be performed under the conditions of a freely consented upon labour relationship, without the menace of any penalty and, given their conditions of captive labour, subject to guarantees as to wages and other conditions of employment approximating a free labour relationship.

The Committee notes with *regret* from the Government’s report that there has been no change in the Government’s position and in national law and practice with regard to the work of prisoners for private entities. The Government reiterates its view that its approach to this issue is in line with the aims of the Convention. It states that both public and private sector prisons and workshops in the United Kingdom are subject to rigorous independent inspections, both domestically and internationally, and that the United Kingdom continues to have in place a robust set of rules and regulations to ensure that prison labour is not abused.

While noting these statements, the Committee points out once again that the privatization of prison labour transcends the express conditions provided in *Article 2(2)(c)* of the Convention for exempting compulsory prison labour from the scope of the Convention. Consequently, it may be held compatible with the Convention only where it does not involve compulsory labour. Thus, in order to comply with the Convention, the work of prisoners for private companies requires the freely given consent of the persons concerned. The Committee has considered that, in the context of a captive labour force having no alternative access to the free labour market, the most reliable indicator of the voluntariness of labour is the work performed under conditions approximating a free labour relationship, which include wage levels (leaving room for deductions and attachments), social security and occupational safety and health (see paragraphs 59–60 and 114–120 of the Committee’s 2007 General Survey *on the eradication of forced labour*).

While noting the Government’s repeated suggestion to refer this matter for further consideration in conjunction with international labour practitioners, as well as the Government’s confirmed willingness to cooperate with the ILO on this matter, the Committee is of the opinion that, in spite of the express prohibition for prisoners to be hired to or placed at the disposal of private parties under the terms of the Convention, it is fully possible for ratifying States to apply the Convention when designing or implementing a system of privatized prison labour, once the abovementioned requirements are complied with. The Committee refers in this connection to paragraph 122 of its 2007 General Survey on the eradication of forced labour, where it observed that a certain number of countries have made progress towards full compliance with the Convention by taking measures, both in law and in practice, so that conditions of the private employment of prisoners progressively approach those of free workers.

The Committee therefore expresses the firm hope that measures will be taken to ensure that freely given and informed consent is required for the work of prisoners in privately operated prisons, as well as for all work of prisoners for private companies, both inside and outside prison premises, such “free” and “informed” consent being authenticated by the conditions of work approximating a free labour relationship, as regards wage levels (leaving room for deductions and attachments), social security and occupational safety and health. The Committee trusts that such measures will be taken both in law and in practice, in order to grant prisoners working in privately operated facilities and other prisoners working for private enterprises a legal status with rights and conditions of employment that are compatible with this basic human rights instrument, and that the Government will soon be in a position to report the progress made in this regard.

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

United States

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1991)

Article 1(c) and (d) of the Convention. Sanctions involving compulsory labour for participation in strikes. In observations addressed to the Government since 2002, the Committee has noted that, under article 12, section 95-98.1, of the North Carolina General Statutes, strikes by public employees are declared illegal and against the public policy of the State. Under section 95-99, any violation of the provisions of article 12 is declared to be a Class 1 misdemeanour. Under section 15A-1340.23, read together with section 15A-1340.11 of Chapter 15A (Criminal Procedure Act), a person convicted of a Class 1 misdemeanour may be sentenced to “community punishment” and, upon a second conviction, to “active punishment”, that is, imprisonment. The Committee has noted the *Compendium of Community Corrections Programs in North Carolina*, published by the North Carolina Sentencing and Policy Advisory Commission, which explains that the imposition of community punishment may include assignment to the State’s Community Service Work Program (CSWP): “The CSWP is an alternative to incarceration imposed as part of a community punishment or Driving While Intoxicated (DWI) sentence, or in some cases as the sole condition of unsupervised probation.” The report states elsewhere: “CSWP is a community punishment. It is also used as a sanctioning tool at every stage of the criminal justice system ... CSWP requires the offender to work for free for public or non-profit agencies in an area that will benefit the greater community.” The Committee has also noted that article 3 (Labor of Prisoners), section 148-26, of Chapter 148 (State Prison System) declares it to be the public policy of the State of North Carolina that all able-bodied prison inmates shall be required to perform diligently all work assignments provided for them.

The Committee notes that in its latest report the Government repeats its indication that court records reveal no cases in which any worker has ever been convicted under these provisions for engaging in an illegal public sector strike. *The Committee trusts that, given the Government’s indication that these provisions have lain dormant and never been applied in practice, appropriate measures will be taken to amend or repeal them, and the law will be brought into conformity with the Convention. Considering also the chilling effect that a general prohibition of strikes linked to criminal penalties involving compulsory labour may have on public sector workers who might otherwise decide to engage in strikes, the Committee urges the Government to take such measures without further delay. Noting also a communication dated 25 August 2009, sent by the Government to the North Carolina Department of Justice, in which it has forwarded the observations of the Committee to the State Government, the Committee hopes that in its next report the Government will be in a position to provide information on the progress achieved in this regard.*

Uzbekistan

Abolition of Forced Labour Convention, 1957 (No. 105) (ratification: 1997)

Article 1(b) of the Convention. Mobilization and use of labour for purposes of economic development in agriculture (cotton production). In its earlier comments, the Committee referred to the observations made by the Council of the Trade Unions Federation of Uzbekistan, communicated by the Government with its 2004 report, which contained allegations concerning practices of a mobilization and use of labour for purposes of economic development in agriculture (cotton production), in which public sector workers, schoolchildren and university students were involved. It also noted a communication dated 17 October 2008, received from the International Organisation of Employers (IOE), which alleged that, despite the existence of the legal framework against the use of forced labour, there were continued non-governmental organizations and media reports denouncing the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan. The Committee notes the Government’s response to the above communication by the IOE, received in January 2009. It further notes a new communication from the IOE dated 26 August 2009, as well as a communication from the International Trade Union Confederation (ITUC) dated 31 August 2009, both of them concerning the above subject, which were sent to the Government in August and September 2009 for any comments it might wish to make on the matters raised therein. Finally, the Committee notes the comments made by the Council of the Trade Unions Federation of Uzbekistan on the application of the Convention, in a communication dated 10 August 2009.

In the 2009 communication referred to above, the IOE reiterated its previous comments submitted in 2008 and stated that there were continued non-governmental organizations and media reports denouncing the systematic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan. The above communication by the ITUC contains similar allegations, according to which the Government systematically mobilizes both school-age children and adults to work in the annual cotton harvest for purposes of economic development; it further alleges that, in addition to forcible nature of the work, persons concerned are working in extremely exploitative and harmful conditions. The ITUC refers in this connection to the report of the fact-finding mission to Central Asia undertaken by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), in which the IUF reported that, during cotton harvesting, teachers and children are mobilized in many rural areas to help with the harvest that interrupts the study for several weeks. Both the IOE and the ITUC refer in their respective communications to the 2005 reports of the two non-governmental organizations: Environmental Justice Foundation (EJF) and the International Labour Rights Forum (ILRF), which contained allegations that every year hundreds of thousands of Uzbek schoolchildren are forced to work in the national cotton harvest for up to three months. The IOE further refers to the 2006 concluding

observations of the UN Committee on the Rights of the Child concerning Uzbekistan (CRC/C/UZB/CO/2, 2 June 2006, 42nd Session), in which the UN Committee expressed its deep concern at the information about the involvement of the very many school-age children in the harvesting of cotton resulting in serious health problems and recommended to the Government to take all measures to comply with international child labour standards and establish mechanisms to monitor the situation. The IOE also refers to the concluding observations of the Committee on Economic, Social and Cultural Rights concerning Uzbekistan (E/C.12/UZB/CO/1, 24 January 2006, 35th Session), in which that Committee expressed concern about the persistent reports of the situation of school-age children who are obliged to participate in the cotton harvest every year and, for that reason, do not attend school during this period.

According to the allegations made by the IOE and the ITUC, adult persons are also subject to forced labour during the cotton harvest. The ITUC alleges, in particular, that local administration employees, teachers, factory workers and doctors are commonly forced to leave their jobs for weeks at a time and pick cotton with no additional compensation; in some instances refusal to cooperate can lead to dismissal from work; even elderly people and mothers of young babies have been reportedly ordered by local government officials to pick cotton or lose their pensions or child benefits. The ITUC concludes that, even if forced labour in the cotton field were not the result of the state policy, the Government still violates the Convention by failing to ensure its effective observance, since it systematically requires persons to work in the cotton fields against their will, under the threat of a penalty and in extremely perilous conditions for the purposes of economic development. The IOE states that, while the adoption in September 2008 of a decree prohibiting child labour in cotton plantations, as well as the approval of a National Action Plan to eradicate forced child labour, could be considered as positive steps, it still remains uncertain if the implementation of these measures will be sufficient to address these deeply rooted practices.

The Committee notes that, in its reply to the 2008 communication by the IOE, the Government denied the allegations about coercion of large numbers of people to participate in agricultural works and reiterated that under no circumstances may employers use compulsory labour for the production or harvesting of agricultural products in Uzbekistan, the exaction of forced labour being punishable with the penal and administrative sanctions and employers being liable for violation of labour legislation in respect of persons under the age of 18. The Government also states that practically all the country's cotton is produced by small undertakings that have no economic interest in employing additional labour, and the well-developed education system prevents the exaction of forced labour from children. The Government further states that state policy on the protection of children is implemented within the framework of the development goals set out in the Millennium Declaration, international obligations arising from ratification of the UN Convention on the Rights of the Child and the adoption of the National Plan of Action to Protect the Rights and Interests of Children. It indicates that, following the ratification by Uzbekistan of the ILO Conventions Nos 138 and 182, the Government has approved the National Plan of Action to implement the above Conventions, and a system of public monitoring ensuring that immediate action is taken to put an end to any violation of children's rights has been set up. The Government refers in this connection to the System for the Protection of the Family, Mothers and Children, headed by the Deputy Prime Minister, and to the Commission on the Affairs of Minors, headed by the Prosecutor General, as well as to the state legal inspectorates and safety and health inspectorates set up in every region of the country under the Ministry of Labour and Social Protection. The national labour legislation sets the minimum age for admission to employment at 16 years, and a list of occupations involving arduous working conditions in which employment of persons under 18 years old is prohibited was adopted in 2001. The Government reiterates that children's welfare is one of the top national priorities and refers in this connection to a large-scale social protection system and various state social programmes, as well as educational reform, which includes 12 years of compulsory schooling for all children.

While noting the Government's indications concerning the positive steps that have been taken to protect the children's rights and to prohibit child labour in occupations involving arduous working conditions, including the adoption in September 2008 of a decree prohibiting the use of child labour in cotton plantations, the Committee observes, however, that there is a convergence of views of the United Nations bodies, the representative organizations of employers and workers, as well as non-governmental organizations concerning the large-scale use of child labour, including compulsory labour, in cotton production in Uzbekistan.

The Committee hopes that the Government will respond in detail to the latest observations of the employers' and workers' organizations referred to above and provide, in its next report, information on measures taken, both in law and in practice, in order to suppress and not to make use of compulsory labour, including both compulsory child labour and compulsory labour of adult persons, in the cotton production. The Committee requests the Government, in particular, to provide information on the application in practice of a decree prohibiting the use of child labour in cotton plantations, adopted in September 2008, as well as information on other measures, legislative or otherwise, that have been taken or envisaged to ensure the observance of the Convention, which expressly prohibits the use of forced or compulsory labour for purposes of economic development.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 29** (*Albania, Algeria, Australia, Azerbaijan, Bahrain, Belgium, Belize, Benin, Botswana, Brazil, Burundi, Cameroon, Cape Verde, Chad, Chile, China: Macau Special Administrative Region, Colombia, Comoros, Congo, Côte d'Ivoire, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Equatorial Guinea, Eritrea, Ethiopia, France, Gabon, Gambia, Guinea, Guinea-Bissau, India, Iraq, Ireland, Italy, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Libyan Arab Jamahiriya, Lithuania, Malawi, Malaysia, Mali, Mauritius, Republic of Moldova, Mozambique, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Panama, Papua New Guinea, Paraguay, Portugal, Qatar, Rwanda, Saint Lucia, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Solomon Islands, Spain, Switzerland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United Kingdom, United Kingdom: Anguilla, United Kingdom: Montserrat, United Kingdom: St Helena, Uzbekistan, Bolivarian Republic of Venezuela, Yemen, Zimbabwe*); **Convention No. 105** (*Afghanistan, Albania, Algeria, Angola, Azerbaijan, Bahrain, Barbados, Belize, Benin, Bolivia, Botswana, Burundi, Cambodia, Cameroon, Central African Republic, Chad, Chile, China: Macau Special Administrative Region, Comoros, Congo, Czech Republic, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Fiji, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Hungary, India, Iraq, Italy, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Lebanon, Lesotho, Liberia, Malawi, Mali, Mauritania, Republic of Moldova, Mozambique, Pakistan, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Seychelles, Sierra Leone, Sri Lanka, Sudan, Suriname, Tajikistan, United Republic of Tanzania, Thailand, The former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United Kingdom, United States, Uzbekistan, Yemen, Zimbabwe*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 29** (*Mauritania, Saint Vincent and the Grenadines, Uruguay*).

Elimination of child labour and protection of children and young persons

Bolivia

Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77) (ratification: 1973)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 2, paragraph 1, of the Convention. Medical examination for fitness for employment. The Committee noted Decision No. 001 of 11 May 2004, issued by the Ministers of Labour and of Health and Sports (SEDES), section 1 of which provides that the Ministry of Health and Sports, through its ministries and municipal authorities, shall allocate the necessary and adequate medical personnel so that, in coordination with the Ministry of Labour, free medical examinations are carried out of the fitness for employment of working boys, girls and young persons in the industrial and agricultural sectors and for own account work, in urban and rural areas, in application of section 137(1)(b) of the Code on Boys, Girls and Young Persons of 1999. In this respect, the Committee noted section 137(1)(b) of the Code on Boys, Girls and Young Persons of 1999, under the terms of which young workers shall periodically undergo medical examination. Noting that the medical examinations envisaged under section 1 of Decision No. 001 of 11 May 2004 appear to refer solely to the periodical medical examinations of young persons to be carried out during employment, the Committee reminded the Government that, in accordance with *Article 2(1)* of the Convention, no young persons under 18 years of age shall be admitted to employment unless they have been found to be fit for work by a thorough medical examination. Furthermore, the Committee noted the Government's indication that the Ministry of Labour, with the technical assistance of the Bolivian Standardization and Quality Institute (IBNORCA), has formulated regulations under the General Occupational Safety, Health and Welfare Act on work by young persons in industry, commerce, mining and agriculture. These regulations are due to come into force shortly. **The Committee therefore once again requests the Government to provide information on the progress achieved in this regard and on the establishment of thorough medical examination before admission to employment.**

With regard to the frequency of the periodical medical examinations (*Article 3(2) and (3)*), the medical examinations required until the age of 21 years in occupations which involve high health risks (*Article 4*) and the adoption of appropriate measures for the vocational guidance and physical and vocational rehabilitation of young persons found by medical examination to be unsuited to certain types of work or to have physical handicaps or limitations (*Article 6*), the Committee noted the Government's indication that these subjects have not yet been covered. Nevertheless, the Government indicated that these and other matters envisaged by the Convention would be defined in the regulations on work by young persons issued under the General Occupational Health, Safety and Welfare Act. **The Committee therefore hopes that these regulations will be adopted in the near future to give effect to these provisions of the Convention. It once again requests the Government to supply a copy of these regulations as soon as adopted.**

Part V of the report form. Application in practice. The Committee noted that, due to economic constraints, there are certain shortcomings in the application of this Convention, particularly in the capitals of remote departments, such as Cobija and Trinidad, and in rural areas. Nevertheless, the Government was adopting measures, in accordance with the possibilities available to it, so that all young persons who work in the country will progressively be covered by the protection afforded by the Convention. The Committee noted the Government's statement with interest. **It once again requests it to continue providing information on the progress achieved in the application of the Convention in practice in the country. The Committee also once again requests the Government to provide, if such statistics are available, information concerning the number of children and young persons who are engaged in work and have undergone the periodical medical examinations envisaged in the Convention; extracts from the reports of the inspection services relating to any infringements reported and the penalties imposed; and any other information illustrating the application of the Convention in practice.**

Work by young persons in agriculture. Even though the Convention does not cover agricultural work, the Committee noted with interest the draft Presidential Decree regulating the exercise of and compliance with rights and obligations arising out of agricultural employment. Section 28(IV) provides that, before being admitted to employment, young persons shall undergo a free medical examination of fitness for work, which shall be repeated periodically. This provision also requires employers to maintain at the disposal of labour inspectors the corresponding medical certificate of fitness for employment. The Committee considered that this provision reflects the principle set out in *Articles 2, 3 and 7* of the Convention with regard to agricultural work. In this respect, the Committee noted that the draft Presidential Decree is currently in the process of being approved by the Economic Policy Analysis Unit (UDAPE), which is a government technical body responsible for preparing a preliminary report on the relevance of the approval of any legal provision by the Cabinet of Ministers. **The Committee once again asks the Government to include provisions in the above draft relating to the intervals at which medical examinations shall be carried out (Article 3(2) of the Convention).**

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

Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78) (ratification: 1973)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 7, paragraph 2, of the Convention. With regard to the methods of identification or other methods of supervision to be adopted for ensuring the application of the system of medical examination for fitness for employment to children and young persons engaged either on their own account or on account of their parents in itinerant trading or in any other occupation carried on in the streets, the Committee requests the Government to take into consideration, when taking the legislative or regulatory measures on the basis of the analysis of the results obtained from the VALORA Plan, the indications

contained in Recommendation No. 79 on the medical examination of young persons particularly Paragraph 14 on methods of supervision.

Moreover, the Committee invites the Government to refer to its comments under Convention No. 77.

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

Brazil

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments the Committee noted that the National Council for the Elimination of Child Labour (CONAETI) was analysing the reports of the organizations and agencies involved in implementing the National Plan for the prevention and elimination of child labour with a view to the adoption of a new plan. It also noted the implementation of the **Time-bound Programme (TBP)** and other programmes of action concerning hazardous agricultural activities, particularly in the context of a family-run enterprise, work in the informal economy and child domestic labour. The Committee further noted the statistics relating to a household survey carried out by the Brazilian Institute of Geography and Statistics (IBGE) in 2004. These statistics revealed that between 2002 and 2004 the number of working children between 5 and 16 years of age fell by approximately 450,000. Although indicating a decrease in child labour, the statistics showed that 5.4 million children and young persons between 5 and 17 years of age were working during the reference week for the study. In this regard the Government indicated that the majority of children and young persons work in family enterprises where it is very difficult for inspectors to carry out their work. The Committee asked the Government to supply information on the way in which the Convention is applied in practice.

In its report the Government indicates that the “National Plan for the prevention and elimination of child labour and the protection of young workers” is currently being reviewed by a CONAETI subcommittee set up for the purpose and the National Council for Children’s Rights (CONANDA), in order to incorporate new policies and redefine the objectives and deadlines for implementation of the plan. Once it has been drawn up, the new plan will be submitted to public consultation. The Government also indicates that a subcommittee for international affairs relating to child labour and South–South cooperation has been set up in order to encourage international cooperation in the field of child labour.

The Committee duly notes that, according to the information contained in the last (December 2008) ILO–IPEC report on the **TBP** (2008 ILO–IPEC final evaluation report), between 2003 and 2008 a total of 10,807 children benefited from the programme, with 5,251 prevented from engaging in the worst forms of child labour and 5,556 removed from the worst forms of child labour. The Committee notes with **interest** that, according to the 2007 statistics of the national household survey (PNAD) available to ILO–IPEC, the number of working children and young persons between 5 and 17 years of age is 4,829,223, which indicates a reduction of more than 570,000 since 2004.

Moreover, the Committee duly notes that, according to the 2008 ILO–IPEC final evaluation report, the **TBP** has created a favourable environment for combating child labour. It also notes that the federal government and the state and municipal governments have been collaborating with ILO–IPEC since March 2008, to strengthen the national policy for the elimination of child labour and the worst forms thereof. Hence, in the context of the Bahia Decent Work Agenda, the Brazilian authorities and ILO–IPEC have implemented a national aid project to make Bahia the first state in the country without child labour. The project is in its early stages. Furthermore, other triangular South–South cooperation projects designed to prevent and eliminate child labour in the Americas are in the process of being approved.

The Committee welcomes the measures taken by the Government to abolish child labour, which it considers to be an affirmation of its political will to develop strategies to combat this problem. Nevertheless, it observes with **concern** the situation of children in Brazil who are forced to work out of necessity. Indeed, despite a reduction in child labour since the ratification of the Convention in 2001, abolition of child labour remains a major challenge for Brazil. **It therefore strongly encourages the Government to redouble its efforts to improve the situation. In this respect, it requests the Government to supply information on the measures taken within the framework of the national aid project to make Bahia the first state in the country without child labour and the various triangular South–South cooperation projects designed to prevent and eliminate child labour in the Americas, particularly regarding the abolition of child labour, and also the results achieved. Moreover, the Committee requests the Government to continue supplying information on the manner in which the Convention is applied in practice, including, for example, statistics disaggregated by sex and age relating to the nature, scope and trends in the labour of children and young persons working below the minimum age specified by the Government at the time of ratification, and extracts from the reports of the inspection services. Finally, it requests the Government to send a copy of the new “National Plan for the prevention and elimination of child labour and the protection of young workers”, once it has been drawn up and adopted.**

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3(a) of the Convention and Part III of the report form. Sale and trafficking of children for economic and sexual exploitation, and court decisions. In its previous comments, the Committee noted that the national legislation prohibits the sale and trafficking of children for economic exploitation (sections 206 and 207 of the Penal Code) and also prohibits incitement to prostitution (section 228 of the Penal Code). It further noted the adoption of Act No. 11.106 of 28 March 2005, which amended section 231 of the Penal Code by prohibiting and penalizing the international trafficking of persons for the purposes of prostitution. The Act also inserted section 231-A, which outlaws and penalizes the internal trafficking of persons. However, the Committee noted that, according to an ILO–IPEC report of 2003 on good practices in Brazil, the sexual exploitation of children and young persons was an increasing phenomenon. According to estimates, nearly 500,000 children between nine and 17 years of age were being sexually exploited in the country. The Committee also noted that, according to the 2006 ILO–IPEC report on the project to combat the trafficking of persons, Brazil is a country of transit, origin and destination for the international sale and trafficking of children for prostitution. Girls and boys are also victims of internal trafficking, particularly for exploitation of their work in agriculture, mining and charcoal production.

The Committee notes that the Committee on the Elimination of Discrimination against Women, in its concluding comments of August 2007 on the sixth report of the Government (CEDAW/C/BRA/CO/6, paragraphs 7 and 23), noted with satisfaction the measures taken by the Government against the trafficking of persons but expressed concern at the scale of the phenomenon.

The Committee notes that, according to the information contained in the December 2008 ILO–IPEC report on the **Time-bound Programme (TBP)** [2008 ILO–IPEC report on the **TBP**], the Government adopted in 2006 a National Policy to combat the trafficking of persons and, in 2008, a National Plan to combat the trafficking of persons. The Committee notes that both the National Policy and the National Plan provide in particular for the adoption of measures to penalize the crime of trafficking of persons.

The February 2009 Global Report on Trafficking in Persons, published by the United Nations Office on Drugs and Crime (UNODC) [UNODC report on trafficking in persons], states that 530 investigations relating to the crime of trafficking of persons, both internally and across national boundaries, were conducted by the federal and state police between 2003 and 2007, leading to prosecutions in 75 cases. Between 2004 and February 2008, a total of 41 persons (20 men and 21 women) were convicted of this crime by the federal and state courts. According to the UNODC report on trafficking in persons, all the convictions handed down related to sexual exploitation. In 19 cases, the penalties imposed ranged from one to five years' imprisonment and, in 15 cases, from five to ten years' imprisonment.

The Committee welcomes the efforts made by the Government to combat the trafficking of persons. However, it is concerned at the information concerning the persistence of the problem on a substantial scale in the country. Furthermore, noting the statistics on the investigations conducted, the prosecutions launched and the convictions handed down for the crime of trafficking of persons in the country, the Committee notes that overall statistics are provided which do not show the situation with regard to children. It also notes that, even though children are the victims of sale and trafficking for both sexual and economic exploitation, the convictions relate only to trafficking for sexual exploitation. ***The Committee therefore requests the Government to intensify its efforts to ensure the protection in practice of young persons under 18 years of age against the sale and trafficking of children for sexual and economic exploitation. In this respect, it requests the Government to supply information on the application in practice of the provisions of national legislation prohibiting the sale and trafficking of persons under 18 years of age, including, in particular, statistics relating to investigations, prosecutions and penalties imposed. Moreover, in view of the statement indicating the investigation and prosecution of persons, the Committee requests the Government to supply copies of any court decisions issued.***

Article 5. Monitoring mechanisms. Reinforcement of labour inspection. The Government indicates in its report that the Ministry of Labour and Employment has modified the functions of the Special Mobile Inspection Group, extending the action taken by labour inspectors to combating child labour and to other related matters, including the commercial sexual exploitation of children. In the context of public information campaigns planned for the World Day Against Child Labour in June 2008, the Government states that the Ministry of Labour and Employment organized inspections targeting child labour throughout the country. These operations enabled 821 children to be removed from their work.

Furthermore, according to the Government's report, an information system on locations of child labour (SITI) has been established. This information system contains detailed information on locations where child labour, and the worst forms thereof, occurs, in both the formal and informal economies, including information concerning the commercial sexual exploitation of children. This database contributes to the planning of actions by the labour inspectorate, particularly by the regional superintendencies for labour and employment. ***Noting with interest the measures taken by the Government to strengthen the intervention capacity of the labour inspectorate throughout the country, the Committee strongly encourages the Government to continue its efforts to ensure the success of the labour inspectorate's activities.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assistance for their removal from these worst forms of child labour and for

their rehabilitation and social integration. *Commercial sexual exploitation. Time-bound Programme (TBP).* With reference to its previous comments, the Committee notes with *interest* that, according to the 2008 ILO–IPEC report on the *TBP*, a total of 723 children (54 boys and 669 girls) have either been prevented from engaging in commercial sexual exploitation or been removed from this worst form of child labour. It also notes that the Sentinel programme which provides psychological and social support to children and young persons who have been the victims of sexual exploitation, is now operating in more than 885 municipalities in the country. Moreover, the Committee notes that the 2006 National Policy for combating the trafficking of persons and the 2008 National Plan for combating the trafficking of persons state, in particular that measures to prevent trafficking and to assist the victims thereof must be adopted in order to reinforce those already in place. ***The Committee requests the Government to continue to adopt the necessary time-bound measures, in the context of the National Plan and National Policy for combating the trafficking of persons, to prevent young persons under 18 years of age from becoming the victims of commercial sexual exploitation, to remove them from this worst form of child labour and to ensure their rehabilitation and social integration. Finally, the Committee requests the Government to supply information on the results achieved.***

Clause (d). Children at special risk. Child domestic workers. The Committee previously noted the indication from the International Trade Union Confederation (ITUC) that, according to the 2004 ILO–IPEC study, there are over 500,000 child domestic workers in Brazil. Many of them are extremely vulnerable to exploitation and work under conditions prohibited by the Convention. These children, particularly the girls, do not attend school, and the school attendance rate for girls in general is very low. Over 88 per cent of child domestic workers begin working before the minimum age for admission to employment, normally at five or six years of age. The ITUC also pointed out that the national legislation contains provisions applicable to child domestic labour but a clear legal framework would be necessary to end this form of exploitation of children. It also underlined the fact that, since these children work in private houses, where it is very difficult to monitor them, it is important to change public attitudes to child domestic work. In this respect, the Committee noted the information from the Government to the effect that the characteristics of domestic work prevent the labour inspection services from carrying out inspections directly in private houses. The Committee further noted that discussions have been held concerning the inclusion of this form of child labour on the list of activities considered to be hazardous.

The Committee takes due note of the Government's statement that, under the terms of Decree No. 6.481 of 12 June 2008, child domestic labour is now regarded as one of the worst forms of child labour and is prohibited for any person under 18 years of age. The Government also indicates that it is impossible for labour inspectors to carry out inspections in private houses because this would amount to trespassing. The Committee notes that, according to the 2008 ILO–IPEC report on the *TBP*, a sectoral plan on domestic workers (Planseq) has been implemented to support this category of workers and inform them of their rights. ***In view of the Government's statements, the Committee requests the Government to supply information on the time-bound measures taken to implement Decree No. 6.481 of 12 June 2008, which prohibits the employment of young persons under 18 years of age as domestic workers, and in particular to prevent the engagement of children in the worst forms of child labour and provide the necessary and appropriate direct assistance for their removal from the worst forms of child labour and for their rehabilitation and social integration.***

Finally, with regard to the work to bring the national legislation into conformity with Conventions Nos 138 and 182, the Committee notes the Government's indication to the effect that this is still in progress. ***It expresses the hope that the issues raised above and also those contained in the direct request will be taken into account in the context of this work to bring the national legislation into conformity with Conventions Nos 138 and 182 and requests the Government to supply information on all progress made in this respect.***

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

Burundi

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

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

Article 2, paragraph 1, of the Convention. Scope of application. In its previous comments, the Committee noted the indication by the International Trade Union Confederation (ITUC) that child labour constitutes a serious problem in Burundi, particularly in agriculture and informal activities in urban areas. It also noted the statement by the Government that the socio-political crisis experienced by the country had aggravated the situation of children, some of whom were obliged to perform work "illegally" to support their families, very frequently in the informal economy and in agriculture. The Committee noted that section 3 of the Labour Code, in conjunction with section 14, prohibits work by young persons under 16 years of age in public and private enterprises, including farms, where such work is carried out on behalf of and under the supervision of an employer.

In its report, the Government confirmed that the country's regulations did not apply to the informal sector, which consequently escapes any control. Nevertheless, the question of extending the application of the labour legislation to this sector was to be discussed in a tripartite context on the occasion of the revision of the Labour Code and its implementing texts. The Committee reminded the Government that the Convention applies to all sectors of economic activity and covers all forms of employment and work, whether or not there is a contractual employment relationship, including own-account work. ***It once again expresses the firm hope that the Government will take the necessary measures to extend the scope of application of the***

Convention to work performed outside an employment relationship, particularly in the informal economy and in agriculture. The Committee requests the Government to provide information in this respect.

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee previously noted the ITUC's indications that the war had weakened the education system due to the destruction of many schools and the death or abduction of a large number of teachers. According to the ITUC, the school attendance rate is lower and the illiteracy rate higher for girls. The Committee further noted that, according to a report of the International Bureau of Education (UNESCO) of 2004 relating to data on education, Legislative Decree No. 1/025 of 13 July 1989 reorganizing education in Burundi does not provide for free and compulsory primary education. Entry into primary education is around the age of 7 or 8 years and lasts six years. Children therefore complete primary education around the age of 13 or 14 years and then have to pass a competition to enter secondary education. The Committee further noted that in 1996 the Government had prepared a Global Plan of Action for Education designed to improve the education system, among other measures, by reducing inequalities and disparities in access to education and achieving a gross school attendance rate of 100 per cent by the year 2010.

The Committee duly noted the information provided by the Government in its report with regard to the various measures adopted in the field of education. It noted that, under article 53(2) of the Constitution of 2005, the State is under the obligation to organize public education and promote access to such education. It further noted that basic education is free of charge and that the number of children attending school tripled during the 2006 school year. In 2007, primary schools would be constructed and other mobile and temporary schools would be established. Furthermore, coordination units for girls' education had been established and over 1,000 teachers recruited. ***The Committee once again encourages the Government to pursue its efforts in the field of education and to provide information on the impact of the above measures in terms of increasing the school attendance rate and reducing the drop-out rate, with special attention to the situation of girls. It also requests the Government to indicate the age of completion of compulsory schooling and the provisions of the national legislation which determine this age.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced recruitment of children for use in armed conflict. In its comments under Convention No. 29, the Committee noted previously that the Committee on the Rights of the Child, in its concluding observations on the initial report of the Government (CRC/C/15/Add.133, October 2000), expressed concern at the use of children by the State as soldiers or helpers in camps or in obtaining information. The Committee on the Rights of the Child also expressed concern at the low minimum age for recruitment to the armed forces and at the widespread recruitment of children by opposition armed forces and the sexual exploitation of children by members of the armed forces. Moreover, the Committee of Experts noted that in March 2003 the International Trade Union Confederation (ITUC) made comments on the application of the Convention confirming the use of child soldiers by the armed forces.

The Committee noted that, in its comments, the COSYBU indicates that armed conflicts persist, maintained by the *Partie pour la libération du peuple Hutu/Forces nationales pour la libération of Agathon Rwaswa* (PALIPEHUTU/FNL) and that children continue to be enrolled. It also noted the information provided by the Government in reply to COSYBU's comments according to which, following the signature of the Arusha Peace and Reconciliation Agreement in August 2000 and the Comprehensive Ceasefire Agreement signed with the *Conseil national pour la défense de la démocratie/Forces pour la défense de la démocratie* (CNDD/FDD) of Pierre Nkurunziza, the phenomenon of children being used in armed conflict has almost ended and the integration of these children into social and economic life is continuing. The Government added that the forced recruitment of children for use in armed conflict is the worst form of child labour observed most commonly in Burundi. However, considering the relative calm that was being experienced over most of the national territory, it had launched the implementation of a vast programme for the demobilization and reintegration of former combatants through three organizations, namely: the National Commission for Demobilization, Reinsertion and Reintegration (CNDRR), the National Structure for Child Soldiers (SEN) and the ILO-IPEC project on the "Prevention and reintegration of children involved in armed conflicts: An interregional programme". Furthermore, according to the Government, all children had been demobilized except those used by the armed movement FNL (*Front national de libération*) of Agathon Rwaswa, which has not yet laid down its arms.

The Committee noted that, in his Report on Children and Armed Conflicts in Burundi of 27 October 2006 (S/2006/851), the United Nations Secretary-General indicated that, despite the substantial progress achieved in addressing the grave violations of children's rights, violations are still occurring and the competent authorities have not always conducted criminal investigations nor punished those responsible. During the period from August 2005 to September 2006, the United Nations Operation in Burundi (UNOB) identified over 300 cases of child victims of grave violations, perpetrated mainly by members of the FNL and FND troops, including the murder and mutilation of children, serious sexual violence and the recruitment and use of children in armed groups and forces, with an increase of this latter violation being noted (paragraph 25). The Secretary-General added that the authorities have not yet adopted national legislation to criminalize the recruitment and use of child soldiers (paragraph 36). Furthermore, according to the information contained in the Report of the Secretary-General of 27 October 2006, a ceasefire agreement was signed between the Government and Agathon Rwaswa's FNL, the last active rebel movement, on 7 September 2006 (paragraph 5). Nevertheless, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicated that the implementation of the Comprehensive Ceasefire Agreement had remained stalled since its signature (paragraphs 1 and 2).

The Committee noted that, in the information provided under Convention No. 29, the Government indicated that the minimum age for enrolment in the armed forces of Burundi *has been increased from 16 to 18 years*. It also noted that, according to the information contained on the Internet site of the Special Representative of the Secretary-General for Children and Armed Conflict (www.un.org/children/conflict/english/home6.html), following her visit to the country, the Government of Burundi had made progress in the protection of children affected by conflict. In this respect, the Committee noted that the Penal Code had been amended to bring its provisions into harmony with the international instruments on human rights ratified by Burundi and that the proposed changes include provisions relating to the protection of children and against war crimes. The Penal Code now provides that the recruitment of children ***under 16 years of age*** in armed conflicts constitutes a war crime. The Committee reminds the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children ***under 18 years of age*** for use in armed conflict is considered to be one of the worst forms of child labour. ***It therefore once again***

requests the Government to take measures as a matter of urgency to amend the national legislation and prohibit the forced recruitment of young persons under 18 years of age for use in armed conflict, either in the national armed forces or in rebel groups, and to provide information in this respect.

The Committee noted that, despite the measures adopted by the Government, the forced recruitment of children for use in armed conflicts still occurs and that the situation in Burundi remains fragile. It expressed great concern at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as the murder and mutilation of children and sexual violence. *In this respect, the Committee refers to the Report of the Secretary-General on Children and Armed Conflict in Burundi and once again requests the Government to take all the necessary measures to continue negotiations with a view to reaching a definitive peace agreement, putting an end unconditionally to the recruitment of children and undertaking the immediate and complete demobilization of all children. Finally, with reference to the Security Council which, in resolution 1612 of 26 July 2005, recalls “the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children”, the Committee once again urges the Government to ensure that sufficiently effective and dissuasive penalties are imposed on persons found guilty of enrolling or using young persons under 18 years of age in armed conflict.*

Clause (b). Use, procuring or offering of children for prostitution. In its communication, the COSYBU indicated that the extreme poverty of the population encourages parents to allow their children to engage in prostitution. In its report, the Government indicated that cases of the use of children for prostitution have been reported in the popular districts of the municipality of Bujumbura (Bwiza and Buyenzi). However, the juvenile police reacted rapidly and eradicated this phenomenon, with penalties being imposed on persons who recruited children for prostitution. The Committee noted that, in the report of 19 September 2006 of the United Nations independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicated that more and more children are victims of sexual violence (paragraph 82). The Committee noted that sections 372 and 373 of the Penal Code penalize the use, procuring or offering of children who are minors for prostitution, even with their consent. The Committee noted that, even though the national legislation prohibits this worst form of child labour, the use, procuring or offering of children for prostitution remains a problem in practice. *It once again requests the Government to renew its efforts to implement these provisions effectively in practice and to ensure the protection of young persons under 18 years of age against prostitution. The Committee once again requests the Government to provide information in this respect, including reports on the number of convictions. It also requests the Government to indicate whether the national legislation contains provisions criminalizing the client in the event of prostitution.*

Clause (c). Use, procuring or offering of children for illicit activities. Street children. In its communication, the COSYBU indicated that the extreme poverty of the population drives parents to allow their children to engage in begging. In his Report on Children and Armed Conflict in Burundi of 27 October 2006 (S/2006/851), the Secretary-General indicated that UNOB and its partner child protection agencies have received information on the recruitment of from three to ten male children per month, including street children in Bujumbura Mairie Province (paragraph 25). As the national legislation does not appear to regulate this activity, the Committee expresses *grave concern* at the increase in street children who are exposed to numerous risks, including being used or recruited for armed conflict or other illicit activities. It reminds the Government that, in accordance with *Article 1* of the Convention, it is under the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. *The Committee once again requests the Government to take the necessary measures to protect street children and to prohibit in the national legislation the use, procuring or offering of children for illicit activities. It also requests the Government to establish penalties for this purpose.*

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms and providing for their rehabilitation and social integration. Child soldiers. The Committee noted with interest that the Government is participating in the ILO-IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which also includes the Congo, Rwanda, the Democratic Republic of the Congo, the Philippines, Sri Lanka and Colombia. The objective of the programme is to prevent the recruitment of children in armed conflict, facilitate their removal and ensure their social integration. The Committee noted the detailed information provided by the Government in its report on the measures that it has taken with organizations to prevent the recruitment of children in armed conflict or to remove them from this worst form of child labour. It noted that, in the context of the ILO-IPEC interregional project, over 15 programmes of action have been implemented and that around 1,440 children have been demobilized in the areas covered by the project. The Committee further noted that, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicates that, since November 2003, the United Nations project for the demobilization, reintegration and prevention of the recruitment of children associated with armed forces and groups has freed and reintegrated 3,015 children (paragraph 27). It further noted that the National Structure for Child Soldiers is a project for the demobilization, reintegration and prevention of the recruitment of child soldiers which has been in operation since 2003. In the context of this programme, 1,932 children had been demobilized.

The Committee noted that the Ministry of National Solidarity, Human Rights and Gender has signed a memorandum of understanding with the Executive Secretariat of the NCDRR. In the context of this agreement, measures are adopted at different levels to raise the awareness of the various target groups with regard to the problem of recruitment (members of military forces, combatants, parents, young persons, the civil administration, civil society, NGOs and politicians) and to institutionalize training on the rights and protection of the child in armed conflicts within the training structures of the national army. Furthermore, children who had been demobilized and were exposed to the risk of being recruited once again are monitored. The Committee encouraged the Government to continue collaborating with the various bodies involved in the process of disarmament, demobilization and reintegration with a view to removing children from armed forces and groups. *It once again requests the Government to provide information on the impact of the measures adopted in the context of the implementation of the ILO-IPEC interregional programme on the prevention and reintegration of children involved in armed conflict with a view to preventing children from being enrolled in armed conflict and to remove them from this worst form of child labour. The Committee also requests the Government to provide information on the time-bound measures adopted for the rehabilitation and social integration of children who are in practice removed from armed forces or groups.*

Sexual exploitation. Considering that a number of children are the victims of sexual exploitation as noted under Article 3(b), the Committee requests the Government to take the necessary measures to remove young persons under 18 years of age from prostitution. It also requests the Government to envisage measures to ensure the rehabilitation and social integration of children removed from this worst form of child labour.

Clause (c). Ensuring access to free basic education and vocational training for all children removed from the worst forms of child labour. The Committee took note of the information provided by the Government to the effect that, during the 2004–05

school year, a total of 485 former child soldiers were reintegrated into primary school, 99 were oriented towards secondary school, 79 in technical training centres and 74 in training from craft workers. ***It once again strongly encourages the Government to pursue its efforts to provide access to basic education or vocational training to children removed from armed conflict. The Committee requests the Government to continue providing information on this subject.***

Clause (d). Children at special risk. Street children. The Committee noted that in his report of 23 September 2005 (E/CN.4/2006/109), the United Nations independent expert on the human rights situation in Burundi indicates that the situation of children in the country remains extremely worrying. Children are affected not only by the continuing conflict, but also by the deteriorating economic situation (paragraph 55). According to some estimates, there are over 3,000 street children in the country. It also noted that, in the report of 19 September 2006 of the independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicates that the phenomenon of street children is on the rise in Bujumbura and that a programme aimed at curbing the trend has been elaborated and includes aspects relating to prevention, assistance and reintegration (paragraph 79). ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee once again encourages the Government to pursue its efforts to protect them from these worst forms. It also requests the Government to provide information on the measures adopted in the context of the programme to bring an end to this phenomenon, particularly with regard to measures for their rehabilitation and social integration.***

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

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

Central African Republic

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Article 1 of the Convention and Part V of the report form. National policy and the application of the Convention in practice. In its previous comments, the Committee noted a study by the Ministry of the Economy, Planning and International Cooperation of 2003 on the situation of children in the country. According to this study, 5.2 per cent of boys and 5.6 per cent of girls between the ages of 6 and 9 years are engaged in work. The study also shows that boys work, in particular, in the private wage sector (boys account for 68.5 per cent of children working in this sector), the para-public wage sector (66.7 per cent), for an employer (72.7 per cent) and as apprentices (60.2 per cent), while the number of girls is greater in own-account work (girls account for 56.9 per cent of children working in this sector) or as family helpers (53.5 per cent). The Committee also noted the Government's indication that a study to identify and classify types of child labour, carried out in collaboration with UNICEF, was in the process of being validated.

The Committee notes that, according to UNICEF statistics for 2007, 57 per cent of children between the ages of 5 and 14 years are engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls). It notes the Government's indication that, in the context of the adoption of the new Act No. 09.004 issuing the Labour Code of the Central African Republic in January 2009 (Labour Code of 2009), the Labour Department has worked on the preparation of texts to implement the Code. The Government indicates that a national policy for the progressive abolition of child labour and to increase the minimum age for admission to employment or work will be prepared once the implementing texts have been issued. The Committee must, however, express once again its deep **concern** at the situation of young children who work in the country out of personal necessity. ***It therefore urges the Government to take the necessary measures to ensure that the national policy for the progressive abolition of child labour is adopted in the very near future and that programmes of action are implemented in the sectors in which child labour is the most problematic. It requests the Government to provide information in its next report on the progress achieved in this respect. It also once again requests the Government to provide a copy of the study to identify and classify child labour.***

Article 2, paragraph 1. Scope of application and minimum age for admission to employment or work. Self-employed work. In its previous comments, the Committee noted the information provided by the Government that most children are used in the sectors of the informal economy, such as diamond workshops, portage or diving in search of diamonds. The Government indicated that the juvenile courts and the Children's Parliament guarantee the protection envisaged by the Convention with respect to children engaged in an economic activity on their own account. The Committee notes that the Labour Code of 2009 is not applicable to self-employed workers (section 2), but only governs professional relationships between workers and employers derived from labour contracts (section 1). ***Noting that the Government's report does not contain any information on this subject, the Committee requests it once again to provide information on the manner in which the juvenile courts and the Children's Parliament ensure the application of the protection envisaged by the Convention in respect of children who work without an employment relationship, in particular when they work on their own account or in the informal economy. In this respect, it once again requests the Government to envisage the possibility of adopting measures to adapt and strengthen the labour inspection services so as to secure this protection.***

Family enterprises. The Committee noted previously that, under section 2 of Order No. 006 of 21 May 1986 determining the conditions of employment of young workers, the types of work and the categories of enterprises that are prohibited for young persons and the age limit up to which this prohibition applies (Order No. 006 of 1986), children under 14 years of age may be employed, even as apprentices, in establishments in which only family members are engaged. The Committee notes that section 166 of the Labour Code of 2009 provides that no one may be apprenticed who is not at least 14 years of age. Furthermore, section 259 provides that children may not be employed in any enterprise,

even as apprentices, before the age of 14 years, unless an exception is issued by order of the minister responsible for labour taking into account the opinion of the National Standing Labour Council. ***The Committee requests the Government to indicate whether exceptions have been authorized by the minister responsible for labour under section 259 of the Labour Code of 2009.***

Domestic work. In its previous comments, the Committee noted that section 3(a) of Order No. 006 of 1986 provides that children over 12 years of age may carry out light domestic work and that section 125 of the Labour Code respecting the minimum age for admission to employment only applies to work performed in an enterprise. The Committee observed previously that no text in the national legislation explicitly establishes a minimum age of 14 years for domestic workers. It therefore recalled that *Article 2* of the Convention is applicable to domestic work and that the minimum age for admission to this type of work must not be less than 14 years, except for work considered to be light, in accordance with the conditions laid down in *Article 7* of the Convention. In this respect, the Government indicated that measures to explicitly establish a minimum age for admission to employment for light domestic work were envisaged in the preliminary draft of the Labour Code. The Committee notes with ***interest*** that section 259 of the Labour Code of 2009 establishes the minimum age for admission to employment at 14 years and that the application of the Labour Code is now no longer limited to work performed in an enterprise (section 1).

Article 2, paragraph 3. Age of completion of compulsory schooling. In its previous comments, the Committee noted that the age of completion of compulsory schooling is 14 years. It also noted the Government's indication to the Committee on the Rights of the Child that, pursuant to section 6 of Act No. 97/014 of 10 December 1997 respecting education policy, school attendance is compulsory from 5 to 15 years and that the texts to be issued under this Act are being prepared. The Committee also noted the adoption of the Plan of Action on Education for All (NPA-EFA) in 2005, the objective of which is to increase the school attendance rate, reduce the school drop-out rate and ensure the completion of the full cycle of primary education by all children. The Committee further noted that, according to UNICEF statistics for 2006, the net school enrolment rate for primary education was 44 per cent for boys and 37 per cent for girls, while the figures for secondary education were 13 per cent for boys and 9 per cent for girls. The Committee also noted that, according to the Education for All Global Monitoring Report 2008, published by UNESCO under the title "Education for All in 2015: Will we make it?", in view of the lack of data, it was impossible to make projections for the achievement of the goals established by the NPA-EFA for the Central African Republic for 2015. However, the study indicates that 20 per cent or more of primary school students are repeating their grade and that girls repeat grades more than boys.

The Committee observes that, according to UNICEF statistics for 2007, the school attendance rates at the primary and secondary levels remain a matter of great concern: the net enrolment rate at primary school is 53 per cent for boys and 38 per cent for girls, and the figures for secondary education are 13 per cent for boys and 9 per cent for girls. The Committee, however, notes that the Government has not provided any information on this subject in its report. The Committee therefore once again expresses its deep ***concern*** at the low rate of school enrolment in both primary and secondary education, and particularly at the disparity between the two sexes, to the detriment of girls, and the fairly high rate of repeating school years, which affects girls in particular. It once again observes that poverty is one of the primary causes of child labour and that, when combined with a deficient educational system, it prevents the development of the child. ***Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system in the country so as to enable children to attend compulsory basic education or to be integrated into an informal school system. In this respect, it once again requests the Government to provide information on the measures adopted in the context of the NPA-EFA of 2005 to increase the school enrolment rate and reduce the school drop-out rate, so as to prevent children under 14 years of age from working. The Committee requests the Government to provide information in its next report on the results achieved. Finally, the Committee once again asks the Government to provide a copy of Act No. 97/014 of 10 December 1997 on education policy.***

Article 3, paragraphs 1 and 2. Minimum age for admission to hazardous types of work and determination of these types of work. With reference to its previous comments, the Committee notes that, under the terms of section 263 of the Labour Code of 2009, the worst forms of child labour, that is work by any person under 18 years of age (section 3), are prohibited throughout the Central African Republic. Section 262 provides that the worst forms of child labour include work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. The Committee notes the Government's indication in its report that section 261 of the Labour Code of 2009 provides that a joint order of the Minister of Labour and the Minister of Public Health, issued taking into account the opinion of the National Standing Labour Council, shall determine the nature of the types of work and the categories of enterprises prohibited for children and the age limit up to which this prohibition applies. The Committee however observes that no list of these hazardous types of employment or work appears to have been published up to now. The Committee reminds the Government that, by virtue of *Article 3(2)* of the Convention, the hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee therefore requests the Government to take the necessary measures to ensure that a list determining the hazardous types of employment or work that are prohibited for persons under 18 years of age, in accordance with section 261 of the Labour Code of 2009, is adopted in the near future. It requests the Government to provide information on the progress achieved in this respect.***

Article 6. Apprenticeship. With reference to its previous comments, the Committee notes with *interest* that Chapter II of the Labour Code of 2009 regulates the nature and conditions of apprenticeship contracts. Under section 166, no person may be apprenticed who is not at least 14 years of age. Furthermore, the provisions of sections III and IV of this chapter lay down the duties of masters and those of apprentices. Accordingly, masters have to teach apprentices progressively and completely the craft, trade or special occupation covered by the contract (section 172), while apprentices have to help the master through their work within the bounds of their capacities and strength (section 173).

Article 9, paragraph 1. Penalties. The Committee notes with *interest* that section 389 of the Labour Code of 2009 provides that any person who commits a violation of section 259 (minimum age for admission to work or employment of 14 years) is liable to a fine of between 100,000 and 1 million CFA francs. Under section 392, in the event of a repeat offence, including violations of section 259, liability may include terms of imprisonment of between one and six months. The Committee further notes that, under the terms of section 393, any person who has procured or endeavoured to procure a child for the worst forms of child labour shall be liable to a fine of between 500,000 and 5 million CFA francs and a term of imprisonment of between one and five years, or to only one of these penalties. In the event of a repeat offence, these penalties are doubled.

Article 9, paragraph 3. Keeping of registers by employers. With reference to its previous comments, the Committee notes that, under the terms of section 331 of the Labour Code of 2009, the employer shall always keep an up to date employment register, the first part of which shall contain data relating to the persons and the contracts of all workers engaged in the enterprise. The employment register has to be kept at the disposal of labour inspectors, who may require its production at any time. However, the Committee notes that section 331 also provides that certain enterprises or establishments, as well as certain categories of enterprises or establishments, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity, by order of the Ministry of Labour, issued taking into account the views of the National Standing Labour Council. The Committee once again reminds the Government that *Article 9(3) of the Convention does not envisage such exceptions. Noting that the Labour Code of 2009 has not taken this issue into account, the Committee urges the Government to take the necessary measures to ensure that all employers are required to keep a register indicating the names and ages or dates of birth, duly certified wherever possible, of persons employed by them or working for them who are under 18 year of age. It requests the Government to provide information in its next report on the progress achieved in this respect.*

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. The Committee previously noted that the Secretary-General of the United Nations, in his report of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29–32), referred to many cases of the recruitment of children by the rebel group *Union des forces démocratiques pour le rassemblement* (UFDR), which controls parts of the north-east of the country. During UFDR attacks on the positions of the armed forces of the Central African Republic (FACA) and the French army in Birao in March 2007, former students of the Birao secondary school were identified among the rebels. Many of the children between the ages of 12 and 17 years who participated in these attacks lost their lives. Furthermore, according to the report, a UNICEF mission in June 2007 confirmed that there were approximately 400 to 500 children associated with the rebel groups of the *Armée pour la restauration de la République et la démocratie* (APRD) and the *Front démocratique du peuple centrafricain* (FDPC), which were participating in operations in the north-western region. The APRD and the FDPC are increasingly resorting to the forced recruitment of children in their areas of influence. The Committee noted in this respect that the national legislation does not appear to contain provisions prohibiting and penalizing the forced recruitment of young persons under 18 years of age for use in armed conflict and it therefore requested the Government to take measures as a matter of urgency for the adoption of such legislation.

The Committee notes with *satisfaction* that sections 262 and 263 of the new Act No. 09.004 issuing the Labour Code of the Central African Republic (Labour Code of 2009), adopted in January 2009, provide that all forms of slavery or practices similar to slavery affecting young persons under 18 years of age, as well as forced or compulsory labour, including forced or compulsory recruitment for their use in armed conflict, are prohibited throughout the territory of the Central Africa Republic. The Committee further notes that fines and terms of imprisonment are envisaged in the event of violations of this provision (section 393).

However, the Committee notes that, according to more recent information provided by the Secretary-General of the United Nations in his Report of 3 February 2009 on children and armed conflict (S/2009/66, paragraphs 26 to 36), the APRD recently identified 250 children for release and reintegration, but it may well be that the children associated with the APRD are more numerous. In November 2008, 100 children had been identified, most of whom were between the ages of 12 to 17 years, with some cases of children of 9 and 10 years of age. The Secretary-General also reports that many children were abducted and recruited in the south-west of the country following the four attacks by the Lord's Resistance Army (LRA) in February and March 2008 on villages in the Obo area. A joint mission of the United Nations, the United

Nations Peace Building Support Office in the Central African Republic, the Office for the Coordination of Humanitarian Affairs, the Department of Safety and Security and UNICEF found that some of the attackers were reportedly under the age of 15 years. According to 35 adults who had been abducted and were later released by the LRA, the 55 children who were abducted during the attacks are now used as soldiers or for auxiliary tasks, and the girls are used as sexual slaves. The Committee further notes that the Representative of the Secretary-General in his Report on the situation of human rights of internally displaced persons of 17 March 2008 (A/HRC/8/6/Add.1, paragraph 67), indicates that he observed children among the rebels patrolling the territories under their control and that something under 1,000 children are reported to be involved.

The Committee further notes the indication by the Secretary-General that an Amnesty Law was promulgated on 13 October 2008 covering violations committed by Government security and defence forces and rebels between March 2003 and October 2008 (S/2009/66, paragraph 6). The amnesty is subject to conditions, including the cantonment, demobilization and disarmament of fighting forces within 60 days of its promulgation. Considering this short timeframe, which was challenged in particular by the APRD, an incremental approach was adopted early in November 2008, with demobilization activities to begin early in 2009. On 25 October 2008, the Government of the Central African Republic released from detention 12 fighters from the APRD, the UFDR and the FDPC, in accordance with its obligations under the agreement (S/2009/66, paragraph 6).

The Committee accordingly observes that the forced recruitment of children for use in armed conflict still exists in the country and that the situation remains fragile. It once again expresses **deep concern** at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as murders and sexual violence. It once again reminds the Government that, under the terms of *Article 1* of the Convention, member States are under the obligation to take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***The Committee therefore requests the Government to take immediate and effective measures to bring an end to the practice of the forced recruitment of young persons under 18 years of age by armed groups, particularly in the north-east and north-west of the country. With reference to the Security Council, which in resolution No. 1612 of 26 July 2005 recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate measures to secure in practice the protection of young persons under 18 years of age against forced recruitment for their use in armed conflict, and to ensure that investigations are undertaken and grave charges brought against those committing violations, and that sufficiently effective and dissuasive penalties are imposed upon persons found guilty of having used young persons under 18 years of age in armed conflict. It requests the Government to provide information in this respect.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and to ensure their access to free basic education and, wherever possible and appropriate, to vocational training. Child soldiers. In its previous comments, the Committee noted that, according to information from UNICEF, the Government, the UFDR and UNICEF signed an agreement on 16 June 2007 to reintegrate children connected with armed groups in the north-east of the country. In this respect, it noted that, according to the Report of the Secretary-General of the United Nations of 21 December 2007 on children and armed conflict (A/62/609-S/2007/757, paragraphs 29 to 32), in the context of an agreement signed on 16 June 2007, a first group of approximately 200 children were released. In April and May 2007, over 450 children associated with the UFDR, 75 per cent of whom were boys aged between 13 and 17 years, were demobilized. According to the report, a last group of between 450 and 500 children are reported to have been released and to have returned to their communities since September 2007, although this information has not been verified. With regard to children associated with the APRD and FDPC rebel groups, which are both active in the north-western region, the report indicates that in March and June 2007 the APRD requested assistance from the United Nations Country Team to demobilize child soldiers. An informal dialogue was commenced with the APRD to prevent the recruitment of children and to demobilize and reintegrate those who are in its ranks with a view to their reintegration into society. However, formal negotiations are hampered by the insecurity in the north-western region of the country.

The Committee further noted that, according to the UNICEF Humanitarian Action Report 2008, the conflict has resulted in internal displacements, with over 610,000 suffering from the conflict. The Committee also noted that UNICEF intends to improve access to basic education for 113,000 conflict-affected children through an extensive back-to-school campaign across the country's northern prefectures. UNICEF also intends to facilitate the reintegration of 1,000 child soldiers into their families and communities.

The Committee notes that, according to the Report of the Secretary-General of the United Nations of 3 February 2009 on children and armed conflict (S/2009/66, paragraph 53), strategic partnerships for the prevention of the recruitment and for the release and reintegration of children in areas controlled by the APRD and the UFDR have recently been concluded with four humanitarian NGOs. This community-based programme envisages support for the release and reintegration of hundreds of children associated with armed groups in the northern areas. Three transit interim care centres are currently being built in the north-western districts and an emergency site to receive released children is already operational in the north-west. The Committee however notes the indication by the Secretary-General that, while there have been some positive developments regarding the anticipated release of children from the APRD and the UFDR, the

deadlock in the peace negotiations and the withdrawal of the major parties to the conflict from the Comprehensive Peace Dialogue in August 2008 stalled the implementation of the commitments to release children. According to the Secretary-General, up to now, relatively few children have actually been released and there may also have been new recruitment.

The Committee therefore once again observes that, despite the Government's collaboration with UNICEF, the current situation of the country remains a cause of grave concern. *The Committee therefore requests the Government to redouble its efforts and to continue its collaboration with UNICEF and other organizations with a view to improving the situation of child victims of forced recruitment who are used in armed conflict. It hopes that the Government will negotiate an end to armed conflict so that all children used in armed conflict are demobilized and reintegrated, particularly in the north-east and north-west of the country. The Committee further asks the Government to provide information on the number of child soldiers removed from armed groups and reintegrated through appropriate assistance for their rehabilitation and social integration, including through care centres. It requests the Government to provide information in this respect in its next report.*

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

Chad

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced recruitment of children for use in armed conflict. With reference to its previous comments, the Committee notes that, under section 14 of Ordinance No. 01/PCE/CEDNACVG of 16 January 1991 reorganizing the armed forces of Chad [Ordinance No. 1 of 16 January 1991], the age of recruitment is 18 years for volunteers and 20 years for conscripts.

The Committee notes that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532, for the period July 2007–June 2008), the political, military and security situation in the country remains highly volatile, owing to the continuation of armed conflict between the Chad armed forces and armed rebel groups, the presence in eastern Chad of foreign rebel groups, cross-border raids by the Janjaweed militia and continuing inter-ethnic tensions. The Committee notes that, according to the Secretary-General's report, the Government of Chad and the three main rebel groups, namely the *Union des forces pour la démocratie et le développement* (UFDD), the *Rassemblement des forces pour le changement* (RFC) and the *Concorde nationale tchadienne* (CNT), signed a peace agreement on 25 October 2007 which provided for an immediate cease-fire. However, despite the signature of this agreement, fighting has continued and all the parties concerned have continued to recruit and use children in the conflict.

The Committee notes that the Secretary-General's Report shows that the forced recruitment and use of child soldiers in the conflict in Chad is related to the regional dimension of the conflict. The Toroboro or Sudanese armed groups allied with the Government of Chad are recruiting children from two refugee camps, at Tréguine and Bredjing, during the rainy season. Furthermore, heavy recruitment also occurs on the basis of needs in Darfur. The Sudanese rebel movement Justice and Equality Movement (JEM) continues to recruit in and around refugee camps, notably Oure Cassoni (Bahai). According to information in the Secretary-General's report, between 7,000 and 10,000 children are associated with the armed forces and armed groups. The Committee notes that the Working Group on Children and Armed Conflict, in its conclusions of December 2008 (S/AC.51/2008/15), expressed grave concern that all parties to the conflict continue to recruit and use children and called for measures to be taken to prosecute the perpetrators and put an end to impunity.

The Committee notes that the situation in Chad has been unstable for many years and that it remains fragile. The Committee also notes that, despite the fact that Ordinance No. 1 of 16 January 1991 provides that the age of recruitment is 18 years for volunteers and 20 years for conscripts, the recruitment of children for use in armed conflict is continuing in practice. In this regard, it notes that no penalties are laid down for violations of this prohibition. The Committee expresses **deep concern** at the current situation, especially as the persistence of the worst forms of child labour leads to other violations of the rights of the child, such as abduction, death and sexual violence. It reminds the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, members States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. *The Committee requests the Government to take the necessary measures as a matter of urgency to stop in practice the forced recruitment of children under 18 years of age by armed forces and groups and immediately undertake the full demobilization of all children. With reference to Security Council resolution 1612 of 26 July 2005, which recalls the "responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate steps to ensure that perpetrators are investigated and prosecuted and that penalties which are sufficiently effective and dissuasive are imposed on persons found guilty of recruiting and using children under 18 years of age in armed conflict. It requests the Government to supply information in this respect.*

Article 7, paragraph 2. Effective and time-bound measures. Clauses (b) and (c). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration, including

access to free basic education and vocational training. Children who have been enlisted and used in armed conflict. Further to its previous comments, the Committee notes that, according to the report of the United Nations Secretary-General of 7 August 2008 on children and armed conflict in Chad (S/2008/532), the Government of Chad signed an agreement with UNICEF on 9 May 2007 to ensure the release and sustainable reintegration of all child soldiers associated with armed forces and groups in the country. According to the Secretary-General's report, since the agreement was signed, 512 child soldiers have been released to UNICEF, which has provided support at five transit centres. So far 265 children have voluntarily returned to or been reunited with their families, and 220 have been placed in schools and 85 in professional activities. Most of the demobilized children were associated with non-governmental armed groups. Very few children associated with the Chadian armed forces have been released. According to the Secretary-General's report, negotiations are under way for placing the demobilized children in vocational training institutions and providing them with gainful employment. Some NGOs which are partners of UNICEF are currently working on the reintegration programme. Moreover, the encouraging start of disarmament, demobilization and reintegration activities in Chad is likely to lead to the release of another estimated 2,500 children associated with armed forces and groups.

The Committee also notes that, according to the Secretary-General's report, Chad undertook to release as a matter of priority children associated with armed groups held in detention. Moreover, it decided that an inter-ministerial task force would be established to coordinate and ensure effective reintegration of children. The Committee on the Rights of the Child, in its concluding observations of February 2009 (CRC/C/TDC/CO/2, paragraph 71), urged the Government to take the necessary measures immediately to facilitate contact between armed groups operating in Chad and the United Nations in order to promote the demobilization of children and prevent the recruitment of children, particularly in refugee camps. In this regard, the Committee on the Rights of the Child urges the Government to extend the disarmament, demobilization and reintegration programme, placing particular emphasis on the demobilization and reintegration of girls.

The Committee notes the measures taken by the Government to demobilize and reintegrate child soldiers, particularly through collaboration with UNICEF. It notes, however, that the current situation in the country remains a source of concern. ***The Committee therefore requests the Government to intensify its efforts and continue its collaboration with UNICEF and other organizations in order to improve the situation of child victims of forced recruitment for use in armed conflict. Moreover, the Committee requests the Government to take effective and time-bound measures to ensure that child soldiers removed from armed forces and groups receive adequate assistance for their rehabilitation and social integration, including reintegration into the school system or vocational training, wherever possible and appropriate. It requests the Government to supply information in this respect.***

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

Congo

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Sale and trafficking of children. In its previous comments, the Committee noted the Government's statement that there is child trafficking between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work. According to the Government, the children are forced to work all day in harsh conditions by their host families, and are subjected to all kinds of hardships. The Committee noted that sections 345, 354 and 356 of the Penal Code lay down penalties for anyone found guilty of the forcible or fraudulent abduction of persons including young persons under 18 years of age. It requested the Government to indicate to what extent sections 345, 354 and 356 of the Penal Code have been implemented in practice. ***The Committee requests the Government once again to supply information on the application of sections 345, 354 and 356 of the Penal Code in practice, including, in particular, statistics on the number and nature of offences reported, investigations, prosecutions, convictions and penalties imposed.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removal of children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children. In its previous observations, the Committee noted the Government's statement acknowledging that the trafficking of children between Benin and the Congo for the purpose of forcing children to work in Pointe-Noire in trading and domestic work is contrary to human rights. It also noted that the Government has taken certain measures to curb child trafficking, including: (a) the repatriation by the Consulate of Benin of children who have either been picked up by the national police or removed from families; and (b) the requirement at borders (airport) for minors (young person under 18 years of age) to have administrative authorization to leave the territory of Benin. The Committee asked the Government to provide information on the impact of the measures taken with regard to the rehabilitation and social integration of children following their withdrawal from labour. It notes that the Government's report does not contain any information on this subject. ***The Committee requests the Government once again to supply information on the time-bound measures taken to remove young persons under 18 years of age from this worst form of child labour and to ensure their rehabilitation and social integration. It also requests the Government to supply information on the impact of these measures.***

Part V of the report form. Application of the Convention in practice. The Committee notes that, according to the concluding observations of the Committee on the Rights of the Child on the initial report of the Congo of October 2006 (CRC/C/COG/CO/1, paragraph 85), a study of the root causes and repercussions of trafficking is due to be conducted in the country. ***The Committee requests the Government to supply information on the results of this study and to supply a copy of it once it has been prepared.***

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

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

Côte d'Ivoire

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Article 3 and Article 7, paragraph 1, of the Convention. Clause (a). Sale and trafficking of children, and penalties. In its previous comments, the Committee noted that sections 370 and 371 of the Penal Code criminalize the abduction of minors. The Committee noted that, according to a study carried out by ILO-IPEC-LUTRENA in 2005 on the trafficking of children for the exploitation of their work in the informal sector in Abidjan, Côte d'Ivoire, these provisions are inadequate for combating the trafficking of children for economic exploitation as they only cover cases of the abduction of minors, whereas the internal or cross-border trafficking of children in Côte d'Ivoire is based on traditional networks for the placement of children and therefore occurs with the consent of the children's parents or guardians. The Committee noted that a draft Act on the trafficking of children was adopted by the Council of Ministers in 2001 but had still not been put to the vote by the National Assembly.

The Committee notes that, according to a 2006 UNICEF report on the trafficking of persons, particularly women and children in West and Central Africa, Côte d'Ivoire is principally a country of destination. The vast majority of victims of trafficking in Côte d'Ivoire are exploited in plantations and gold mines. In Abidjan and Bouaké, girls originating in particular from Nigeria are subjected to sexual exploitation or are exploited as servants or street vendors. Moreover, according to UNICEF information for February 2007, approximately 200,000 children originating from Burkina Faso, Mali, Togo and also the north and centre of the country are working in cocoa plantations.

The Committee notes the Government's indication that steps will be taken to adopt the Act prohibiting the trafficking of children and the worst forms of child labour. It also notes that, according to the Government, 14 persons were arrested and imprisoned in 2008 for the trafficking of children. The Committee expresses its **serious concern** at the scale of the phenomenon and the lack of regulation, which is one of the factors which favours the economic or sexual exploitation of children in the country. It reminds the Government that, under the terms of *Article 3(a)* of the Convention, the sale and trafficking of young persons under 18 years of age for economic or sexual exploitation are considered as the worst forms of child labour and that, under *Article 1* of the Convention, immediate and effective measures must be taken to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. **The Committee expresses the firm hope that the draft Act prohibiting the trafficking of children and the worst forms of child labour will be adopted as a matter of urgency and requests the Government to supply information on any new developments in this respect. The Committee requests the Government to take the necessary steps to ensure the protection in practice of young persons under 18 years of age against the sale and trafficking of children, including through the conviction of perpetrators and the imposition of penalties which act as a sufficient deterrent. In view of the indication that a number of persons were arrested and imprisoned in 2008 for the trafficking of children, the Committee requests the Government to send copies of any court decisions that are issued.**

Article 3(a). Forced recruitment of children for use in armed conflict. In its previous comments the Committee noted that, according to the report of United Nations Secretary-General of 9 February 2005 on children and armed conflict (A/59/695-S/2005/72, paragraphs 14 and 24), even though no precise information on the recruitment of children by armed groups had been obtained during the reporting period, children continued to be present in certain armed groups.

In this regard, the Committee notes with **satisfaction** that, according to the reports of the United Nations Secretary-General of 21 December 2007 (A/62/609-S/2007/757, paragraphs 18 and 33–37) and 26 March 2009 (A/63/785-S/2009/159, paragraphs 35–38) on children and armed conflict, there has been no substantiated evidence of new cases of recruitment or use of children by armed forces or groups since October 2006. Since action plans were signed in October 2005 and September 2006, the *Forces armées des forces nouvelles* (now *Forces de défense et de sécurité des Forces nouvelles (FDS-FN)* and the four armed militia in Côte d'Ivoire – namely, *Front pour la libération du Grand Ouest (FLGO)*, *Mouvement ivoirien de libération de l'Ouest de la Côte d'Ivoire (MILOCI)*, *Alliance patriotique de l'ethnie Wé (APWé)* and *Union patriotique de résistance du Grand Ouest (UPRGO)* – have stopped recruiting children. Moreover, the Committee welcomes the removal of the parties to the conflict in Côte d'Ivoire from the list of organizations that recruit or use children in armed conflict, as listed in the appendix to the Secretary-General's Report.

Article 3(d) and Article 4, paragraph 1. Hazardous work. Gold mines. The Committee previously noted that, according to the study carried out by ILO-IPEC-LUTRENA in 2005 on the trafficking of children for exploitation in gold mines in Issia, Côte d'Ivoire, children are the victims of internal and cross-border trafficking for economic exploitation in the gold mines of Issia. The Committee noted that child labour in mines is one of the 20 hazardous types of work covered by section 1 of Order No. 2250 of 14 March 2005 and is prohibited for young persons under 18 years of age. It also noted that, although the legislation is in conformity with the Convention on this point, child labour in mines is a problem in practice.

The Government indicates in its report that awareness campaigns for parents and employers in mines in Issia, Bouaflé and Yamoussoukro have been conducted. While noting this information, the Committee reminds the Government that, under the terms of *Article 3(d)* of the Convention, work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, is considered to be one of the worst forms of child labour and must be prohibited for persons under 18 years of age. ***The Committee therefore requests the Government to intensify its efforts to ensure the effective application of the legislation on the protection of children against hazardous work, particularly hazardous work in mines. The Committee also requests it to supply information on the application of the national legislation regulating hazardous work in practice, including statistics on the number and nature of violations reported, investigations, prosecutions, convictions and penalties imposed.***

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes with ***interest*** the information supplied by the Government to the effect that the project relating to a system for monitoring child labour (SSTE-Certification) has provided information for more than 7,000 people with regard to the worst forms of child labour and enabled the identification of some 1,300 who have been victims of child labour. These victims have been provided with school education.

Clause (b). Removing children from the worst forms of child labour and ensuring their rehabilitation and social integration. Sale and trafficking of children. With reference to its previous comments, the Committee notes with ***interest*** the Government's information to the effect that, between 2004 and 2008, the project to combat the trafficking of children for the exploitation of their work in West and Central Africa (LUTRENA) has prevented more than 2,870 children falling victim to trafficking and enabled the removal of 642 children from this worst form of child labour. Furthermore, these children have been provided with schooling, either in the form of an apprenticeship or in informal schools. The Committee notes that the country is participating in phase V of the LUTRENA project. ***The Committee strongly encourages the Government to continue its efforts and requests it to provide information on the time-bound measures taken, as part of the implementation of phase V of LUTRENA, to remove children from sale and trafficking, indicating in particular the number of children actually removed from this worst form of child labour and the specific measures taken to ensure the rehabilitation and social integration of these children.***

Recruitment and use of children in armed conflict. The Committee notes that, according to the report of the Special Representative of the Secretary-General for Children and Armed Conflict of 6 August 2008 (A/63/227, paragraph 7), the armed forces and groups have taken coordinated steps to identify and release children associated with them with a view to ensuring their reintegration. ***The Committee requests the Government to supply information on the time-bound measures taken to ensure that child soldiers released from armed forces and groups receive appropriate assistance for their rehabilitation and social integration, including by reintegrating them in the school system or in vocational training.***

Article 8. International cooperation. The Committee previously noted that Côte d'Ivoire signed the multilateral cooperation agreement of 27 July 2005 to combat the trafficking of children in West Africa. It notes that the country also signed the regional multilateral cooperation agreement to combat the trafficking of children in West and Central Africa in July 2006. ***In view of the scale of cross-border trafficking in the country, the Committee requests the Government to provide information on the measures taken to implement the multilateral agreements signed in 2005 and 2006, indicating in particular whether the exchange of information has enabled child trafficking networks to be identified and persons working in such networks to be arrested. Furthermore, the Committee requests the Government to state whether steps have been taken to identify and intercept child victims of trafficking in border regions and whether transit centres have been established.***

Parts IV and V of the report form. Application of the Convention in practice. With reference to its previous comments, the Committee notes the statistics provided by the Government to the effect that, according to a national survey of child labour conducted in 2005, 1.1 per cent of children are victims of internal trafficking while 10.4 per cent are victims of cross-border trafficking, with 52 per cent originating from Burkina Faso and 31 per cent from Ghana. The cities most affected by trafficking are Bas Sassandra, NZI Comoé and Abidjan. In addition, 17 per cent of economically active children are involved in hazardous work. ***The Committee requests the Government to continue providing statistics on the number of child victims of trafficking as well as those involved in hazardous work.***

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

Czech Republic

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee had previously noted the ICFTU's indication that children are trafficked from Eastern European countries and the former Soviet Union to the Czech Republic for the purposes of prostitution, and Czech children are also trafficked to Western Europe. The Committee had also noted the following sections of the Penal Code which deal with trafficking: section 216a (trade in children);

section 216b (definition of child as per section 216 and 216a); and section 246 (trade in women for sexual relations). The Committee had requested the Government to supply a copy of section 246 of the Penal Code as amended by Act No. 134/2002, which extends its application to boys and young men. The Committee noted with satisfaction the Government's information that a new provision under section 232a, which repeals and replaces section 246 of the Penal Code, has been introduced in the Penal Code by Act No. 537/2004. According to this provision, a person who engages, arranges, hires, entraps, transports, hides or detains a person younger than 18 years, by force, threat, violence or otherwise, for the purposes of sexual exploitation, slavery or serfdom, forced labour or other forms of exploitation shall be punished with imprisonment from two to ten years.

Clause (b). Using, procuring or offering a child for prostitution. The Committee had previously noted the ICFTU's indication that the forced prostitution of children is a serious and increasing problem in the country. Following its previous comments on the matter, the Committee noted the Government's information that a new section 217a was introduced in the Penal Code by Act No. 537/2004. The Committee noted that, according to this section, any person who offers, promises or provides payment or any other benefit for sexual intercourse or self-abuse, denudation or other similar acts to a person younger than 18 years, shall be punished with imprisonment for two years or by a fine.

Article 5. Monitoring mechanisms. The police. The Committee noted the Government's information that, within the framework of the National Plan of Action against the Commercial Sexual Exploitation of Children, the Criminality Prevention Department of the Ministry of Interior, in cooperation with the United Kingdom embassy, organized a two-day seminar in March 2005 for specialists from the criminal police and other professionals of the Czech Republic. This seminar focused on the commercial sexual exploitation and abuse of children, the offenders' typology and tactics for questioning them, understanding of the offender's behaviour when travelling abroad for sexual tourism, women as offenders and Internet criminality distributing child pornography. The Committee noted that the seminar continued in 2006 for the same group. The Committee also noted that various training programmes of police secondary schools were used to train policemen with regard to the legislation; the examination of witnesses; the psychology of persons younger than 15 years; and basic professional preparation to get acquainted with crimes related to the sexual abuse of children and youth, etc. ***The Committee once again requests the Government to continue providing information on the impact of the above measures taken within the framework of the National Plan of Action Against the Commercial Sexual Exploitation of Children on increasing police effectiveness in combating the commercial sexual exploitation of children under 18 years.***

Article 6. Programmes of action to eliminate the worst forms of child labour. National Plan against the Commercial Sexual Exploitation of Children. The Committee had previously noted the Government's indication that a National Plan against the Commercial Sexual Exploitation of Children was adopted in 2000 with a view to eliminating child prostitution and child pornography. The Committee noted the Government's information that within the framework of this national plan, the Criminality Prevention Department (CPD) of the Ministry of Interior provided, financially and organizationally, education to Roma social assistants and street workers in topics related to child prostitution. The Committee also noted that the CPD training plan included a two-day educational training by La Strada Organisation, on psychosocial care for threatened children and children exposed to sexual and commercial sexual abuse. The Committee noted the Government's indication that, in 2006, a training for the Roma assistants will be conducted by the Brno organization which has been realizing a pilot project called SASTIPEN-CR-Health and Social Assistants in Excluded Localities. The Committee further noted the Government's indication that a National Strategy to Combat Trafficking in Persons for the period 2005–07 was approved by government resolution No. 957/2005. The Committee also noted that a National Plan to Abolish Commercial Sexual Abuse of Children for the period 2006–08 is currently under preparation. ***The Committee once again requests the Government to provide information on the impact of these measures on the elimination of the commercial sexual exploitation of children under 18, particularly prostitution. The Committee further requests the Government to supply information on the implementation of the National Strategy to Combat Trafficking in Persons (2005–07) and the National Plan to Abolish the Commercial Sexual Abuse of Children (2006–08) as well as the results achieved.***

Article 7, paragraph 1. Penalties. The Committee noted that the new section 232a on trafficking in persons introduced in the Penal Code by Act No. 537/2004 and which replaces section 246 (trade in women for sexual relations) of the Penal Code carries penalties of imprisonment from two to ten years. Section 217a of the Penal Code states that any person who offers, promises or provides payment or any other benefit for sexual intercourse or self-abuse, denudation or other similar acts to a person younger than 18 years is liable to imprisonment for two years and a fine. The Committee noted the statistics provided in the Government's report on the crimes committed under sections 246, 232a and 217a of the Penal Code. According to these statistics, under section 246 for the year 2003: five crimes were committed and five people were sentenced; in 2004: 12 crimes committed and 12 people sentenced; in 2005: 20 crimes committed and 20 people sentenced. Under section 232a for the first quarter of 2006: two crimes were committed by two people for which the legal procedure is pending. With regard to section 217a: in 2004, three people were sentenced; in 2005, six people were sentenced; and in the first quarter of 2006, 11 crimes were committed, out of which eight people were sentenced. ***The Committee once again requests the Government to continue providing information on the application of the above penalties in practice.***

Article 7, paragraph 2. Time-bound measures. Clause (a). Measures taken to prevent the engagement of children in the worst forms of child labour. The Committee noted the Government's information that the problem of the commercial sexual abuse of children is included in the professional training of pedagogical staff, and that the Ministry of Education, Youth and Sports (MEYS) elaborated a strategy for the prevention of sociopathological effects in children and youth within schools, in relation to commercial sexual abuse. The Committee noted that the MEYS in cooperation with the Pedagogic Research Institute initiated two projects: the first was a training programme entitled "Reducing the incidence of child pornography"; and the second one was concerned with the creation of a methodological manual for teachers called "Sex education – child pornography and its prevention at school". The Committee also noted the Government's information that a pilot inquiry called "Prevention of Commercial Sexual Abuse of Children in Educational Institutions for Youth and Child Homes with Schools" conducted by MEYS in 2004 with a sample of pupils of an average age of 16.6 years revealed that most of the children had problems of truancy, including sexual abuse in the family which led them to run away from the family. ***The Committee once again requests the Government to provide information on the impact of the abovementioned measures in preventing the commercial sexual exploitation of children.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee had previously noted that the programme on the implementation of measures to eliminate the worst forms of child labour of 2003 indicates that the Ministry of Labour and Social Affairs and the Ministry of Health shall support long-term therapeutic work with child victims of criminal offences and their families and ensure their protection from further victimization. The Committee noted the Government's information that institutions, such as centres of

educational care, diagnostic institutions, children's homes with access to schools and educational institutions provide care for victims of the worst forms of child labour, children hailing from problematic families and children having problems with truancy. The Committee noted the Government's information that within the framework of the National Plan of Action against the Commercial Sexual Exploitation of Children, the Criminality Prevention Department of the Ministry of Interior established interrogation rooms for traumatized victims, especially children, with the aim of preventing secondary victimization of the commercial sexual abuse of such victims. ***The Committee once again requests the Government to provide information on the impact of the abovementioned measures on removing children from commercial sexual exploitation and providing for their rehabilitation and social integration.***

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

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

Dominica

Minimum Age Convention, 1973 (No. 138) (ratification: 1983)

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

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. The Committee recalled that, under section 3 of the Employment of Children Prohibition Ordinance, the minimum age of admission to employment was 12 years and that, under section 4, subsections (1) and (5), of the Employment of Women, Young Persons and Children Ordinance, the minimum age is 14 years. The Government, however, specified a minimum age of 15 years when it ratified the Convention. ***It once again urges the Government to take the necessary measures in order to raise the statutory minimum age to 15 years, in accordance with this provision of the Convention.***

The Committee further noted that the statutory provisions on minimum age applied only to persons employed under an employment relationship or under a contract of employment, whereas the Convention also covered work performed outside any employment relationship, including work performed by young persons on their own account. ***The Committee once again expresses the hope that the Government will indicate the measures taken or envisaged to give full effect to the Convention on this point.***

Article 3. Hazardous work. The Committee recalled that no higher minimum age had been fixed for work which is likely to jeopardize the health, safety or morals of young people, other than night work. ***It once again urges the Government to take measures so as to set such higher minimum age(s) in accordance with Article 3(1) of the Convention, and to determine the types of employment or work to which higher minimum age(s) should apply, in accordance with Article 3(2) of the Convention.***

Article 7. Light work. The Committee noted that the national legislation allowed exceptions to the above minimum ages as regards the employment of children under the age of 12 years in domestic work or agricultural work of a light nature at home by the parents or guardian of such children (section 3 of the Employment of Children Prohibition Ordinance) and the employment of children under the age of 14 years in an undertaking or on a ship where only members of the same family are employed (section 4, subsection 1 and section 5, of the Employment of Women, Young Persons and Children Ordinance). The Committee recalled that under this Article of the Convention, national laws or regulations may permit the employment or work of persons 13–15 years of age on light work which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. Another condition is that the activities involved and the conditions of work and employment should be determined by the competent authority. ***It once again expresses the hope that the Government will take measures to restrict, in accordance with this provision, the possibility to employ children below the minimum age specified, and to determine the activities and conditions of their employment or work.***

As regards the Government's reference to the work of family members as the category excluded under *Article 4*, the Committee pointed out that the exceptions under this provision must be listed in the first report after ratification, and that the Government declared in its first report, received in February 1988, that no use was made of this provision.

Article 9, paragraph 3. Keeping of registers. The Committee noted that section 8, subsection (1), of the Employment of Women, Young Persons and Children Ordinance provided for the keeping of registers or lists of young persons of less than 16 years of age, whereas the Convention describes the keeping of such registers of persons of less than 18 years of age. It noted the Government's indication that this provision is not applied in practice. The Committee nevertheless pointed out that the Government has an obligation to give effect to the provisions of the Convention in law and practice. ***It therefore once again asks the Government to take the necessary measures so that registers or other documents are kept by the employer concerning workers younger than 18 years of age.***

The Committee noted the Government's indication that the provisions of the Convention are upheld by custom and practice. ***Pending the necessary amendments to the legislative provisions as requested above, the Committee once again asks the Government to supply detailed information on how the Convention is applied in practice, as required under Part V of the report form, including, for instance, extracts from official reports, statistics, and information on inspection visits made and contraventions reported.***

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

Egypt

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention and Part V of the report form. National policy on the effective abolition of child labour and the application of the Convention in practice. The Committee previously noted that, according to the 2005 report of the International Trade Union Confederation entitled “Internationally recognized core labour standards in Egypt” (ITUC report), 6 per cent of children aged 5–14 are involved in labour activities, 78 per cent of whom are in the agricultural sector (in commercial as well as subsistence agriculture). Moreover, the ITUC report indicated that children often work in repair and craft shops, in heavier industries such as brick making and textiles and in leather and carpet-making factories. The ITUC report stated that there is still clear evidence of employers who abuse, overwork and many times endanger many child workers. The ITUC report concluded that child labour is employed extensively in Egypt, in both the rural and the urban sectors and, despite some measures taken to tackle this issue, it remains a serious case for concern and further improvements are needed both in law and in practice. The Committee expressed serious concern at the situation of children working in Egypt, and urged the Government to redouble its efforts in this regard. Also, noting that the Government had drafted a national strategy to combat child labour, the Committee requested the Government to provide information on the progress made towards its adoption, and on the results achieved following its implementation.

The Committee takes due note that the Government adopted a national strategy to eliminate child labour (National Child Labour Strategy) in 2006, which highlights the role of NGOs, trade unions and the private sector, in partnership with state agencies, for its implementation. In March 2008, within the framework of the National Child Labour Strategy, the Ministry of Manpower and Migration (MoMM) signed protocols of cooperation with the Chamber of Construction Material, the Chamber of Engineering Industries, the Chamber of Leather Industries and the Al-Fustat Association. In cooperation with numerous other governmental ministries, the MoMM took the following measures:

- the provision of trained personnel to deal with working children and the development of a capacity-building programme with a focus on children’s rights;
- the creation of a central database on child labour, taking gender into account in the classification and analysis of data;
- the implementation of a social mobilization and media awareness campaign on child rights and the importance of combating child labour;
- the implementation of the Children at Risk Programme, by the National Council for Childhood and Motherhood, including the “Red Card to Child Labour” initiative;
- the development of policies and legislation on the protection of working children and their harmonization with international standards in addition to strengthening their methods of implementation;
- the provision of direct services to improve the economic, health and educational status of working children and their families;
- the development of poverty-alleviation programmes to help prevent additional children from entering the labour force and to ensure that children return to school; and
- the modernization of hazardous industries to reduce the risk to children and the provision of alternatives to children, where possible.

The Committee notes the Government’s indication that the implementation of the National Child Labour Strategy focuses on protection (with an emphasis on reintegrating children into basic education and preventing them from dropping out and joining the labour market), and rehabilitation (with an emphasis on withdrawing children from hazardous types of work, and providing them with training opportunities and safe jobs). The Committee also notes the information in the Government’s report that it has set up advisory committees in the Directorates of Manpower and Migration in all governorates, focused on the elimination of child labour. As a result of the work of these committees, 694 children were reintegrated into basic education, 7,852 children were enrolled in literacy classes, 4,747 children were enrolled in one-room schools and 1,997 children were enrolled in training centres. In addition, 2,911 children received social services, 1,455 children received health services and 133 children received material assistance. The Committee also notes the information in the Government’s report that, in cooperation with the US Department of Labor, a project on the worst forms of child labour is currently being implemented in the Geni Sueif, Assiut and Sohag governorates, targeting working children and their families, in addition to enterprise owners. Through this programme, 1,474 children were removed from work, 6,477 children were enrolled in state schools, 1,061 children were enrolled in community schools and 503 children received occupational safety and health equipment.

The Committee welcomes the measures taken by the Government to combat child labour and facilitate access to education, though notes the information available from UNICEF that, for the period 1999–2007, approximately 7 per cent of all children aged 5–14 (approximately 1,067,000 children) were engaged in child labour. ***The Committee remains concerned at the high number of working children under the minimum age and therefore urges the Government to strengthen its efforts, within the framework of the national strategy to eliminate child labour, to address this issue. The Committee requests the Government to continue to provide information on the results obtained in this regard. In***

addition, noting that the national strategy to eliminate child labour includes the establishment of a central database on child labour, the Committee requests the Government to provide information on the general application of the Convention from this database, as soon as this information is available.

Article 2, paragraph 2. Raising the initially specified minimum age for admission to work. The Committee notes the Government's statement that the Children's Act No. 12 of 1996 (Children's Act) was amended by Law No. 126 of 2008, to raise the minimum age of employment to 15 years. Observing that, upon ratification the Government specified the minimum age of 14 years, the Committee draws the Government's attention to the fact that *Article 2(2)* of the Convention provides for the possibility for a State which decides to raise the initially specified minimum age for admission to employment or work to inform the Director-General of the International Labour Office by means of a new declaration. This allows the age fixed by the national legislation to be harmonized with that provided for at international level.

Part III of the report form. Labour inspection. The Committee previously noted that, the Committee on the Rights of the Child, in its concluding observations, noted that 80 per cent of child labour is reportedly concentrated in the agricultural sector and that "many of these children work long hours in dusty environments, without masks or respirators, receiving little or no training on safety precautions for work with toxic pesticides and herbicides" (CRC/C/15/Add.145, paragraph 49, of 21 February 2000). The Committee also noted that, according to a 2007 report on findings on the worst forms of child labour in Egypt, available on the High Commissioner for Refugees web site (www.unhcr.org), a separate unit within the MoMM is responsible for child labour investigations in the agricultural sector. In this regard, it noted the Government's indication that inspections are conducted on commercial plantations with a large agricultural production and child labour inspectors endeavour to enforce the legislation regarding children working in agriculture. As a result, the MoMM reported that its 2,000 labour inspectors issued 72,000 citation violations between 2006 and the first nine months of 2007, though the Committee noted that the inspection reports communicated to the Office did not reference these citations.

The Committee notes the information in the Government's report submitted under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that, although the Labour Code does not apply to children and women working in small family enterprises which produce for the sake of local consumption, inspections are still carried out in the agricultural sector to ensure that the working conditions conform to those prescribed under Order No. 118 of 2003, specifying that children under the age of 18 years may not be employed in several agricultural occupations, such as cotton baling (section 1(34)) and the preparation and spraying of pesticides (section 1(39)), and Order No. 1454 of 2001 of the Ministry of Agriculture on child labour in agriculture and cotton harvesting, which prohibits persons under the legal age from performing certain agricultural tasks. The Committee further notes the Government's statement that the MoMM, through inspections, takes an active role in providing a safe working environment for children in agriculture and that the MoMM held 50 national workshops in the field of agricultural labour inspections. These workshops included awareness-raising activities on the issue of child labour in Egypt and on Order No. 1454 of 2001, and an explanation of the underlying causes of child labour.

The Committee notes the information in the Government's report that inspections were carried out in 4,361 enterprises, and a total of 3,677 children were found to be working (3,271 boys and 406 girls). The Committee also notes that comprehensive inspections were carried out in 398 enterprises, and a campaign to monitor rest and work hours included 2,657 enterprises. These inspections found wage violations concerning 254 children, leave violations concerning 169 children, hours of work and rest violations concerning 29 children and the failure of employers to meet their obligations regarding 277 children.

The Committee notes the Government's indication that, in response to the violations, inspectors issued minutes and applied the penalties prescribed in the Labour Code. However, the Committee observes that the Government's report does not indicate the number of these recourses taken with regard to child labour. The Committee also observes that the information in the Government's report on labour inspections does not indicate if these inspections include the agricultural sector. *The Committee therefore requests the Government to clarify if these statistics on inspections refer to inspections in both the agricultural and non-agricultural sector. It also requests the Government to indicate the number of violations, including violations of the prohibition of hazardous work, detected by labour inspectors with regard to children working in the agricultural sector. The Committee further requests the Government to provide information on the number of fines issued, pursuant to the Labour Code, for violations involving persons under this minimum age. Lastly, the Committee requests the Government to provide a copy of Order No. 1454 of 2001 of the Ministry of Agriculture on child labour in agriculture and cotton harvesting.*

Ethiopia

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its previous comments, the Committee noted the Government's indication that a new "National Plan of Action for Children 2003–10 and beyond" (NPA) had been drafted in 2004. One of the six main components of the NPA is reducing child labour. The Committee requested the Government to provide more detailed information on the implementation of the

NPA and on the results attained. The Committee notes the Government's indication that, based on the priority areas identified by the NPA, it has begun to plan an awareness-raising programme concerning the problems associated with child labour, aimed at governmental and non-governmental bodies, although this programme has not yet been fully implemented. ***The Committee requests the Government to continue to provide information on the implementation of the NPA, as well as results achieved in terms of the elimination of child labour.***

Article 2, paragraph 1. Scope of application. The Committee had previously observed that the provisions of the Labour Proclamation No. 377/2003 (Labour Proclamation) do not cover work performed outside an employment relationship. The Committee notes the Government's acknowledgement that the labour legislation does not cover children who work on their own account, and that measures will be taken. The Committee notes the information in National Labour Force Survey of 2004–05 (NFLS), produced by the Central Statistical Agency of Ethiopia (Ministry of Finance and Economic Development), that approximately 1.57 per cent of economically active children (approximately 139,404 children between the ages of 5 and 14) are self employed. The Committee recalls that the Convention applies to all branches of economic activity and that it covers all types of employment or work, whether under a labour relationship or contract of employment or not, and whether it is remunerated or not. ***It therefore again requests the Government to provide information in their next report on measures taken or envisaged to ensure the application of the Convention to all types of work, including work carried out by persons under 14 years of age who work on their own account.***

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee notes the information in the Government's National Report on the Development of Education submitted to the International Conference on Education in 2008, that the third five-year Education Sector Development Program was launched in 2005, with the goal of improving educational quality, relevance and efficiency and expanding access to education with special emphasis on primary education in rural areas and the promotion of education for girls, as a step to achieving universal primary education by 2015. The Committee further notes the data in the Government's report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that indicates that between 2001 and 2006, drop-out rates for primary school fell from 17.2 per cent to 12.4 per cent. The Committee also notes the information in this report that, over this period, there has been an increase in enrolment at the primary, secondary and higher education levels, as well as for technical and vocational education and training.

Nonetheless, the Committee notes that the Committee on the Rights of the Child (CRC), in its 1 November 2006 concluding observations, expressed serious concern that primary education in Ethiopia is still not free nor compulsory, and that net enrolment is still very low. While the CRC welcomed the improved enrolment rate in primary school, the increased budgetary allocation for education, and the improved collection of statistics regarding school attendance, it nevertheless expressed concern at the large number of school drop-outs, the charging of fees in primary education, the overcrowding of schools, the limited provisions for vocational training, the low transition rate to secondary school, the insufficient number of trained teachers and available school facilities, the absence of budgetary allocations for pre-primary schools and the poor quality of education (CRC/C/ETH/CO/3, paragraph 63). In addition, the Committee notes the information in the UNESCO report on school attendance and enrolment issued in 2007, that the net primary school enrolment rate in 2006 was 68.2 per cent, and that the secondary net enrolment rate was 32.1 per cent. Finally, the Committee notes the information in the NFLS that 36.3 per cent of children between the ages of 5 and 14 engage only in economic activity and do not attend school. ***The Committee is seriously concerned by the large numbers of children who, in practice, do not attend school, and in view of the fact that compulsory schooling is one of the most effective means of combating child labour, it urges the Government to take the necessary measures to set the age of completion of compulsory schooling at 14 years in the near future. The Committee also requests the Government to redouble its efforts to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates among children in rural areas and among children under 14 years of age, so as to prevent the engagement of these children in child labour. Lastly, it requests the Government to provide information on the progress made in this regard.***

Article 3. Hazardous Work. The Committee previously observed that the section 4(1) of the decree issued by the Minister of Labour and Social Affairs of 2 September 1997 concerning the prohibition of work for young workers, contained a list of types of hazardous work prohibited for young workers. The Committee also noted that, pursuant to section 4(2) of this decree, this prohibition did not apply to persons who carry out such activities in the course of professional education in vocational centres. The Committee further noted that the guidelines designed to facilitate the implementation of this decree are only available in Amharic. The Committee had asked the Government to specify what measures ensured that apprentices of 14 years of age and above do not engage in the hazardous work prohibited to young workers.

The Committee notes the information in the Government's report that pursuant to section 3(2)(b) of the Labour Proclamation, apprenticeships are covered by the Labour Proclamation. Section 89(4) of the Labour Proclamation prohibits young workers (which, pursuant to section 89(1), is defined as a person who has attained the age of 14 years, but is not over the age of 18 years) from engaging in work which endangers their life or health. However, the Committee notes that pursuant to section 89(5) of the Labour Proclamation, young workers following courses in vocational schools (that are approved and inspected by the competent authority) are expressly excluded from the prohibition in section 89(4). It therefore appears that workers between the ages of 14 and 18 are not prohibited from engaging in hazardous work while

they are following courses in vocational schools which have been approved and inspected by the competent authority. The Committee recalls that, under the terms of *Article 3(1)* of the Convention, the minimum age of admission to hazardous work shall not be less than 18 years. The Committee further recalls that the exception outlined in *Article 3(3)* of the Convention provides that national laws or regulations may authorize hazardous work for young persons over the age of 16 following consultation with the organizations of employers and workers concerned, provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee therefore requests the Government to take the necessary measures to ensure that young persons under 16 years of age following courses in vocational schools will be not be authorized to carry out hazardous work that is prohibited for young workers. The Committee further requests the Government to provide information on the measures taken to ensure that the health, safety and morals of young persons engaged in vocational training aged 16 and 17 are fully protected, and to specify whether the employers' and workers' organizations have been consulted on the matter. Lastly, the Committee once again requests the Government to supply a copy of the guidelines of the abovementioned decree concerning the prohibition of work for young workers once they have been translated into one of the official languages of the ILO.***

Part V of the report form. Practical application of the Convention. The Committee notes the data in the Government's report from the 2001 National Child Labour Survey and the 2006 analysis of this data. The Committee notes that this survey indicates that 15.5 million children (84.5 per cent of the child population) were engaged in economic activities, and 12.6 million of these children (81.2 per cent) were under the age of 15. The Committee also notes the information in the NLFS that 46.4 per cent of boys in rural areas, between the ages of 5 and 14, do not attend school, and are engaged only in economic activity. The Committee notes that the CRC, in its concluding observations of 1 November 2006, expressed deep concern at the prevalence of child labour among young children including those as young as 5 and that the Government had not taken comprehensive measures to prevent and combat this large-scale economic exploitation of children (CRC/C/ETH/CO/3, paragraph 71). The Committee must express its ***serious concern*** at the large percentage of children under the age of 14 who are engaged only in economic activity and do not attend school, particularly in rural areas. ***It therefore urges the Government to redouble its efforts to ensure that, in practice, children under the minimum age of 14 do not work. It strongly encourages the Government to take the necessary measures in the very near future to address this issue, including the allocation of additional resources to the child labour component of the NPA. The Committee asks the Government to provide detailed information on the implementation of measures taken in this regard.***

Kenya

Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

Article 2, paragraph 3, of the Convention. Age of completion of compulsory schooling. The Committee had previously noted that, under section 7(2) of the Children's Act, every child shall be entitled to free basic education which shall be compulsory. It had also noted that, according to the Child labour report 1998–99 and the "Child labour policy", primary education is compulsory from 6 to 13 years of age. The Committee had further noted the Government's information that children in Kenya complete schooling at different ages and that the Government had not envisaged fixing the age of completion of compulsory schooling. In this respect, the Committee had noted the information provided by the Government of Kenya to the Conference Committee on the Application of Standards in June 2006 concerning the application of the Minimum Age Convention, 1973 (No. 138), that it had appointed a committee to review the Education Act with a view to modifying, inter alia, the age of completion of compulsory schooling. Recalling that this Convention had been ratified by Kenya more than 25 years ago, the Conference Committee had urged the Government to ensure that legislation addressing the gap between the age of completion of compulsory schooling and the minimum age for admission to employment or work would be adopted shortly.

The Committee notes the Government's indication that the average age for completing free primary education is 14–16 years. It also notes the Government's statement that in order to address the gap between the minimum age for admission to employment and the age of completion of compulsory schooling, the Government has waived the tuition fees for the first two years in secondary schooling. It further notes the Government's indication that it has not envisaged adopting any legislation fixing the age of completion of compulsory education. The Committee notes, however, that according to UNICEF statistics for 2007, the gross enrolment rate in primary education is 75 per cent for boys and 76 per cent for girls, and that the rate for secondary education is 52 per cent for boys and 49 per cent for girls. It also notes that according to the Global Monitoring Report 2009 on Education for All, published by UNESCO, there are about 0.9 million out-of-school children in Kenya. The Committee expresses ***concern*** at the relatively low enrolment rate for secondary education and the number of out-of-school children in Kenya. The Committee is of the view that compulsory education is one of the most effective means of combating child labour and it is important to emphasize the necessity of linking the age of admission to employment to the age limit of compulsory education. If the two ages do not coincide, various problems may arise. If compulsory schooling comes to an end before the young persons are legally entitled to work, there may be a period of enforced idleness (see ILO: *Minimum age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 67th Session, Geneva, 1981, paragraph 140). ***The***

Committee therefore urges the Government to take the necessary measures to set the age of completion of compulsory schooling at 16 years, as a matter of urgency. It requests the Government to provide information on the developments made in this regard. The Committee also requests the Government to redouble its efforts to improve the operation of the education system, in particular by increasing school enrolment and attendance rates among children under 16 years of age at the primary as well as the secondary level.

Article 3, paragraph 2. Determination of hazardous work. The Committee had previously noted the Government's statement that the stakeholders had approved a list of the types of hazardous work which would be presented to the National Labour Board for final approval, before the minister assented to it as part of legislation. The Committee notes the Government's information that the list is still undergoing the process of approval by the National Labour Board and thereafter adoption by the minister. ***The Committee expresses the firm hope that the list of types of hazardous work will be adopted in the very near future. It requests the Government to supply a copy of the same as soon as it has been adopted.***

Article 3, paragraph 3. Admission to hazardous work as from 16 years of age. The Committee had previously noted that section 10(4) of the Children's Act provides that the minister shall make regulations in respect of periods of work and establishments where children aged at least 16 years may work, including hazardous work. It had also noted the Government's indication that the competent Minister had issued regulations referred to in section 10(4) of the Children's Act, which is an Act of Parliament. The Committee notes the Government's statement that the Children's Act is currently being reviewed and that the copy thereof will be sent after adoption by the Parliament. ***The Committee hopes that the regulations issued under section 10(4) of the Children's Act will be adopted soon. It requests the Government to provide a copy thereof, as soon as it has been adopted.***

Article 6. Apprenticeship. The Committee had previously noted the Government's indication that the Industrial Training Act was being amended to bring the legislation into conformity with the Convention with regard to apprenticeship. It had noted that, according to section 58(1) of the Employment Act of 2007, no person shall employ a child of between 13 and 16 years of age, other than one serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act, in an industrial undertaking to attend to machinery. Similarly, section 57 of the Employment Act, which lays down the penalties for breach of the provisions of light work by children, exempts children between the ages of 13 and 16 years who are subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship. The Committee had observed that, according to the Employment Act of 2007, children between 13 and 16 years of age are allowed to take part in apprenticeship programmes subject to the provisions of the Industrial Training Act. In this regard, the Committee had reminded the Government that ***Article 6 of the Convention fixes a minimum age of 14 years for work done in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, and is an integral part of: (a) a course of education or training for which a school or training institution is primarily responsible; (b) a programme of training, mainly or entirely, in an undertaking, which programme has been approved by the competent authority; or (c) a programme of guidance or orientation designed to facilitate the choice of an occupation. The Committee once again notes the Government's information that the Industrial Training Act is being amended to bring the legislation into conformity with the Convention. The Committee expresses the firm hope that the amendments to the Industrial Training Act will be adopted in the near future with a view to bringing it into conformity with the Convention. It requests the Government to provide information on any developments in this regard.***

Article 7, paragraph 3. Determination of light work. The Committee had previously noted that, according to section 56(3) of the Employment Act, the minister may make rules prescribing light work in which a child of 13 years may be employed and the terms and conditions of that employment. The Committee had requested the Government to take the necessary measures to determine the light work activities that may be undertaken by children of 13 years of age and to prescribe the number of hours during which, and the conditions in which, such work may be undertaken. The Committee notes the Government's statement that while the reviewing of the rules and regulations has not yet been completed, these rules and regulations clearly stipulate the types of light work activities permitted to children under 13 years, and the hours and conditions of such employment. ***The Committee expresses the firm hope that the regulations determining the light work activities that may be undertaken by children of 13 years of age and the number of hours during which, and the conditions in which, such work may be undertaken, will be adopted in the near future. It requests the Government to provide a copy of the regulations as soon as they have been adopted.***

Article 8. Artistic performances. The Committee had previously noted section 17 of the Children's Act, which provides that a child shall be entitled to leisure, play and participation in cultural and artistic activities. It had noted that the national legislation does not provide for permits to be granted to children participating in cultural artistic performances. The Committee once again notes the Government's information that no consultations with the social partners with regard to the granting of individual permits for artistic performances have been so far undertaken. It further notes the Government's indication that this matter will be addressed in the subsidiary legislation yet to be completed. ***The Committee once again expresses the firm hope that in its next report the Government will be in a position to provide information on the progress made in the revision of national legislation in order to ensure that approval for young persons below 16 years of age to take part in artistic performances is required in individual cases. It also reminds the***

Government that the permits so granted must prescribe the number of hours during which, and the conditions in which, such employment or work shall be permitted.

Article 1 and Part V of the report form. National policy and application of the Convention in practice. The Committee notes the Government's information that the incidence of child labour in Kenya has reduced tremendously from 1.9 million in 1998–99 to 951,273 in 2005. According to the Government's report this reduction is attributed to the following measures taken by the Government: free primary education; fee waiver for the first two years of secondary education; financial assistance to orphans and vulnerable children; policy development and legislation; social mobilization and awareness raising among the general population; enhanced capacity among stakeholders on child labour issues; expanded knowledge base through research; and strong partnerships with stakeholders among other interventions. The Committee notes, however, the Government's statement that it is also experiencing the following challenges in the fight against child labour:

- information on the employment of children is hard to obtain as most of the employers do not keep records of child employment or claim other reasons for keeping them as employees;
- serious unemployment problems coupled with high poverty and the HIV pandemic;
- enforcement of child labour legislation is weak due to lack of resources, transport, and manpower;
- lack of alternative placement such as vocational training institutions for children removed from child labour.

The Committee notes, however, the information provided by the Government in its report under Convention No. 182 that in order to face the above challenges the Government has adopted several measures including: strengthening and enhancing the monitoring capacity of the district child labour committees and the local child labour committees; reviewing and upgrading the child labour monitoring system under the ILO–IPEC TACKLE project in order to develop a central data system for children; and implementing a cash transfer programme for families having orphans and vulnerable children (OVC) including orphans of HIV/AIDS. ***The Committee encourages the Government to continue taking similar measures to face the abovementioned challenges experienced in the fight against child labour and to provide information in this regard. Moreover, while noting the improvement in reducing the incidence of child labour over the past few years, the Committee nevertheless urges the Government to redouble its efforts to ensure the progressive abolition of child labour. The Committee further requests the Government to provide information on the application of the Convention in practice, including, for example, statistics on the employment of children and young persons, extracts from the reports of the inspection services and information on the number and nature of the contraventions reported and sanctioned imposed.***

Kuwait

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

Article 2, paragraph 1, of the Convention. Scope of application. (a) Seasonal workers. In its previous comments, the Committee noted that a draft Labour Law amending Act No. 38 of 1964 on labour in the private sector (Act No. 38 of 1964) was being discussed by the national authorities. The Committee observed that the Government had been referring to the enactment of the draft Labour Law for a number of years, and expressed the firm hope that it would be adopted in the near future. The Committee notes the Government's statement that the draft project of the Labour Law is before the legislative authority (*Majlis al-Ummah*). The Committee notes the Government's indication that the draft project of the Labour Law was discussed in its entirety during the *Majlis al-Ummah*'s first session and that it will soon be promulgated. ***The Committee requests the Government to provide a copy of the Labour Law, once it is adopted.***

(b) Domestic workers. The Committee previously noted that Act No. 38 of 1964 excluded domestic workers from its scope of application, and requested the Government to provide a copy of Order No. 640 of 1978 taken by the Minister of the Interior (attached to the regulations putting into effect the Foreigners' Residence Act), in addition to a copy of the model contract for the employment of domestic workers. The Committee notes that these documents were submitted with the Government's report. The Committee also notes with ***interest*** that pursuant to section 5(3) of Order No. 640 of 1978, the minimum age for domestic workers is 20 years of age.

(c) Self-employment and street children. The Committee previously requested the Government to supply information on the measures taken or envisaged to ensure the application of the Convention to all types of work outside of an employment relationship. It also requested the Government to provide information on the situation of street children, in particular with regard to their age, number and the types of work they undertake. The Committee notes the Government's statement that there are no street children in Kuwait. Nonetheless, the Committee notes that, according to the information in the summary record for the 1,301st meeting of the Committee of the Rights of the Child (CRC) on 24 January 2008, a member of the CRC noted that the numbers of street children and refugee children had recently increased significantly in Kuwait (CRC/C/SR.1301 paragraph 9).

The Committee reminds the Government that the Convention applies to all branches of economic activity and that it covers every kind of employment or work, including work performed by children and young persons performed on their own account. ***The Committee urges the Government to take the necessary measures to ensure the application of the***

Convention to all types of work performed outside an employment relationship, such as street children and other self-employed children.

Minimum age for admission to employment or work. The Committee previously noted that under the terms of section 18 of Act No. 38 of 1964, the minimum age for admission to employment or work is 14 years, although the minimum age specified by the Government at the time of ratifying the Convention is 15 years. The Committee noted the Government's information that section 18 of the draft Labour Law in the private sector has specified 15 years as the minimum age for admission to employment or work so as to bring the national legislation into conformity with the Convention. **The Committee requests the Government to take the necessary measures to ensure that the draft Labour Law is adopted in the near future.**

Article 9, paragraph 3. Registers of employment. The Committee previously noted that, pursuant to section 3 of Ministerial Decree No. 148 of 2004 regulating the employment of young persons between 14 and 18 years of age, the employer of these young persons shall keep an up to date record of the names, ages and date of employment, as well as the type of work, of his/her employees. It requested the Government to provide a copy of the model register used by employers. **Noting an absence of information on this point in the Government's report, the Committee once again requests to the Government to provide a copy of the model register used by employers.**

Part V of the report form. Application of the Convention in practice. The Committee previously requested the Government to provide the Office with a copy of the statistical compilation for employees in the private sector of 2006. The Committee notes the copies of statistics on labour inspections submitted with the Government's report, including the statistical compilation of 2006. The Committee notes that in 2006, the labour inspectorate recorded one violation (in the commercial, restaurant and hotel sector) of section 19 of Act No. 38 of 1964, which sets forth the terms under which persons between the ages of 14 and 18 may be employed. **The Committee requests the Government to continue to provide information on the practical application of the Convention, including, for example, statistical data on the employment of children and young persons, as well as extracts from the reports of inspection services and information of the number and nature of contraventions reported.**

The Committee also once again requests the Government to keep it informed of progress made in enacting the draft Labour Law. In this regard, it hopes that due consideration will be given to all the comments made by the Office on the draft Labour Law.

Lebanon

Minimum Age Convention, 1973 (No. 138) (ratification: 2003)

Article 2, paragraph 1, of the Convention. Scope of application. The Committee previously noted that the Labour Code only applies to work performed under an employment relationship (by virtue of sections 1, 3 and 8 of the Code). The Committee reminded the Government that the Convention applies to all branches of economic activity and covers all types of employment or work, whether they are carried out on the basis of an employment relationship or not, and whether they are remunerated or not. It requested the Government to provide information on the manner in which children who are not bound by an employment relationship are covered by the protection provided for in the Convention. The Committee notes the information in the Government's report that Chapter 2, section 15 of the draft amendments to the Labour Code, prepared by a tripartite committee, provides for rules governing "the employment or work of young persons". The Committee notes the Government's statement that the principles in this amendment therefore include all young persons, and not solely those bound by an employment relationship. **The Committee requests the Government to take the necessary measures to ensure the adoption in the near future of the draft amendments to the Labour Code relating to self-employed children or children in the informal economy, and to provide a copy, once adopted.**

Article 2, paragraph 2. Minimum age for admission to employment or work. In its previous comments, the Committee noted that, at the time of ratifying the Convention, Lebanon declared 14 years as the minimum age for admission to employment or work and that Act No. 536 of 24 July 1996, amending sections 21, 22 and 23 of the Labour Code, prohibits the employment of young persons before they complete 13 years of age (*i.e. beginning of 14 years*). The Committee also noted the Government's information that it intended to amend the Labour Code, to prohibit the employment or work of young persons before they complete 14 years (*i.e. beginning of 15 years*). The Committee notes the information in the Government's report that section 19 of the draft amendment to the Labour Code prohibits the employment or work of persons under the age of 15 years. Noting that the Government specified a minimum age of 14 years at the time of ratification, the Committee draws the Government's attention to the fact that *Article 2(2)* of the Convention establishes the possibility for a State which decides to raise the initially specified minimum age for admission to employment or work to notify the Director-General of the International Labour Office by means of a further declaration. This enables the age fixed by the national legislation to be aligned to that provided for at international level. **The Committee requests the Government to provide information on any progress made in the adoption of the draft amendments to the Labour Code.**

Article 2, paragraph 3. Compulsory education. The Committee previously noted that the Committee on the Rights of the Child (CRC), in its concluding observations of 2002 (CRC/C/15/Add.169), while noting that basic education was free and compulsory until the age of 12, expressed concern about its implementation in practice. It noted the

Government's indication that Act No. 686/1998 relating to free and compulsory education in the primary phase has not so far been applied, due to the economic conditions of the country and the insufficient educational facilities. The Committee also noted that, according to the 2004 ILO-IPEC survey that in Lebanon, 18.9 per cent of children drop out of school at the elementary level (6–11 years), 22.8 per cent at the intermediate level (12–15 years) and 10.6 per cent at the secondary level. According to this survey, dropping out of school was a major contributing factor to the early participation of boys and girls in the labour market.

The Committee notes the information in the Government's report that 250 children (in three schools), who were at risk of dropping out, were assisted and given additional lessons through a programme entitled "Strengthening courses in basic subjects". The Committee also notes the information in the November 2008 report of the Minister of Education and of Higher Education submitted to UNESCO for the 48th International Conference on Education entitled "The Development of Education in Lebanon", that the Government intends to raise the age at which compulsory education ends, from the current 12 years to 15 years of age. The Committee further notes that the CRC, in its concluding observations of 8 June 2006 expressed concern that in primary education, parents are still charged for some costs of education despite the legal guarantee of free education, and that dropout rates have increased at this level while enrolment in secondary education declined (CRC/C/LBN/CO/3, paragraph 63).

The Committee is of the view that compulsory education is one of the most effective means of combating child labour and it is important to emphasize the necessity of linking the age of admission to employment to the age limit for compulsory education. If the two ages do not coincide, various problems may arise. If compulsory schooling comes to an end before the young persons are legally entitled to work, there may be a period of enforced idleness. However, if young persons are legally entitled to work before the end of completion of compulsory schooling, children from poor families might be tempted to drop out of education and work in order to earn money (see ILO: *Minimum Age*, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 67th Session, Geneva, 1981, paragraph 140). Noting the Government's intention to raise the age of completion of compulsory schooling to 15 years, the Committee reminds the Government that pursuant to *Article 2(3)* of the Convention the minimum age for admission to employment (currently 14 years) should not be lower than the age of completion of compulsory schooling. ***Therefore, the Committee urges the Government to intensify its efforts to provide for compulsory education up until the minimum age for admission to work (which is currently 14 years, and will be 15 years with the adoption of the draft amendments to the Labour Code). The Committee requests the Government to provide information on any new developments on this point.***

Article 3, paragraphs 1 and 2. Minimum age for admission to, and determination of, hazardous work. The Committee previously noted that section 1 of Decree No. 700 of 1999 prohibits the employment of young persons before they complete 17 years of age (*i.e. beginning of 18 years*). The Committee also noted that Decree No. 700 of 1999 provides for a detailed list of the types of hazardous work in which it is prohibited to employ young persons. The Committee further noted the information in the Government's report that the National Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour which, in accordance with *Article 3(1)* and *(2)* of the Convention, prohibits the employment of children under 18 years in work which, by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety or morals of children.

The Committee notes that section 20 of the draft amendments to the Labour Code prohibits the employment or labour of children before they reach 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also notes that the "Draft Decree on the prohibition of employing children before they complete 18 years of age in work which is likely to jeopardize their health, safety or morals" (Draft Decree Prohibiting Hazardous Work), was issued by Advisory Opinion No. 239 of the State Council on 26 May 2009 and will be promulgated following approval by the Council of Ministers. The Committee notes the Government's statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled "Worst Forms of Child Labour – under 18 years old in Lebanon". The Committee further notes that section one of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700 of 1999, and that section two contains a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons' access to education and training. ***The Committee urges the Government to take the necessary measures to ensure the adoption by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work (as issued by Advisory Opinion No. 239 of the State Council on 26 May 2009).***

Article 3, paragraph 3. Authorization to undertake hazardous work from 16 years. The Committee previously noted that section 23(1) of the Labour Code prohibits the employment of young persons under 15 years of age in industrial projects and activities which are physically demanding or detrimental to their health, as set out in Annexes 1 and 2. The Committee observed that section 23(1) of the Labour Code was not in conformity with *Article 3(3)* of the Convention, to the extent that it appeared to allow young persons from 15 to 16 years to perform hazardous work. The Committee noted the information in the Government's report that the draft amendment to the Labour Code includes the principles specified in *Article 3(3)* of the Convention.

The Committee notes the information in the Government's report that, by virtue of an order of the Ministry of Labour, section 20, paragraph 3 of the draft amendments to the Labour Code authorizes employment or work in hazardous

types of employment as of 16 years of age, under certain conditions. The Committee also notes that section 3 of the Draft Decree Prohibiting Hazardous Work contains a list of activities which may be authorized as of 16 years of age, on the condition that the health, safety and morals of young persons are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. The Committee observes that this list prohibits the employment of children under 16 years in work with chemical hazards, physical hazards, intellectual or social hazards, safety hazards (such as heights), some types of agricultural work, work in slaughterhouses, work in construction, work in transport, work in horse races, work in restaurants or hotels, or work in factories with more than 20 employees. ***The Committee expresses the firm hope that section 3 of the Draft Decree Prohibiting Hazardous Work, concerning the authorization of some types of hazardous work for persons between the ages of 16 and 18, will be adopted shortly and requests the Government to provide information on any developments in this regard.***

Article 4. Exclusion from the application of the Convention of limited categories of employment or work. In its previous comments, the Committee noted the Government's indication that section 7 of the Labour Code excludes from its application, and consequently from the scope of application of the Convention, the following categories of work: (a) workers in households in Beirut; (b) agricultural undertakings which are unrelated to trade and industry and which shall have their own legislation; (c) undertakings which only employ family members under the management of the father, mother or guardian; and (d) Government departments and municipal bodies with respect to daily and temporary workers not covered by the regulations governing officials. The Committee also noted the Government's reference to the draft amendments to the Labour Code which would regulate the first three of the abovementioned four excluded categories, by a decree issued by the Council of Ministers.

The Committee notes that section 2, paragraph 2 of the Draft Decree Prohibiting Hazardous Work, submitted with the Government's report, prohibits, for persons under the age of 18, work with psychological hazards, including domestic work and work where the young person sleeps outside of the home. The Committee also notes that section 3, paragraph 2 of the Draft Decree Prohibiting Hazardous Work, concerning work prohibited for children under the age of 16, prohibits the employment of a young person in agricultural work (including family undertakings) which requires a tractor, work involving sharp equipment, work involving high ladders or trees or the mixing or dispersal of pesticides and fertilizers and the picking or handling of poisonous plants (including tobacco). The Committee observes that, by virtue of these provisions in the Draft Decree Prohibiting Hazardous Work, effect is given to the Convention with regard to the previously excluded categories of employment. ***The Committee expresses the firm hope that the provisions of the Draft Decree Prohibiting Hazardous Work relating to domestic workers and children employed in agricultural work (including family undertakings) will be adopted shortly and requests the Government to provide information on any developments in this regard.***

Article 6. Vocational training and apprenticeship. The Committee previously noted the information in the Government's report that section 16 of the draft amendment to the Labour Code provides for the definition of "training contract" and states that the minimum age to receive vocational training under a contract is 14 years, provided that conditions to safeguard the health, safety or morals of the young persons in question are respected. The Committee notes the Government's statement that amendments are still ongoing to the proposed draft amendments. ***It requests the Government to provide information on any progress made in adopting section 16 of the draft amendments to the Labour Code, fixing a minimum age of 14 years for entry into an apprenticeship, in conformity with Article 6 of the Convention.***

Article 7. Light work. Following its previous comments, the Committee notes the information in the Government's report that section 19 of the draft amendments to the Labour Code provides that employment or work of young persons in light work may be authorized when they complete 13 years of age (except in different types of industrial work in which the employment or work of young persons under the age of 15 years old is not authorized), on the condition that such employment or work, by its nature or the circumstance in which it is carried out, does not jeopardize their development, health, safety or morals. Section 19 further states that this work should not weaken their capacity to benefit from instruction received, nor should it impact on their participation in vocational orientation and training approved by the competent authority. The Committee also notes the Government's statement that light work activities shall be determined by virtue of an Order promulgated by the Ministry of Labour. The Committee further notes that the Ministry of Labour set up a committee, pursuant to Memorandum 58/1 of 20 June 2009, which in consultation with employers' and workers' organizations, shall formulate this statute, among other labour standards. In addition, the Committee notes the Government's indication that the Ministry of Labour, in coordination with ILO-IPEC, is preparing a study on the classification of occupations undertaken by working children, within the framework of the ILO-IPEC programme "Supporting the national strategy for the elimination of child labour in Lebanon, third phase", so as to formulate this statute on light work. ***The Committee requests the Government to take the necessary measures to ensure the formulation and adoption of a statute determining light work activities, in conformity with Article 7 of the Convention, following the adoption of the draft amendments to the Labour Code.***

The Committee notes the Government's statement that the draft amendments to the Labour Code have reached an advanced stage and will be referred to the competent authority for its adoption in the shortest delay. The Committee also notes the Government's statement that some amendments are still ongoing to the draft amendments, to achieve additional conformity between its provisions and the provisions of Arab and international labour Conventions. ***Considering that the***

Government has been referring to the draft amendments to the Labour Code for a number of years, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted in the near future. Furthermore, the Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee's comments on discrepancies between national legislation and the Convention and invites it to consider technical assistance from the ILO.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar to slavery. Trafficking. The Committee previously noted that the relevant Lebanese legislation does not specifically prohibit the trafficking of women and children. The Committee noted that the cooperation project, the "Anti-trafficking project", had been agreed upon by the United Nations Office on Drugs and Crime (UNODC) and the Ministry of Justice (MoJ) to ensure the conformity of national legislation with the Protocol against the Smuggling of Migrants by Land, Sea and Air and with the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children. According to the project document annexed to the Government's report, the existing Lebanese legislation was reviewed to identify gaps and formulate specific recommendations regarding necessary amendments and adoption of specific anti-trafficking legislation. The Committee noted that this legal review was sent to the MoJ for comments and clearance.

The Committee notes the information in the Government's report that the amendments to the Labour Code, prepared by a tripartite committee (which was set up by virtue of Order No. 210/1 of 20 December 2000), include provisions relating to the sale and trafficking of children. The Committee notes the information in the Government's report that section 33(a) of these amendments penalizes any person who participates, encourages or facilitates all forms of slavery or practices similar to slavery, such as the sale and trafficking of children. The Committee observes that it has drawn the Government's attention to the lack of legislation prohibiting the sale and trafficking of children since 2005. ***The Committee therefore urges the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code relating to the prohibition of the sale and trafficking of all persons under the age of 18, as a matter of urgency.***

Clauses (b) and (c). Use, procuring or offering of a child for the production of pornography or for pornographic performances and for illicit activities, in particular for the production and trafficking of drugs. The Committee previously noted the Government's information that section 33(b) of the draft amendments to the Labour Code specifies that any person who participates, encourages, facilitates or incites anyone to use, procure or offer a child or young person for the production of pornography or for pornographic performances is liable to punishment under the Penal Code, in addition to the penalties imposed by the Labour Code. Furthermore, the Committee noted the Government's information that section 33(c) of the draft amendments to the Labour Code provides that any person who participates, encourages, facilitates or incites another to use, procure or offer a child or young person for illicit activities, especially for the production and trafficking of drugs, commits a penal crime under the Penal Code.

The Committee notes the Government's statement that the amendments to the Labour Code are in their last stages and they shall be referred to the competent authorities for adoption within the shortest delay. However, the Committee also notes the Government's statement in its report submitted under Convention No. 138 that further revision to the draft amendment to the Labour Code are still necessary. ***The Committee requests the Government to take the necessary measures to ensure the adoption of the draft amendments to the Labour Code prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or for pornographic performances, and the use, procuring or offering of persons under the age of 18 for illicit activities.***

Clause (d). Hazardous work. The Committee previously noted the Government's information that Decree No. 700/1999 prohibits the employment of young persons before they complete 17 years of age (i.e. beginning of 18 years) in dangerous activities enumerated according to their nature. The Committee also noted the Government's indication that the National Committee to Combat Child Labour (NCCL) was formulating a statute on the worst forms of child labour to amend Decree No. 700 of 1999 and supplement section 23(1) of the Labour Code.

The Committee notes that section 20 of the draft amendments to the Labour Code prohibits the employment of children under 18 years in work which, by its nature or the conditions in which it is carried out, is likely to expose them to danger. The Committee also notes that the "Draft Decree on the prohibition of employing children before they complete 18 years old in work which is likely to jeopardize their health, safety or morals" (Draft Decree Prohibiting Hazardous Work), was approved by Advisory Opinion No. 239 of the *shura* on 26 May 2009, and will be promulgated following approval by the Council of Ministers. The Committee further notes the Government's statement that the Draft Decree Prohibiting Hazardous Work was formulated by the NCCL following the study entitled "Worst Forms of Child Labour under 18 years old in Lebanon".

The Committee notes that section 1 of the Draft Decree Prohibiting Hazardous Work provides for the annulment of Decree No. 700/1999, and that section 2 provides a list of the worst forms of child labour prohibited for children under 18, including work with physical, psychological and moral hazards, and work that would limit the young persons' access to education and training. ***The Committee requests the Government to take the necessary measures to ensure the adoption***

by the Council of Ministers of the Draft Decree Prohibiting Hazardous Work for children under 18 as a matter of urgency and requests it to provide information on developments in this regard.

Considering that the Government has referred to these draft amendments to the Labour Code for a number of years and, given that Article 1 of the Convention obliges member States to take “immediate” measures to prohibit the worst forms of child labour, the Committee expresses the firm hope that the Government will take the necessary measures to ensure that the amendments are adopted as a matter of urgency. Furthermore, the Committee encourages the Government to take into consideration, during the review of the relevant legislation, the Committee’s comments on discrepancies between national legislation and the Convention and invites it to consider technical assistance from the ILO.

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

Madagascar

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Article 1 of the Convention. National policy. National action plan to combat child labour. In its previous comments, the Committee noted the adoption of the National Plan of Action against Child Labour in Madagascar (PNA), and the six action plans covering the rural sector, mining and quarrying, manufacturing, domestic service, catering and trade, and miscellaneous activities. The Committee also noted the Government’s information concerning the positive outcomes of the activities carried out so far in Madagascar, including: (a) gradual assumption at national and regional level of the fight against child labour; (b) involvement of local decision-makers and the social partners (c) public awareness campaigns; (d) emergence of regional anti-child labour committees; (e) integration of anti-child labour activities in development plans at all levels, including the national “Madagascar Action Plan” (MAP).

The Committee notes, that according to the Government, the PNA is still under way and now at the end of phase one. It notes with *interest* that, according to the technical progress report of 13 March 2008 on the ILO–IPEC project “Combating the worst forms of child labour in Madagascar – IPEC support to the National Action Plan Against Child Labour”, 14,539 children at risk who attend primary school have been covered by the project and thus prevented from engaging prematurely in work. *The Committee requests the Government to continue to provide information on the implementation of the PNA in Madagascar, and on the results obtained in terms of the number of children under 15 years of age who are protected against premature work or employment*

Article 2, paragraph 1. Scope of application. The Committee noted previously that the Labour Code applies only to employment relationships, thereby excluding children who work on their own account. It also noted the indication from the Government that the PNA was drawn up to protect children who are not bound by an employment relationship. The Government indicated that the PNA makes no distinction between children bound by an employment relationship and children who work on their own account. The Committee accordingly asked the Government to provide information on the specific measures taken in the context of the PNA to prevent children under 15 years of age from working on their own account and to remove from work those already doing so. The Committee notes, that according to the Government, the PNA targets all child workers and consequently provides for the same measures for all child workers, including their withdrawal from work and their guidance towards alternatives. The Government also states that Decree No. 2007-563 of 3 July 2007 on child labour, which sets the minimum age for admission to employment or work at 15 years, applies equally to children bound by a contractual relationship and children working on their own account.

Article 2, paragraph 3. Age of completion of compulsory schooling. In its previous comments, the Committee noted that Order No. 3949/87 raised the age of completion of compulsory schooling from 14 to 16 years. The Committee noted however that, according to a document published by the UNESCO International Bureau of Education, the age of completion of compulsory schooling is lower than the minimum age for admission to employment or work. The Committee pointed out that, according to this document, the official age for access to primary education is 6 years and the levels of compulsory schooling five years, thus making the age of completion of compulsory schooling 11 years. It further noted that, according to the Government, the Ministry of National Education is currently undertaking various legislative and regulatory reforms which will include provisions on specification of the age of completion of compulsory schooling. It reminded the Government that the condition set in *Article 2(3)* of the Convention was met to the extent that the minimum age for work, namely 15 years in Madagascar, was not lower than the age of completion of compulsory schooling (11 years). The Committee nonetheless expressed the view that compulsory schooling is one of the most effective means of combating child labour and that it is important to emphasize how necessary it is to link the age of admission to employment or work with the age of completion of compulsory schooling. Where these two ages do not coincide, a number of problems may arise. If schooling ends before young persons are legally authorized to work, there may be a period of enforced idleness (see the General Survey of 1981 on minimum age, ILC, 67th Session, Report III, part 4(B), paragraph 140).

The Committee notes the information sent by the Government to the effect that it is fully aware of the importance of compulsory schooling as a means of combating child labour. The Government states that several meetings have been held on this subject in order to give the matter of national education the place it deserves, but work remains to be done, in particular because of the political crisis currently affecting the country. *The Committee trusts that its comments will be*

taken into consideration and that, in the context of the legislative and regulatory reforms mentioned above, the Government will ensure that the age of completion of compulsory schooling coincides with the age of admission to employment or work in Madagascar, in accordance with Paragraph 4 of ILO Recommendation No. 146. It requests the Government to take the necessary steps to ensure that the legislative and regulatory reforms are completed as soon as possible, and to provide information on all progress made in this regard.

Article 3. Hazardous work. The Committee noted previously the adoption of Decree No. 2007-563 of 3 July 2007 on child labour, the legislation now governing child labour. It observed that section 2 of Decree No. 2007-563 prohibits the recruitment of children 18 years of age and under in jobs that are a source of danger and work that is liable to harm their health or their physical, mental, spiritual, moral or social development. It further observed that Chapter 2 of the Decree “Worst Forms of Child Labour” consists of three parts listing the forms of work which are prohibited to children under 18 years of age. The Committee nonetheless noted the Government’s statement that Decree No. 2007-563 would take effect following its publication in the *Official Journal*.

The Committee notes with **satisfaction** that, according to the Government, Decree No. 2007-563 has been published in the *Official Journal* and applies throughout Madagascar.

Article 6. Vocational training and apprenticeship. In its previous comments the Committee noted the Government’s indication that a decree determining the conditions of work for vocational training and apprenticeships was to be examined by the National Labour Council (CNT), which is a tripartite body. It also noted that, according to the Government, the Ministry of Employment and Vocational Training was preparing various regulations on vocational training which were to be examined in 2006. The Committee further noted that the Ministry of Employment and Vocational Training was planning to submit to parliament a bill on the national employment policy, in which further vocational training and apprenticeships are a priority objective. The Committee noted the Government’s statement that the abovementioned draft texts were before the CNT and were due to be promulgated before the end of 2007. The Government states in its report, however, that these texts are still under examination by the CNT. **The Committee therefore urges the Government to take the necessary steps to ensure that the bills on apprenticeship and vocational training are adopted at the earliest possible date. It again asks the Government to provide a copy of them once they have been adopted.**

Part V of the report form. Application of the Convention in practice. Further to its previous comments the Committee notes that according to the National Survey on Child Labour (ENTE) of 2007, conducted by the National Bureau of Statistics in conjunction with ILO/IPEC/SIMPOC, in Madagascar more than one child out of four between 5 and 17 years of age (28 per cent) is economically active, that is 1,870,000 children. The participation rate in economic activity increases with age: while 12–15 per cent of children between 5 and 9 years of age are economically active, the rate rises to more than 30 per cent in the 10–14 age group, and to 55 per cent in the case of children between 15 and 17. The problem is more acute in rural areas, where 31 per cent of children engage in some form of economic activity as opposed to 19 per cent in urban areas. Most economically active children are found in agriculture and fishing and in most cases (two out of three) they work as home helpers. In the 5–14 age group, 22 per cent engage regularly in an economic activity and 70 per cent attend school. The ENTE also indicates that the great majority of Malagasy children (85 per cent) do household tasks, the most common of which are fetching water or wood, preparing meals and washing clothes. However, most children claim to devote less than two hours a day to such work. Furthermore, participation in household tasks is higher among schoolchildren than among non-schoolchildren, but the number of hours spent on household jobs is higher than among non-schoolchildren. Furthermore, economically active children in general, and those compelled to carry out harmful activities, that is work to be abolished according to the regulations on child labour in Madagascar, are very much exposed to the risk of illness and injury. Indeed, some 37 per cent of children employed in harmful activities state that they have been sick or injured because of their work, the most vulnerable being those employed in mining, manufacturing and agriculture.

The Committee notes the information in the Government’s report to the effect that it is working together with the international community to combat child labour in a context that requires much patience and responsibility. The Government indicates that although the results may appear insignificant given the extent of the problem, it is sparing no efforts, particularly now that all the necessary regional bodies are starting to take shape. The Committee expresses its appreciation of all the measures the Government has taken to abolish child labour. **However, the Committee expresses its concern at the situation and the number of children who are forced to work in Madagascar, it urges the Government to redouble its efforts to improve the situation. It requests the Government to continue to provide detailed information on progress made in this regard.**

Malawi

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

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

Article 1 of the Convention and Part V of the report form. National policy and practical application of the Convention. In its previous comments, the Committee had noted its serious concern at the situation of the considerable number of children

under 14 years of age who were compelled to work (according to the Malawi Child Labour Survey of 2002, more than 1 million children worked, of whom approximately half were less than 9 years of age). Moreover, the Committee had noted the Government's indication that a National Plan of Action for Orphans and Other Vulnerable Children 2005–09 (NPA for OVC) and a Childhood Development Policy were established. More particularly, it had noted that, according to the NPA for OVC, around 500,000 children were orphans due to HIV/AIDS in 2004 and more than 1 million children were orphans in Malawi in 2005. The Committee had noted that the Government was aware of the consequences of HIV/AIDS on orphans, such as increased child labour and children dropping out of school. It had also noted that the Strategic Objective No. 3 of the NPA for OVC was "to protect the most vulnerable children through improved policy and legislation, leadership, efficient coordination at all levels".

The Committee noted the Government's information that it was difficult to measure the impact of specific policies on child labour unless detailed scientific measurement studies are undertaken. However, according to the preliminary report of the Malawi Multiple Indicator Cluster Survey of 2006, the total child labour rate in Malawi dropped from 37 per cent in 2004 to 29 per cent in 2006. According to the same report, approximately 90 per cent of the total number of child orphans in Malawi is made up of children aged 0–14 years. The Committee therefore once again observed that HIV/AIDS has consequences for orphans, for whom there is an increased risk of being engaged in child labour.

The Committee noted the implementation of the ILO–IPEC Country Programme to combat child labour in Malawi, the objective of which is to contribute to the progressive elimination of child labour. According to the technical progress report of March 2007, two country projects were launched on 26 February 2007: the ILO HIV/AIDS Workplace Education Programme and the HIV/AIDS in the Transport Sector. The ILO–IPEC Country Programme also featured four action programmes, the objectives of which are to enhance community empowerment and awareness to prevent child labour and to train teachers to ensure an improvement in school retention rates and, consequently, contribute to the elimination of child labour. The Committee also noted the Government's information, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182), that a National Action Plan on Child Labour was being developed and that a Child Labour Network, comprising all key organizations involved in the fight against child labour, had been formed to strengthen and increase the impact of child labour programmes.

While noting the improvement made in reducing child labour rates, the Committee nevertheless urges the Government once again to redouble its efforts to ensure the progressive abolition of child labour. It also once again requests the Government to provide information on the progress made in the elaboration of the National Action Plan on Child Labour and asks the Government to supply a copy of it as soon as it is adopted. Furthermore, the Committee requests the Government to continue providing information on the other measures it has taken, such as the ILO–IPEC programmes and the HIV/AIDS country projects and their impact towards abolishing child labour. Finally, the Committee also once again requests the Government to continue providing information on the application of the Convention in practice, including, for example, statistics on the employment of children and young persons, extracts from the reports of the inspections services and information on the number and nature of the contraventions reported and sanctions imposed.

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

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

Malaysia

Minimum Age Convention, 1973 (No. 138) (ratification: 1997)

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. The Committee had previously noted that the provisions of the Children and Young Persons (Employment) Act of 1966 (CYP Act), with regard to the minimum age for employment or work, were not in conformity with the age specified by the Government when ratifying the Convention. Indeed, although the Government, at the time of ratifying the Convention, declared 15 years as the minimum age for admission to employment, section 2(1) of the CYP Act provides that no "child" – who is a person under 14 years of age, according to section 1(A) – shall be engaged in any employment. The Committee had also noted the Government's information that the CYP Act does not outlaw child labour, but rather governs and protects children who work. It had further noted the Government's information that a tripartite committee would review the labour legislation, taking into consideration the possibility of increasing the minimum age for admission to employment. The Committee had recalled that, by virtue of *Article 2(1)* of the Convention, no one under the age specified by the Government, when ratifying the Convention, shall be admitted to employment or work in any occupation.

The Committee notes that, according to a Government representative of Malaysia at the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference in June 2009, the Government would set up a tripartite technical committee composed of employers' organizations, workers' organizations, government agencies and other relevant agencies. The tripartite technical committee is scheduled to meet in December 2009 to, among other things, review the CYP Act and give consideration to raising the minimum age for admission to employment or work from 14 to 15 years. Indeed, the Government indicates in its report that it is making a serious effort to raise the minimum age for employment or work in order to comply with the Convention. However, the Committee expresses its **concern** that, as the Conference Committee on the Application of Standards noted, while the Government had reviewed a series of labour laws to be tabled in Parliament in 2009, the Government had postponed the review of the CYP Act because it felt that child labour and abuses related to it were not critical or alarming in Malaysia. *Noting once again that the Government has referred to the legislative review of the CYP Act for a number of years, the Committee strongly urges the Government to take the necessary measures to ensure that the tripartite technical committee seriously considers raising the minimum age for admission to employment or work to 15 years, as specified by the Government at the time of ratification, and that the relevant amendments are adopted as soon as possible. It requests the Government to provide information on the progress made in this regard with its next report.*

Article 3, paragraphs 1 and 2. Minimum age for admission to, and determination of, hazardous work. In its previous comments, the Committee had noted that the relevant legislation does not contain any provisions prohibiting young people under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals. It had noted the Government's referral to two prohibitions provided for in the CYP Act for children and young people: (i) managing or being in close proximity to machinery; and (ii) working underground. The Committee had observed that section 2(5) of the CYP Act provides that no child or young person shall be, or required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act, 1967, or the Electricity Act, 1949, or in any employment requiring them to work underground. It had noted, however, that section 1A(1) of the CYP Act defines a "child" as being any person who has not completed their fourteenth year of age, and a "young person" as being any person who has not completed their sixteenth year of age. The Committee had reminded the Government that, by virtue of *Article 3(1)* of the Convention, the minimum age for hazardous work shall not be less than 18 years. The Committee had also reminded the Government that, by virtue of *Article 3(2)* of the Convention, the types of hazardous work to which *paragraph 1* of this Article applies, shall be determined by national laws or by the competent authority after consultations with the organizations of employers and workers concerned.

Referring to conclusions made by the Conference Committee on the Application of Standards, the Committee notes that the Government indicated that it would make the necessary recommendations to the tripartite technical committee so as to ensure that no one under the age of 18 years is authorized to perform hazardous work and that those hazardous types of work are determined in national legislation. The Committee also notes the Government's information in its report that a proposal to include new provisions in the CYP Act to specify and determine the types of hazardous work and to prohibit the employment or work of persons under 18 years of age in these types of work is currently being reviewed by the Department of Labour. ***The Committee strongly urges the Government to take the necessary measures to ensure that the tripartite technical committee seriously considers the prohibition of the employment or work of persons under 18 years of age, in accordance with Article 3(1). Moreover, it firmly hopes that the determination of types of hazardous work to be prohibited to people below 18 years of age will be reviewed and adopted by the Department of Labour after consultation with the organizations of employers and workers concerned, in accordance with Article 3(2) of the Convention. It urges the Government to take the necessary measures to ensure that the relevant legislation is adopted as soon as possible and requests it to provide information on the progress made in this regard in its next report.***

Article 3, paragraph 3. Admission to hazardous work from 16 years. The Committee had previously noted that certain provisions of the CYP Act allow young people of 16 years and above to perform types of hazardous work under certain conditions. The Committee reminded the Government that, under the terms of *Article 3(3)* of the Convention, national laws or regulations may, after consultation with the organizations of employers and workers concerned, authorize the performance of types of hazardous work by young people between 16 and 18 years of age, on condition that the health, safety and morals of the young people concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity.

The Committee notes that the Government representative at the Conference Committee on the Application of Standards indicated that the Government is aware that young people between 16 and 18 years of age are only allowed to perform hazardous work if authorized in accordance with the requirements of *Article 3(3)* of the Convention. The Government representative explained that the tripartite technical committee would review and take action on that recommendation. The Committee also notes the Government's information that the Department of Occupational Safety and Health is reviewing the Factories and Machinery Act, 1967, to raise the minimum age to perform hazardous work in occupations falling within the scope of that Act from 16 to 18 years of age. ***The Committee urges the Government to take the necessary measures to ensure that the activities of the tripartite technical committee lead to the adoption of national legislation authorizing the performance of types of hazardous work done by young people between 16 and 18 years of age only in accordance with the requirements of Article 3(3) of the Convention. It requests the Government to provide information on the progress made in this regard in its next report.***

Article 7. Light work. The Committee had previously noted that section 2(2)(a) of the CYP Act allows people under 14 years of age to be employed in light work which is adequate to their capacity, in any undertaking carried on by their family. It had, however, noted that the legislation does not specify a minimum age for admission to light work. The Committee had reminded the Government that *Article 7(1)* of the Convention, provides for the possibility of admitting young people of 13 years of age to light work. The Committee had also recalled that, according to *Article 7(3)* the competent authority shall determine and prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. With regard to the definition of light work, the Committee drew the Government's attention to Paragraph 13(b) of the Minimum Age Recommendation, 1973 (No. 146) which states that, in giving effect to *Article 7(3)* of the Convention, special attention should be given to the strict limitation of hours spent at work in a day and in a week, and the prohibition of overtime, so as to allow enough time for education and training (including the time needed for homework), for rest during the day and for leisure activities. The Committee had shared the concern of the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, that the provisions of the CYP Act concerning light work permit, among other things, employment involving light work without detailing the acceptable conditions of performing such work (CRC/C/MYS/CO/1, paragraph 90).

The Committee notes that the Government representative at the Conference Committee on the Application of Standards explained that, in the framework of the revision of the CYP Act, the tripartite technical committee would consider whether the competent authority could authorize persons between 13 and 15 years of age to perform light work. This would include a definition of light work and a limitation of working time. The Committee also notes the Government's information, in its report, that it has agreed to define "light work activities" in the CYP Act so as to be in line with the Convention. ***The Committee urges the Government to take the necessary measures to ensure that the CYP Act is reviewed and amended in conformity with the requirements of the Convention on the following points: (i) that the minimum age of 13 years for light work be established by legislation; and (ii) that, in the absence of a definition of light work in the legislation, the competent authority should determine what is light work and should prescribe the number of hours during which, and the conditions in which, such employment or work may be undertaken. It requests the Government to provide information on the progress made in this regard in its next report.***

Parts III and V of the report form. Application of the Convention in practice. The Committee had previously noted that the responsibility of the enforcement of the CYP Act rests solely with the Ministry of Human Resources. It had noted, however, that the Committee on the Rights of the Child expressed concern, in its concluding observations of 25 June 2007, that the enforcement of Convention No. 138 remains weak (CRC/C/MYS/CO/1, paragraph 90). It had also noted that the Committee on the Rights of the Child expressed its regret at the lack of a national data collection system and at the insufficient data on working children.

The Committee notes that the Government representative at the Conference Committee on the Application of Standards indicated that the Malaysia peninsula alone has 300 labour inspectors and every labour inspector carries out between 25 and 30 inspections per month. In 2008, the Department of Labour, under the Ministry of Human Resources, received a total of 30,084 complaints on various labour issues. The Government representative explained that all complaints and cases were scrutinized and that no cases relating to child labour occurred. However, the Committee notes that the Worker members at the Conference Committee on the Application of Standards indicated that, while many rights were respected in Malaysia, many issues remained, particularly with regard to children working in the oil palm plantations, in the agricultural sector, but also those working in towns and cities. The Worker members further noted that, according to the National Commission for the Protection of Children in Indonesia, cases of the forced labour of migrant workers and their children on plantations in Sabah involve an estimated 72,000 children. The Committee reminds the Government that, so that the Committee can assess whether a member State that has ratified the Convention has complied with its obligations, and particularly whether all the necessary measures have been taken to ensure the effective implementation and enforcement of the provisions giving effect to the Convention (*Article 9(1)*), it needs certain information, including statistical data, as requested in *Part V of the report form*. In light of the indication of the Government representative at the Conference Committee on the Application of Standards that Malaysia has one of the most effective labour inspectorates in the region, the Committee is of the view that Malaysia is in a position to ensure the effective enforcement of legislation giving effect to the Convention. ***The Committee once again strongly urges the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. The Committee also urges the Government to take the necessary measures to ensure that sufficient data on the situation of working children in Malaysia is available, in accordance with the Convention. It requests the Government to provide information on the progress made in this regard and once again asks the Government to provide information on the application of the Convention in practice including, for example, statistics on the employment of children and young people and extracts from the reports of inspection services, as soon as this information becomes available.***

The Committee also strongly urges the Government to redouble its efforts and take the necessary measures to ensure that, during its review of the CYP Act by the tripartite technical committee set up for this purpose, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention, and amendments are made in this regard. The Committee once again requests the Government to provide information on any progress made in the review of the CYP Act in its next report.

Finally, in response to the Government's request for technical assistance from the Office, the Committee requests the Office to take the necessary measures to respond positively.

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use, procuring or offering of a child for the production of pornography or for pornographic performances. In its previous comments, the Committee had noted that section 17(1) and (2) of the Child Act of 2001 only refers indirectly to the use, procuring or offering of a child for the production of pornography or for pornographic performances and that there appear to be no specific provisions that explicitly prohibit and punish such acts committed by persons other than the child's parents, guardian or extended family. The Committee notes the Government's information that the provisions of the Child Act need to be read together with other acts and regulations such as the Penal Code (Act 574), in which section 377E prohibits any person from inciting a child under the age of 14 years to any act of gross indecency with him or another person. The Committee observes that section 377E only extends this prohibition to the case of children who are under 14 years of age. The Committee notes the Government's information that the Ministry of Women, Family and Community Development (MWFCDD) is currently in the process of amending the Child Act, in the course of which the Government indicates that the issue of the use,

procuring or offering of a child for the production of pornography or for pornographic performances will be given due consideration. ***The Committee requests the Government to take immediate and effective measures to ensure that, in the framework of the amendments to the Child Act, legislation is adopted to prohibit the use, procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances, in accordance with Article 3(b) of the Convention, as a matter of urgency. It requests the Government to provide information on the progress made in this regard in its next report.***

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee had previously noted that section 32 of the Child Act of 2001 punishes anyone who causes or procures or allows any person under 18 years of age to be on any street, premises or place for the purposes of “carrying out illegal hawking, illegal lotteries or gambling, or other illegal activities detrimental to the health or welfare of the child”. However, the Committee had noted that there seem to be no specific provisions which explicitly prohibit the use, procuring or offering of a child for the production and trafficking of drugs. The Committee notes the Government’s information that the “other illegal activities detrimental to the health or welfare of the child” of section 32 of the Child Act include the use, procuring and offering of a child for illicit activities, including the production and trafficking of drugs. ***As the Committee needs further information to assess whether section 32 of the Child Act can be applied effectively to prohibit the use, procuring or offering of a child for the production and trafficking of drugs, it requests the Government to provide information on the effect given to this provision in practice, including statistics on the number of persons prosecuted and found guilty under section 32 of the Child Act of using, procuring or offering a child under 18 years for illicit activities, in particular for the production and trafficking of drugs.***

Clause (d) and Article 4, paragraph 1. Hazardous work and determination of hazardous work. In its previous comments, the Committee had noted that the relevant legislation does not contain any provisions prohibiting young people under 18 years of age from being employed in types of work likely to jeopardize their health, safety or morals. It had noted the Government’s referral to two prohibitions provided for in the CYP Act for children and young people: (i) managing or being in close proximity to machinery; and (ii) working underground. The Committee had observed that section 2(5) of the CYP Act provides that no child or young person shall be, or required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act, 1967, or the Electricity Act, 1949, or in any employment requiring them to work underground. It had noted, however, that section 1A(1) of the CYP Act defines a “child” as being any person who has not completed their fourteenth year of age, and a “young person” as being any person who has not completed their sixteenth year of age. The Committee had reminded the Government that, by virtue of *Article 3(d)* of the Convention, hazardous work constitutes one of the worst forms of child labour and consequently shall be prohibited for children under 18 years of age. It had also recalled that *Article 4(1)* of the Convention states that the types of work referred to under *Article 3(d)* shall be determined by national laws or regulations or by the competent authority after consultation with the organizations of employers and workers concerned, taking into consideration relevant international standards, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190).

The Committee notes that, according to a Government representative of Malaysia at the Conference Committee on the Application of Standards at the 98th Session of the International Labour Conference of June 2009, the Government would set up a tripartite technical committee composed of employers’ organizations, workers’ organizations, government agencies and other relevant agencies. Referring to conclusions made by the Conference Committee on the Application of Standards, the Committee notes that the Government indicated that it would make the necessary recommendations to the tripartite technical committee so as to ensure that no one under the age of 18 years is authorized to perform hazardous work and that those hazardous types of work are determined in national legislation. The Committee also notes the Government’s information in its report that a proposal to include new provisions in the CYP Act to specify and determine the types of hazardous work and to prohibit the employment or work of persons under 18 years of age in these types of work is currently being reviewed by the Department of Labour. ***The Committee strongly urges the Government to take effective and immediate measures to ensure that the tripartite technical committee seriously considers the prohibition of the employment or work of persons under 18 years of age, in accordance with Article 3(d) of the Convention. Moreover, it firmly hopes that the determination of types of hazardous work to be prohibited to persons below 18 years of age will be reviewed and adopted by the Department of Labour after consultation with the organizations of employers and workers concerned, in accordance with Article 4(1) of the Convention. It urges the Government to take the necessary measures to ensure that the relevant legislation is adopted as a matter of urgency and requests it to provide information on the progress made in this regard in its next report.***

Article 5 and Article 7, paragraph 1. Monitoring mechanisms and effective enforcement of the Convention. Labour inspectorate. The Committee had previously noted the concern expressed by the Committee on the Rights of the Child, in its concluding observations of 25 June 2007, that the enforcement of ILO Convention No. 182 remains weak. The Committee notes that the Government representative at the Conference Committee on the Application of Standards indicated that the Malaysia peninsula alone has 300 labour inspectors and every labour inspector carries out between 25 and 30 inspections per month. In 2008, the Department of Labour, under the Ministry of Human Resources, received a total of 30,084 complaints on various labour issues. The Government representative explained that all complaints and cases were scrutinized and that no cases relating to child labour occurred. However, the Committee notes that the Worker members at the Conference Committee on the Application of Standards indicated that, while many rights were respected

in Malaysia, many issues remained, particularly with regard to children working in the palm oil plantations, in the agricultural sector, but also those working in towns and cities. The Worker members further noted that, according to the National Commission for the Protection of Children in Indonesia, cases of forced labour of migrant workers and their children on plantations in Sabah involve an estimated 72,000 children. In light of the indication of the Government representative at the Conference Committee on the Application of Standards that Malaysia has one of the most effective labour inspectorates in the region, the Committee is of the view that Malaysia is in a position to ensure the effective enforcement of legislation giving effect to the Convention. ***The Committee strongly urges the Government to take the necessary measures to ensure that the provisions giving effect to the Convention are effectively enforced. It requests the Government to provide information on the progress made in this regard and to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied with regard to children engaged in the worst forms of child labour, particularly children working in the palm oil plantations, in the agricultural sector, and in the urban economy.***

Article 6. Programmes of action. Referring to its previous comments, the Committee notes the Government's information that the National Policy on Children and its Plan of Action (NPAC) has been approved by the Government on 29 July 2009. The Government indicates that the NPAC will focus on children's survival, protection, development and social participation. A Technical Committee, chaired by the MWFC, will be established in order to coordinate and monitor the implementation of the NPAC. The Government further indicates that, although the NPAC is still in its infancy, its policy and plans are set to have considerable impact on the elimination of the worst forms of child labour by promoting and facilitating children's rights. ***The Committee requests the Government to supply information on the implementation of the NPAC and on the results achieved with regard to the elimination of the worst forms of child labour in Malaysia.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevention of the engagement of children in the worst forms of child labour. Access to free basic education. The Committee had previously noted that, in its concluding observations of 25 June 2007, the Committee on the Rights of the Child expressed regret that, according to estimates, 200,000 children of primary-school age are not attending school. The Committee on the Rights of the Child had also expressed concern at the regional disparities in the dropout rates and that many children, in particular boys, drop out from secondary education (CRC/C/MYS/CO/1, paragraph 73).

The Committee notes the Government's information that it is committed to ensure adherence to compulsory primary education and that basic education is free at both the primary and secondary levels. The Government indicates that several factors explain the majority of dropout cases in Government and Government-assisted schools, which are mainly related to the students' backgrounds and include poverty, attitudes toward education and students' health. Lack of infrastructural amenities, such as poor methods of transportation, also make it difficult for students to attend school, thus contributing to the dropout rates. The Committee notes that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, Malaysia has formulated an Education Development Master Plan (EDMP) of 2006–10, which outlines Malaysia's initiatives in ensuring that all students receive fair and equal educational opportunities regardless of location, ability or ethnic background (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 34). Malaysia thus provides a comprehensive set of education support measures which include a textbook loan scheme, supplementary food plan, trust funds, scholarships, food assistance, transport assistance, monthly allowances for disabled students and tuition aid schemes. The Committee notes that, according to the UNESCO Education for All Global Monitoring Report of 2008 (UNESCO Report), Malaysia has made extraordinary progress in reducing the number of children not enrolled in education and universal primary education has been achieved. Indeed, the Committee notes that, according to the UNESCO Report, the net enrolment rate in primary education is 100 per cent. However, the Committee notes that, while the gross enrolment rate is 90 per cent at the lower secondary level, it is only 53 per cent at the upper secondary level. ***The Committee welcomes the efforts made by the Government and encourages it to pursue its efforts to improve the operation of the education system in the country, in particular by increasing school attendance at the secondary level and reducing school dropout rates. It requests the Government to provide information on the progress made in this regard and the results achieved.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking. The Committee had previously noted that the Trafficking in Women and Children Report of the Human Rights Commission of Malaysia of 2004 shows that Malaysia is considered primarily a destination country for victims of trafficking. The findings of the report showed that, even if the trafficking involved mostly women over 18 years of age, a number of girls between 14 and 17 years of age were also reported to be victims of trafficking.

The Committee notes that, according to the Universal Periodic Review of Malaysia of 3 March 2009, the Anti-Trafficking in Persons Act came into force in 2008 (A/HRC/11/30, paragraph 58). It also notes that, according to the UNODC Global Report on Trafficking in Persons of 2009 (UNODC Report), a National Plan of Action to combat trafficking in persons was drafted in 2008. The UNODC Report further indicates that about 160 persons were convicted of "trafficking and abduction of children" between 2003 and 2006. Most of the persons convicted were involved in child trafficking for sexual exploitation, while two were exploiting children for forced labour. The Committee further notes that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council

Resolution 5/1 of 19 November 2008, Malaysia has set up three shelter homes to provide assistance and counselling to victims of trafficking in persons and established an Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 92). Finally, the Committee notes the Government's information that the shelter home for child victims of trafficking for exploitative purposes has been operational since March 2008 and has, thus far, received 13 rescued children. ***The Committee requests the Government to continue providing information on the number of children who have been withdrawn from trafficking and rehabilitated through the shelters homes established for that purpose and through the action of the Inter-Agency Committee on Protection and Rehabilitation of Trafficked Victims. The Committee further requests the Government to provide information on the measures taken within the framework of the National Plan of Action to combat trafficking in persons to ensure that child victims of trafficking for labour or commercial sexual exploitation are withdrawn and then rehabilitated.***

Clause (d). Identifying and reaching out to children at special risk. Migrant children, street children and child domestic workers. The Committee notes that the Worker member of Indonesia indicated, at the Conference Committee for the Application of Standards, that the Indonesian National Commission for Child Protection (INCCP) reported, after a 2008 fact-finding mission to the plantations in Sabah, Malaysia, that tens of thousands of migrant workers' children also worked in the plantations without regulated employment hours, which meant they worked all day long. Other sectors where migrant workers' children were often found were family food businesses, night markets, small-scale industries, fishing, agriculture and catering. The INCCP Secretary-General stated that the children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education. Furthermore, in Sabah, an unknown number of children begged in the streets; estimates ranged from a few hundred to as many as 15,000 children. The Worker members emphasized the need to devote particular attention to migrant children and to children employed as domestic workers. ***The Committee reminds the Government that migrant children, street children and child domestic workers are particularly exposed to the worst forms of child labour and requests the Government to take effective and time-bound measures to ensure that these children are protected from the worst forms of child labour by withdrawing them from these vulnerable situations and rehabilitating them. It requests the Government to provide information on the results achieved.***

Article 8. International cooperation and assistance. Regional cooperation. The Committee had previously noted that a Memorandum of Understanding (MOU) between Malaysia and Thailand was proposed as a beginning to reduce the flow of young girls into Malaysia and allow for an exchange of information in order to monitor traffickers' actions. The Committee notes the Government's information that the MOU between Malaysia and Thailand has been suspended. The Committee notes that the Worker member of Indonesia at the Conference Committee on the Application of Standards indicated that, in 2006, the Confederation of Indonesian Trade Unions established a partnership with the Malaysian Trade Union Congress (MTUC). Both parties signed an MOU to inform migrants from Indonesia going to Malaysia on the risks of migration, including the risk of their children becoming labourers. However, the Worker members noted that unions alone could not solve this problem and this problem could only be solved in a regional context. The Committee further notes that according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, due to Malaysia's porous borders, the influx of migrants, trafficked victims and refugees is increasing despite pledges by source states that they have taken progressive measures (A/HRC/WG.6/4/MYS/1/Rev.1, paragraph 94). ***The Committee therefore urges the Government to take measures to cooperate with the neighbouring countries, particularly Indonesia and Thailand, and therefore strengthen security measures with a view to bringing an end to child trafficking for labour or commercial sexual exploitation and to the engagement of child migrants in the worst forms of child labour.***

Parts IV and V of the report form. Application of the Convention in practice. Following its previous comments, the Committee notes the Government's information that the MWFC is conducting a pilot study to develop a database on street children in Sabah. The Government also indicates that it will initiate the creation of a database on the phenomena of child trafficking, the commercial sexual exploitation of children and street children in Malaysia. Furthermore, the Committee notes that, according to the National Report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 19 November 2008, Malaysia is currently setting up a One Stop Information Centre on trafficking in persons which will provide comprehensive information on the statistics of traffickers and victims. ***The Committee requests the Government to provide the statistics compiled in the framework of the database on child trafficking, the commercial sexual exploitation of children and street children in Malaysia, as well as through the One Stop Information Centre on trafficking in persons. The Committee also requests the Government to take measures to ensure that data on the number of children engaged in domestic work is available.***

The Committee also strongly urges the Government to redouble its efforts and take the necessary measures to ensure that, during its review of the CYP Act by the tripartite technical committee set up for this purpose, due consideration is given to the Committee's detailed comments on the discrepancies between national legislation and the Convention, and amendments are made in this regard. The Committee once again requests the Government to provide information on any progress made in the review of the CYP Act in its next report.

Finally, in response to the Government's request for technical assistance from the Office, the Committee requests the Office to take the necessary measures to respond positively.

Mali

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee noted that children from Mali were taken to Cote d'Ivoire to work on plantations or as domestic workers and that they were subjected to slavery and enforced labour and to deplorable conditions of work, often unpaid. Certain ethnic groups, such as the Bambara, Dogon and Sénoufo, are particularly vulnerable. The Committee noted that according to the UNICEF report published in 2006 on trafficking in human beings, particularly women and children, in West and Central Africa (2006 UNICEF report), Malian children are the victims of trafficking to the following countries: Cote d'Ivoire, Gambia, Guinea, Ghana and Nigeria. The Committee noted that, although the Government has taken several measures to combat the sale and trafficking of children for the exploitation of their labour, the problem still exists in practice, despite its prohibition by section 244 of the Penal Code and section 63 of the Child Protection Code.

The Committee notes the Government's indication that the only statistics available on the application of national provisions respecting trafficking of children cover children who have been intercepted and repatriated in the framework of measures taken to combat the trafficking of children during the period between 2000 and 2006. In this context, the Committee notes that 565 children (289 girls and 276 boys) were intercepted and 271 children (101 girls and 170 boys) were repatriated during that period. However, the Committee notes that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the International Federation for Human Rights (FIDH) indicates that, even though no statistics are available, Mali is a transit country for the trafficking of women and children, and it therefore recommends that the Malian authorities strictly apply sections 240 et seq of the Penal Code penalizing the trafficking of children, and improve the assistance provided to children who have been the victims of trafficking (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). ***The Committee therefore urges the Government to redouble its efforts to ensure in practice the protection of children under 18 years of age against sale and trafficking and to ensure that thorough investigations and robust prosecutions of offenders are carried out and that effective and sufficiently dissuasive penalties are imposed. In this respect, it requests the Government to provide information on the effect given in practice to provisions respecting the sale and trafficking of children for the exploitation of their labour through the provision of statistics on the number of convictions and the penal sanctions imposed.***

Forced or compulsory labour. Begging. In its previous comments, the Committee noted that, according to the 2006 UNICEF report, *talibé* children originating from neighbouring countries, including Mali, are found on the streets of Dakar who have been brought to the city by Koranic teachers (*marabouts*). These children are kept in conditions of servitude and are obliged to beg daily. The Committee also noted that the 2006 UNICEF report refers to the involvement of *marabouts* in the trafficking of children for the exploitation of young *talibé* workers from Burkina Faso in the rice fields of Mali. The Committee noted that the Committee on the Rights of the Child, in its concluding observations of May 2007, expressed concern at the vulnerability of children living in the streets or who are engaged in begging, particularly to all forms of violence, sexual abuse and exploitation, and economic exploitation (CRC/C/MLI/CO/2, paragraph 62). The Committee noted that section 62 of the Child Protection Code defines begging as a sole or main activity of a dehumanizing nature and an obstacle to the rights of the child. It further noted that section 183 of the Penal Code provides that any person inciting a child to beg shall be liable to a sentence of imprisonment of from three months to one year.

In this respect, the Committee notes that in the Report of the Working group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali indicated that begging by children in Koranic schools was an infringement of the law (A/HRC/8/50, paragraph 55). The Committee observes that, although the legislation is in conformity with the Convention on this point, the phenomenon of child *talibés* remains a cause for concern in practice. The Committee expresses ***serious concern*** at the use of these children for *purely economic purposes*. ***It requests the Government to take the necessary measures to enforce the national legislation on begging and to punish marabouts who use children for purely economic purposes. The Committee also requests the Government to indicate the effective and time-bound measures taken to prevent young persons under 18 years of age from becoming victims of forced or compulsory labour, including begging, and to protect these children against forced labour and ensure their rehabilitation and social integration.***

Article 5. Monitory mechanisms. Monitoring committees. In its previous comments, the Committee noted that, in the context of the implementation of the ILO–IPEC–LUTRENA project to prohibit and eliminate the sale and trafficking of children, local monitoring committees to combat child trafficking have been set up in the circles of Kangala, Bougouni, Kolondiéba and Koutiala. The Committee notes that, according to the final technical progress report of ILO–IPEC of March 2008 on the LUTRENA project, 344 monitoring committees are now operational in Mali. The Committee notes the Government's indication that the principal role of these committees is to identify potential victims of child trafficking, indicate cases in which children are the victims of trafficking and collect and disseminate data on the trafficking of children. The Committee notes with ***interest*** that, since 2005, monitoring committees have intercepted and repatriated 730 child victims of trafficking and apprehended four persons who are presumed to be guilty of the trafficking of children. ***The Committee requests the Government to continue providing information on the number of children who***

are prevented from becoming victims of trafficking or are removed from trafficking for labour exploitation as a result of the activities of monitoring committees.

National Committee to Follow-up Programmes to Combat the Trafficking of Children. The Committee notes the Government's indication that the National Committee to Follow-up Programmes to Combat the Trafficking of Children in Mali (CNS) is responsible for evaluating the action taken in the context of the implementation of programmes to combat the trafficking of children, for following the implementation of cooperation agreements to combat the trafficking of children signed by Mali and for learning from the experience acquired in this field to take responsibility for child victims of trafficking. However, the Government indicates that, since it was established in 2006, the CNS has not been operational, thereby creating a gap in the coordination of action to combat the trafficking of children in Mali. To overcome this problem, three meetings have been planned between September and November 2009, at which the programme and action of the CNS will be determined and the annual work-plan for 2010 adopted. ***The Committee requests the Government to redouble its efforts to ensure that the CNS becomes operational and contributes to combating the trafficking of children in Mali. It requests the Government to provide information on the activities carried out by the CNS and their impact on the elimination of the trafficking of children for labour exploitation.***

Article 7, paragraph 2. Effective and time-bound measures. With reference to its previous comments, the Committee notes with ***interest*** that, according to the ILO-IPEC final technical progress report of March 2008 on the LUTRENA project, a total of 36,160 children in West and Central Africa benefited from the activities carried out in the context of the project. The Committee notes that 26,576 children (11,791 girls and 14,785 boys) who were at risk were prevented from becoming victims of trafficking and 9,584 children (4,317 girls and 5,267 boys) were removed from trafficking. The Committee also notes that in Mali 21,195 children attended the model lessons provided by teachers on the issue of the trafficking of children.

Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour and assistance to remove them from these worst forms of child labour. Sale and trafficking of children. With reference to its previous comments, the Committee notes with ***interest*** the Government's indication that, in the context of the implementation of the LUTRENA project, 37,532 children (13,151 girls and 24,381 boys) were covered by awareness-raising activities relating to the trafficking of children and its consequences. The Government adds that, through an information caravan carried out in 2007, 5,658 children were covered by awareness-raising activities on the trafficking of children for labour exploitation in agriculture. The Committee also notes with ***interest*** the information provided by the Government that 250 child victims of trafficking have been repatriated from Cote d'Ivoire and are now engaged in income-generating activities in Mali, and that 3,830 children (1,851 girls and 1,979 boys) who were victims of trafficking have been rehabilitated through formal and informal education services, vocational training and income-generating activities.

The Committee further notes that a sub-regional project to combat the trafficking of children for labour exploitation in West Africa was launched by ILO-IPEC in May 2008 (ILO-IPEC project to combat the trafficking of children). The objectives of the project include strengthening the capacity of the Government, employers and workers to replicate the activities of the LUTRENA project through which children at risk were prevented from becoming victims of trafficking and child victims were removed from trafficking, making use of the methods and good practices developed during the course of the LUTRENA project. The ILO-IPEC project is targeting 4,000 boys and girls, who will be prevented from becoming victims of or removed from trafficking involving hazardous or abusive conditions of work through the provision of educational and non-educational services. Another objective of the project is to establish a pilot information system on the trafficking of children and to improve the database of the trafficking of children through targeted research and by facilitating networking between sub-regional experts.

However, that Committee notes that, in the summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1 of 3 April 2008, the FIDH indicates that there are no institutional facilities available in Mali to shelter, offer guidance to or assist young women who have been the victims of trafficking or sexual exploitation (A/HRC/WG.6/2/MLI/3, paragraphs 13–14). The FIDH therefore recommends that the Malian authorities set up care and guidance facilities and provide assistance for the return of girls who are victims of trafficking. ***The Committee requests the Government to provide information on the measures adopted in the context of the ILO-IPEC Project to combat the trafficking of children with a view to preventing young persons under 18 years of age from falling victim to sale and trafficking and to remove child victims from this worst form of child labour. It also requests the Government to envisage the establishment of care and guidance facilities and the provision of assistance for the return of child victims of trafficking, as recommended by the FIDH, with a view to ensuring their rehabilitation and social integration. The Committee requests the Government to provide information on any progress achieved in this respect.***

Access to free basic education. In its previous comments, the Committee noted that, according to the report on the national survey of child labour carried out in 2005, 41 per cent of children between the ages of 5 and 14 years were engaged in full-time economic activity, 25 per cent combined work and studies and 17 per cent went to school only. The net enrolment rate for primary school (7–12 years) in 2004–05 was 56.7 per cent (48.9 per cent for girls and 64.8 per cent for boys), compared with 20.6 per cent for secondary school (13–15 years) (15.4 per cent for girls and 26 per cent for boys).

The Committee notes the information provided by the Government in its report under the Minimum Age Convention, 1973 (No. 138), according to which the National Education Statistical Yearbook indicates that, for the 2007–08 school year the gross enrolment rated in primary school (7–12 years) was 80 per cent, or 70.7 per cent for girls and 89.5 per cent for boys, while that for secondary school (13–15 years) was 46.8 per cent (36.6 per cent for girls and 57.3 per cent for boys). The Committee notes that Mali is one of the 11 countries involved in the implementation of the ILO–IPEC project “Tackle child labour through education” (ILO–IPEC TACKLE project), the principal objective of which is to contribute to poverty reduction in the least developed countries by providing equitable access to primary education and developing the knowledge of the most underprivileged categories of society. According to the activity report of the ILO–IPEC TACKLE project in Mali of October 2009, several measures and programmes of action have been implemented in support of the school attendance of children engaged in work at an early age. Furthermore, an integrated framework to cover the educational needs of the most vulnerable categories of children is currently being formulated with the objective of integrating these needs into Phase III of the Sectoral Investment Programme for the Education Sector (PISE).

The Committee takes due note of the measures adopted by the Government in the field of education. However, it notes that, according to the 2008 Education for All Global Monitoring Report published by UNESCO under the title “Education for All by 2015: Will we make it?”, although substantial progress has been made in the field of education, Mali still has little chance of the objective of universal primary education by 2015, and will probably not achieve gender parity in 2015 or 2025. The Committee also observes, that, according to the national report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 14 April 2008, despite the progress made over the past ten years with regard to the realization of the right to education, many problems and challenges still need to be addressed, including raising enrolment rates, inequality of opportunity between girls and boys and the uneven geographical distribution of schools (A/HCR/WG.6/2/MLI/1, paragraph 69). ***Considering that education contributes to preventing children from being engaged in the worst forms of child labour, the Committee requests the Government to redouble its efforts to improve the functioning of the education system in the country, particularly by increasing school attendance and reducing school drop-out rates, affording particular attention to girls so that they benefit from the same opportunities of access to education as boys. It requests the Government to continue providing information on the results achieved.***

Article 8. Cooperation. Regional cooperation. In its previous comments, the Committee noted that the Government had signed bilateral cooperation agreements on the cross-border trafficking of children with Burkina Faso, Côte d’Ivoire, Guinea and Senegal. It also noted that in addition to the Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in July 2005, Mali also signed the Abuja Multilateral Cooperation Agreement in 2006. The Committee noted that mobile security brigades had carried out patrols in the border regions between Mali and Burkina Faso, Côte d’Ivoire and Senegal.

The Committee notes the Government’s indication that, in the context of the bilateral treaty signed between Guinea and Mali, a Koranic master from Guinea was intercepted with children from Guinea, who were repatriated. It also notes that, in the context of the ILO–IPEC project to combat the trafficking of children, it is planned to reinforce the application of the bilateral and multilateral treaties signed by Mali. However, the Government indicates that, although the countries which have signed agreements with Mali meet periodically, they are more dynamic in their activities in the national territory than in terms of mutual international assistance. The Committee observes that, in the Report of the Working Group on the Universal Periodic Review of Mali of 13 June 2008, the representative of Mali noted that, with regard to trafficking in children, the main difficulties stemmed from the cross-border nature of the phenomenon (A/HRC/8/50, paragraph 54). ***The Committee therefore requests the Government to take measures to reinforce the application of the bilateral and multilateral treaties signed by Mali so as to contribute to the elimination of the trafficking of children for labour exploitation or for sexual exploitation. It expresses the firm hope that, in the context of these agreements, measures will be taken to increase the numbers of land, maritime and air border police officers, particularly through the establishment of joint frontier patrols and the opening of transit centres near these frontiers.***

Poverty reduction. The Committee previously noted that a PRSP had been adopted, in the context of which the problem of child labour was taken into account as a cross-cutting issue and placed in the overall framework of improving the situation of children and the role of the family. The Committee notes that, according to the national report submitted in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 of 14 April 2008, the second generation of this framework, known as the Growth and Poverty Reduction Strategy Framework (GPRSF), covering the period 2007–11, is currently being implemented (A/HCR/WG.6/2/MLI/1, paragraph 58). It also notes that the first National Forum on Child Poverty and Social Security was held in Bamako from 12–14 May 2009. The Committee further notes that a National Action Programme for Employment to Reduce Poverty (PNA/ERP) has been formulated and that a Decent Work Country Programme (DWPC) is currently being prepared. ***Considering that poverty reduction programmes help to break the circle of poverty, the Committee requests the Government to take measures in the context of the implementation of the GPRSF, PNA/ERP and the DWCP to eliminate the worst forms of child labour, with particular reference to the effective reduction of poverty among children who are the victims of sale, trafficking and forced begging. It requests the Government to provide information on any progress achieved in this respect.***

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

Mauritania

Minimum Age Convention, 1973 (No. 138) (ratification: 2001)

Article 2, paragraph 3, of the Convention and Part V of the report form. *Compulsory schooling and application of the Convention in practice.* In its previous comments, the Committee noted the indications of the International Trade Union Confederation (ITUC), according to which the Ministry of Labour authorized, without exception, work by 13-year-old children in both the agricultural and non-agricultural sectors. The ITUC also indicated that, according to UNICEF statistics for 2000, the total number of child workers aged between 10 and 14 was 68,000, which represents a slight decrease over previous years. However, the Committee noted that, according to the study undertaken by the Government in 2004 in collaboration with UNICEF, entitled “Child Labour in Mauritania”, around 90,000 children under 14 years of age work in the country, signifying an increase of around one third over four years. The study shows that poverty is responsible for child labour. The Committee noted that, according to UNICEF information, the Government has implemented a ten-year development plan for education, the aim of which is to increase the school attendance rate of young persons in the first cycle of secondary education and to establish remedial courses for children who have never been to, or have dropped out of, school.

The Committee notes the information provided by the Government to the effect that one of the methods to ensure the abolition of child labour is the adoption of Act No. 2001-054 of 19 July 2001, making basic education compulsory for children of both sexes from 6 to 14 years of age, signifying a minimum duration of schooling of six years. It also notes that, according to the Government, parents are now required, under penalty of penal sanctions, to send children aged between 6 and 14 years to school. The Committee also notes that, in its second periodic report submitted to the Committee on the Rights of the Child in July 2008 (CRC/C/MRT/2, paragraphs 165–167), the Government indicates that there have been significant improvements over the past two decades in basic and secondary education as a result, among other measures, of the National Programme for the Development of the Education Sector, 2001–10 (National Ten-year Programme), the principal components of which include the reduction of regional disparities and the improvement of girls’ enrolment. Indeed, the Government’s total expenditure on education is increasing every year: between 2000 and 2004, there was a rise of one third in spending on education and basic education as a percentage of GDP, and an increase of 2.7 per cent in the investment budget for education (CRC/C/MRT/2, paragraphs 184 and 185). However, despite these efforts, “the capacity of the education system to look after, educate and train children remains a concern” (CRC/C/MRT/2, paragraph 174). In this respect, the Committee notes that the rate of transition from basic to secondary school is only 38.8 per cent for girls and 43.3 per cent for boys (CRC/C/MRT/2, paragraph 177). In this respect, the Committee notes that the Government is “endeavouring to find responses to the demands of young people who have been unable to complete their general education by offering them alternative means to continue their studies, find jobs and avoid marginalization and a precarious existence” (CRC/C/MRT/2, paragraph 194).

The Committee notes that, according to the Statistics in Brief 2006 of the UNESCO Institute for Statistics, 82 per cent of girls and 78 per cent of boys are in primary school, whereas only 15 per cent of girls and 16 per cent of boys are in secondary school. Despite the efforts and progress made by the Government, the Committee once again expresses **deep concern** at the persistence of low school attendance rates. It observes once again that poverty is one of the prime causes of child labour and, when combined with a deficient education system, hampers children’s development. ***Considering that compulsory schooling is one of the most effective means of combating child labour, the Committee urges the Government to renew its efforts to improve the working of the education system, particularly by increasing the secondary school attendance rate, especially among girls. The Committee requests the Government to provide information on the results achieved. It also asks the Government to step up its efforts to combat child labour by reinforcing the measures to enable working children to be integrated into the school system, whether formal or informal, or in apprenticeships or vocational training, on condition that the minimum age requirements are respected, and to provide information in this respect.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. *Worst forms of child labour. Clause (a).* *Slavery or practices similar to slavery. Sale and trafficking of children.* In its previous comments, the Committee noted the adoption of Act No. 025/2003 of 17 July 2003 on the suppression of the trafficking of persons. It also noted that, according to a UNICEF report on trafficking in persons, with particular reference to women and children in West and Central Africa, published in 2006, the information available on trafficking flows in Mauritania is very limited and it is very difficult to know whether Mauritanian children are victims of trafficking in the countries of the subregion or whether children are exploited in the territory of Mauritania. However, the UNICEF report indicates that, in the streets of Dakar, there are boy *talibés* from neighbouring countries, including Mauritania, who have been brought to the city by their Koranic masters (*marabouts*). These children are in conditions of servitude and are forced to beg on a daily basis. Also according to the UNICEF report, the internal trafficking of children also exists, including the phenomenon of child *talibés* from rural areas who beg on the streets of Nouakchott. The Committee observes that Mauritania appears to be a country of origin for the trafficking of children for labour exploitation. ***Noting the absence of information in the Government’s report, the Committee once again expresses concern at the situation of these children and requests the Government to redouble its efforts to ensure***

in practice the protection of young persons under 18 years of age from sale and trafficking. The Committee also once again requests the Government to provide information on the effect given to Act No. 025/2003 of 17 July 2003 on the suppression of the trafficking of persons in practice, including statistics on the number and nature of the offences reported, the investigations conducted, prosecutions, convictions and penalties imposed.

Forced or compulsory labour. Begging. In its previous comments, the Committee noted that, in its concluding observations on the Government's initial report in November 2001 (CRC/C/15/Add.159, paragraph 49), the Committee on the Rights of the Child expressed its concern at the number of children working, particularly in the streets, including child *talibés* who are exploited by their *marabouts*. It also noted the indication, in a UNICEF study entitled "Child labour in Mauritania", that according to a July 2003 study by the National Children's Council (CNE) observations in the field suggested that street children tend to be beggars who give daily account of their begging activities to their *marabouts*. The Committee further noted that section 42(1) of Ordinance 2005-015 on the penal protection of the child provides that the act of causing a child to beg or directly employing a child to beg is punishable by imprisonment of one to six months or a fine of 100,000 ouguiyas. Section 42(2) provides that any person who, having authority over a child, hands the child over to individuals who incite or engage the child in begging shall be punishable by imprisonment for eight months or a fine of between 180,000 and 300,000 ouguiyas. The Committee requested the Government to provide information on the effect given in practice to the national legislation on begging.

Noting the absence of information in the Government's report on this matter, the Committee once again expresses **concern** at the use of children for purely economic purposes, namely the utilization of children as a source of labour by certain *marabouts*. **The Committee therefore urges the Government to take the necessary measures to give effect to the national legislation on begging and to punish marabouts who make use of children for purely economic purposes.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Sale and trafficking of children. In its previous comments, the Committee noted that, according to UNICEF information, children who have been the victims of trafficking, particularly to the United Arab Emirates to work as camel jockeys, have recently been repatriated to Mauritania and are receiving education in a special school for former jockeys. The Committee requested the Government to provide information on the results achieved. The Committee notes from the Government's report that the results are more than satisfactory as these children are receiving special attention, particularly through the special programme developed for them in collaboration with UNICEF. The Committee also notes from the second periodic report of Mauritania to the Committee on the Rights of the Child of 30 July 2008 that "a plan of action has been adopted to attend to their reintegration in their families. A technical committee has been set up to monitor this matter" (CRC/C/MRT/2, paragraph 263). **The Committee strongly encourages the Government to continue its efforts to provide the necessary and appropriate direct assistance for the removal of child victims of trafficking and to ensure their rehabilitation and social integration. The Committee also requests the Government to continue providing information on the results achieved. Finally, it requests it to provide information on the plan of action implemented for the rehabilitation and social integration of these children.**

Forced or compulsory labour. Begging. In its previous comments, the Committee requested the Government to provide information on the time-bound measures adopted to ensure the rehabilitation and social integration of child victims of forced labour, including begging. The Committee notes the information provided by the Government that it has worked to identify beggars and other street children with a view to their integration into the country's economic and social fabric. It further notes that, according to the information contained in the second periodic report submitted by Mauritania to the Committee on the Rights of the Child in July 2008 (CRC/C/MRT/2, paragraph 88), a centre for the protection and social integration of children in difficult situations has been created, and is targeting street children, children forced to beg or children subject to economic exploitation. **The Committee requests the Government to indicate the effective and time-bound measures adopted further to the survey to remove street children and victims of begging from their activities and to ensure their rehabilitation and social integration, including through the centre for the protection and integration of children in difficult situations. It also requests the Government to provide information on the number of children who are in practice removed from this worst form of child labour.**

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

Mauritius

Minimum Age Convention, 1973 (No. 138) (ratification: 1990)

Article 3, paragraph 3, of the Convention. Authorization to undertake hazardous work as from 16 years. The Committee had previously noted that, according to sections 2 and 28 of the Occupational Safety, Health and Welfare Act No. 34 of 1988, no young person (aged 15–18 years) shall work at any machine specified in the third schedule, unless he/she has been fully instructed as to the dangers arising in connection with the machine and the protection to be observed, and (a) has received sufficient training in work at the machine or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine. The Committee had urged the Government to take the necessary measures to raise to 16 years the minimum age from which young persons may be authorized to work on hazardous machines on condition that their health and safety are fully protected and that they have received adequate training in the relevant branch of activity. It had subsequently noted the Government's information that the provisions regarding the

minimum age for admission to hazardous work were included in section 8 of the draft Occupational Safety and Health Bill of 2005. Noting that section 2 of this Bill defines a “young person” as a person between 16 and 18 years, the Committee had expressed the hope that this Bill would soon be adopted.

The Committee notes with *satisfaction* the Government’s information that Occupational Safety and Health Act No. 28 of 2005 was adopted and came into force on September 2007.

Article 9, paragraph 1, and Part III of the report form. Penalties. The Committee had previously observed that in the two cases of violations of child labour detected by the labour inspectorate during the period from June 2005 to May 2007, the employers who employed the children in breach of the provisions giving effect to the Convention were not prosecuted or punished. Accordingly, the Committee had requested the Government to take the necessary measures to ensure that a person found to be in breach of the provisions giving effect to the Convention is prosecuted and adequate penalties are imposed. The Committee notes with interest the Government’s information that the Labour and Industrial Relations Officers undertake systematic inspections at all places of work, including formal and informal sectors of employment, and whenever any case of child labour is detected, such employment is stopped and criminal action is taken against the offenders. It further notes the Government’s statement that among the four cases of child employment involving four children detected during the period from June 2007 to May 2009, criminal action was taken in two cases and a fine of 2,400 rupees (INR) each were imposed on the employers. The Committee finally notes that the penalty for employing children has been increased from INR2,000 (according to the Labour Act 1975) to INR10,000 according to the newly adopted Employment Rights Act 2008.

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

Mongolia

Minimum Age Convention, 1973 (No. 138) (ratification: 2002)

Article 1 of the Convention. National policy designed to ensure the effective abolition of child labour. In its previous comments, the Committee noted that in 2002 the Government approved a National Programme of Action for the Development and Protection of Children for 2002–10 (NPA 2002–10). It noted that particular attention has been given to the issue of child labour in this document and that one of its objectives is to amend national legislation to ensure the protection of children. The Committee requested the Government to provide information on any developments regarding the review and possible amendments to the Labour Code and the Law on the Protection of the Rights of the Child in order to better address the problem of child labour. The Committee notes in the Government’s report submitted under the Worst Forms of Child Labour Convention, 1999 (No. 182), that the Labour Code has recently been amended. It also notes that the NPA 2002–10 is ongoing, as are a number of other projects and programmes, most of them dealing with the worst forms of child labour. ***The Committee requests the Government to supply a copy of the recently amended Labour Code. The Committee also requests the Government to continue providing information on the NPA 2002–10, or any other such programmes, aimed at ensuring the effective abolition of child labour.***

Article 2, paragraph 1. Scope of application. The Committee previously noted that the Labour Code, according to its section 4, covers relations governed by a labour contract, defined as a mutual agreement on work for pay between an employee and an employer (section 3(1)(3)). The Committee therefore noted that the Labour Code appeared to exclude work performed outside the framework of a labour contract and self-employment from its scope of application. In this regard, the Committee noted the Government’s information that, according to the survey conducted by the Mongolian Employers’ Federation in 2003, 54.3 per cent of employers involved in the survey had been employing children without a labour contract. In this regard, the Committee requested the Government to provide information on the manner in which protection is given to children carrying out an economic activity that is not covered by a labour contract, such as work on their own account.

The Committee notes the information in the Government’s report that, following an audit by the ILO on labour inspection in Mongolia, the Parliament approved a review of the Labour Code and state policy on informal employment. The Committee notes that the Government plans to revise the Labour Code to extend its scope of application in 2010. The Committee also notes the Government’s statement that child protection is still weak in the informal sector. The Committee further notes the information in the Human Rights and Freedoms in Mongolia Status Report, issued in 2007 by the National Human Rights Commission of Mongolia, that approximately 6,950 children were working in the informal economy in urban areas (page 50). ***The Committee requests the Government to take the necessary measures to ensure that, within the review of the Labour Code and the state policy on informal employment, protection is given to children carrying out work on their own account or in the informal economy. The Committee requests the Government to continue to provide information on developments in this regard.***

Article 2, paragraph 3. Age of completion of compulsory education. In its previous comments, the Committee noted that, according to section 109(2) of the Labour Code, a person aged 15 years may enter into a labour contract with the permission of parents or guardians. It noted however that, according to National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 8), the new Law on Primary and Secondary Education was adopted on 3 May 2002. The Committee also noted that the Government indicated in its report to the Committee on the Rights of the Child (CRC) that “the Law on

Education provides that a child shall be provided a compulsory basic education up to 17 years of age” (CRC/C/65/Add.32 of 15 November 2004, page 19). The Committee observed that the minimum age of 15 years specified by the Government seems to be lower than the age of completion of compulsory schooling.

The Committee notes, in its concluding observations, that the CRC expressed concern “about some contradictory provisions of the domestic laws leaving children without adequate protection, e.g. the compulsory school age is 17, whereas the labour law allows children aged 14 and 15 years old to work 30 hours per week” (CRC/C/15/Add.264, 21 September 2005, paragraph 9). The Committee further notes in the Government’s report submitted under Convention No. 182, that the Law on Education was amended in December 2006, and notes the Government’s statement in its report to the CRC of 9 June 2009 that education is mandatory until the age of 16 (CRC/C/MNG/3-4 paragraph 280).

The Committee recalls that, pursuant to *Article 2(3)* of the Convention, the minimum age for admission to employment (currently 15 years) should not be lower than the age of completion of compulsory schooling. The Committee also considers that compulsory schooling is one of the most effective means of combating child labour. If the age of admission to employment and the age limit for compulsory education do not coincide, a number of problems may arise. For example, if the age of completion of compulsory education is higher than the minimum age for admission to work or employment, children who are required to attend school are at the same time legally competent to work and may be tempted to abandon their studies (see ILO: Minimum age, General Survey of the reports relating to Convention No. 138 and Recommendation No. 146 concerning minimum age, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4(B)), ILC, 67th Session, Geneva, 1981, paragraph 140). ***The Committee therefore requests the Government to indicate the legislative provisions contained in the Law on Primary and Secondary Education, in the Law on Education or in any other legislation, fixing the actual age of completion of compulsory education and to supply a copy of the same. Noting that the minimum age for admission to employment appears to be less than the age of completion of compulsory schooling, the Committee requests the Government to take the necessary measures to raise the minimum age for admission to employment in order to link it with the age of completion of compulsory schooling in conformity with Article 2(3), of the Convention.***

Providing education for school drop-outs. The Committee noted that, according to the National Programme for the Prevention and Elimination of Child Labour in Mongolia (Phase II, ILO–IPEC Multi-bilateral Programme of Technical Cooperation of 9 April 2002, page 9), since the mid-1990s, school enrolment has been gradually improving and the school drop-out rate has reversed.

The Committee notes in the Government’s report submitted under Convention No. 182 that the National Statistical Office with support from UNICEF carried out the “Random sampling research on groups with mixed indicators” in 2005–06. One finding of this research was that 90.2 per cent of children living in Ulaanbaatar are studying in secondary school versus only 76.1 per cent in the remote rural areas, mostly due to a high drop-out rate for children of herders, who need the assistance of their children in their family’s livestock herding activities. The CRC expressed similar findings (CRC/C/15/Add.264, 21 September 2005, paragraphs 51 and 52). The Committee notes that the Ministry of Education, Culture and Science, with financial support from UNICEF, is implementing the “Circular for alternative training of primary, basic and complete secondary education” (Circular). This Circular, as well as the newly amended Law on Education both make explicit provisions for providing working children and drop-out children with educational services, including informal education. ***The Committee requests the Government to continue providing information on the impact of the Circular, and any other measures taken, on providing educational services to both working and drop-out children as well as in increasing school attendance rates, in particular in the remote areas. It also requests the Government to continue providing statistical information on school attendance and school drop-out rates, in particular in rural schools.***

Article 3, paragraph 2. Determination of types of hazardous work. The Committee previously noted that, the Minister of Health and Social Welfare issued Order No. A/204 of 1999 specifying a list of 340 types of work covering 17 workplaces prohibited to minors under Appendix 2.

The Committee notes with *satisfaction* that, pursuant to Order No. 107 of the Minister of Labour of 26 September 2008, a list of types of prohibited work for minors was adopted. The Committee also notes the Government’s statement that this list was approved following consultation with workers’ and employers’ organizations. This list contains 39 jobs and services, seven labour conditions and 53 working positions in 11 economic sectors that are prohibited for minors, and intends to address child labour in both the formal and informal sectors. The Committee further notes that the Government plans on translating the list into other languages, raising public awareness about its existence and building capacity for the implementing parties.

Article 7. Light work. The Committee previously noted that, according to a national survey conducted by the National Statistical Office in 2000, quite a number of children under the specified minimum age for admission to employment are economically active in some way or another. The Committee recalled that *Article 7(1)* of the Convention provides that national laws or regulations may permit persons from the age of 13 to engage in light work, which is: (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received. The Committee also recalled that, according to *Article 7(3)* of the Convention, the competent authority shall determine what is light work and shall prescribe the number of hours during which, and the

conditions in which, such employment or work may be undertaken. *Noting the absence of information in this regard, the Committee once again requests the Government to indicate the measures taken or envisaged in respect of provisions to determine light work activities and the conditions in which such employment or work could be undertaken by young persons of 13 years or more.*

Article 8. Artistic performances. The Committee previously noted that section 25(6) of the Law on the Protection of the Rights of the Child provides that individuals and officials using a child in press and commercial advertising without the consent of the child or his/her parents, guardians, caregivers and conducting profit-oriented activities illegally using the name of the child will face a penalty of 20,000–30,000 tughris with confiscation of their income and profit. The Committee recalled that, according to *Article 8* of the Convention, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment under the general minimum age, for such purposes as participation in artistic performances. Permits so granted shall limit the number of hours during which, and prescribe the conditions in which, employment or work is allowed. It requested the Government to indicate whether in practice children under the age of 15 years participate in artistic performances and, if so, to provide information on provisions of the national legislation which determine conditions of such work. The Committee notes the information in the Government's report that, pursuant to section 8.1 of the Law on the Protection of the Rights of the Child, a list of plays and performances which may adversely affect a child's health shall be developed and approved by Governmental officials responsible for health issues. *The Committee requests the Government to provide a copy of this list, once approved.*

Article 9, paragraph 1. Penalties. In its previous comments, the Committee noted that, according to section 141(1)(6) of the Labour Code, if an employer forces minors to do work prohibited to them, or to lift or carry loads exceeding the prescribed limits, or has required employees under 18 years of age to work in a workplace that adversely affects their health and mental development, or in abnormal working conditions, or compels them to work overtime or during public holidays or weekends, the state labour inspector shall impose a fine on that officer of 15,000–30,000 tughris. It also noted that section 25(5) of the Law on the Protection of the Rights of the Child provides for penalties for engaging a child in hazardous work stating "individuals forcing the child to beg and officials engaging the child in a work harmful for his/her health will face a penalty of 10,000–20,000 tughris".

The Committee notes in the Government's report, submitted under Convention No. 182, that the penalties for breach of provisions found in the Criminal Code (such as human trafficking in children, involvement in pornography, sexual exploitation, drug trafficking) and other laws relating to children's rights are appropriate. However, the penalties imposed upon employers, parents and other representatives in connection with employment in hazardous work are weak. The Committee further notes the Government's indication that the fine imposed upon someone employing minors in prohibited work is insufficiently small to deter employers from resorting to the labour exploitation of minors. The Government indicates that much still remains to be done in relation to updating the legislation by imposing penalties, by ordering injunctions and ameliorating the penalty mechanism imposed upon parents and family members who allow the employment of children in the worst forms of child labour. *The Committee encourages the Government to continue updating the legislation in this regard and requests it to provide information on any developments thereof. The Committee also requests the Government to take the necessary measures to ensure that a person found to be in breach of the provisions giving effect to the Convention, in particular those in respect of hazardous work, is prosecuted and that adequate penalties are imposed. It asks the Government to provide information on the types of violations detected, the number of persons prosecuted and the penalties imposed.*

Article 9, paragraph 3. Registers of employment. In its previous comments, the Committee noted that the national legislation does not appear to contain provisions on the obligation of an employer to keep and make available the registers of persons under the age of 18 whom he/she employs. The Committee reminded the Government that, in accordance with *Article 9(3)* of the Convention, national laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer containing the names and ages or dates of birth, duly certified, wherever possible, of persons whom he/she employs or who work for him/her and who are less than 18 years of age. *Noting the absence of information in the Government's report, the Committee once again requests the Government to indicate in which manner it ensures that employers shall keep and make available registers, which contain the names and ages or dates of birth, duly certified whenever possible, of persons under the age of 18 years employed or working for them.*

Part V of the report form. Application of the Convention in practice. The Committee notes in the Government's report submitted under Convention No. 182 that the National Statistics Office recently conducted the second National Child Labour Survey (2006–07) (NCL Survey). The Committee notes 621,500 children, of which 60.3 per cent were boys and 39.7 per cent girls, were covered in the NCL Survey and that at least 11.5 per cent worked at least one hour a week or were economically active. Though the survey has some shortcomings as it did not include homeless children, as well as those living in correctional labour colonies, orphanages and childcare institutions, it is nevertheless significant in creating the official and objective database. The prevalent sectors of work for children were: 84.6 per cent in agriculture; 5.1 per cent in services; 3.5 per cent in trade and industry; and 5.8 per cent in sweatshops. In relation to the employment relationship, the NCL Survey indicates that 93.1 per cent of working children work in household enterprises and are not paid, 9.2 per cent are self-employed and 1.7 per cent have a contractual relationship.

Another survey, conducted by the Mongolian Employers Federation in 2003, (Employers' Survey), reveals that labour standards in relation to children working in the formal sector are not always adhered to: 59.5 per cent of employers hiring children aged 14–18 years of age did not conclude any contracts and 29.2 per cent were employing the children on a wage or work performance contract. The main motives for not concluding a contract were not wanting to pay the social insurance premiums and other deductions (36 per cent) and the temporary nature of the employment (52 per cent). According to the reports submitted by employers and used in the Employers' Survey, 46 per cent of the children's conditions at the workplace were deemed "normal", 11.7 per cent were too hot, 21 per cent too dusty or with poor air circulation and 10.6 per cent were too noisy.

In addition, the Committee notes that the Population Training and Research Centre of the National University of Mongolia also carried out a survey which focused mostly on children aged 16–18 years of age working in the gold- and coal mining sectors in the Selenge and Tuv aimags (provinces). This survey indicates that most children started mining at an average age of 12, work an average of four hours per day in the winter, and an average of eight to nine and 10–11 continuous hours in the summer for children aged below 16 and 16–18, respectively. A total of 37.7 per cent of the children mining gold used mercury and 66.7 per cent of them work at home. Of these, 22.5 per cent have been involved in an accident in which 92.6 per cent have injured their legs, arms or their organs. Half of all children mining gold experience some form of health problem: 43.3 per cent suffer regularly from respiratory diseases, 41.7 per cent suffer from kidney and urinary disorders, 25 per cent suffer from orthopaedic illnesses and 23.3 per cent suffer from ear, nose and throat diseases.

Finally, the Committee notes that the report "Understanding children's work and youth employment outcomes in Mongolia", issued in June 2009 by the ILO, UNICEF and the World Bank (through the Understanding Children's Work Project), indicates that 13.2 per cent of children between the ages of 5 and 14 are engaged in economic activity and that 7.5 per cent of children between the ages 15 and 17 are engaged in hazardous work. The Committee also notes that, in its concluding observations, the CRC expressed concern "at the high rate of working children in Mongolia and the various kinds of negative consequences resulting from the exploitation of child labour, including the school drop outs and negative impacts on health caused by the harmful and hazardous work. The high number of child domestic and rural workers and children working in very harmful conditions in gold and coal mines give cause for serious concerns" (CRC/C/15/Add.264, 21 September 2005, paragraph 59). *While noting the efforts made by the Government to combat child labour, the Committee expresses serious concern at the large number of children working under the age of 15, as well as the significant number of children engaged in hazardous occupations, and therefore strongly encourages the Government to redouble its efforts to improve the situation, including through the allocation of additional resources for the implementation of measures aimed at combating child labour. The Committee also requests the Government to continue providing information on the situation of child labour in Mongolia and, in particular, to supply copies or extracts from official documents of inspection services. The Committee also asks the Government to provide information on the number and nature of the contraventions reported and penalties imposed.*

Morocco

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

Article 1 of the Convention. National policy. In its previous comments, the Committee noted that a National Action Plan for Children (2006–15) (PANE) has been adopted, a major component of which is devoted to combating child labour. In this regard, the Committee notes the information provided by the Government that the activities under the PANE include support for NGOs working to combat child labour and the carrying out of a study on the working conditions of children. The Committee also notes that the PANE aims to remove working children under 15 years of age at the rate of 10 per cent per year until 2015 and to improve the situation of needy families at the rate of 5 per cent per year. Furthermore, the Committee notes that, according to the final technical progress report (TPR) of 30 September 2008 on the ILO–IPEC project entitled "Combating child labour in Morocco by creating an enabling national environment and developing direct action against the worst forms of child labour in rural areas", the issue of combating child labour has been included in other national social development strategies in Morocco, including the Government Declaration for the period 2007–11 and the National Human Development Initiative. *The Committee hopes that the study on the working conditions of children will be completed soon and requests the Government to provide a copy of that study with its next report. It also requests the Government to provide information on the implementation of the National Action Plan for Children (2006–15), as well as on the results achieved in terms of the gradual abolition of child labour. Finally, it requests the Government to provide information on the steps taken in the context of the Government Declaration for 2007–11 and the National Human Development Initiative relating to combating child labour.*

Article 2, paragraphs 1 and 3. Scope of application and compulsory schooling. In its previous comments, the Committee noted that, under section 143 of the Labour Code, minors may not be employed or admitted in enterprises or the premises of employers before the age of 15 years, and observed that the protection provided by the Labour Code does not apply to self-employed workers. It nonetheless noted that, according to the report entitled "Understanding children's work in Morocco", published in March 2003 as part of an interagency project involving the ILO, UNICEF and the World Bank (pages 2 and 22), 85 per cent of working children under 14 years of age were in agriculture, where they were

working for free for their families. The commercial sector, which employs many children in urban areas, also included a large number of children working for their families without wages (59 per cent) and a high proportion of children working on a self-employed basis (around 26 per cent). The Committee also noted the Government's indication that the Labour Code does not protect children working on a self-employed basis, but that these children are protected by the Dahir of 13 November 1963 on compulsory schooling, as amended by Act No. 04.00 of 25 May 2000, under which parents are required to enrol their children in school, failing which they face penalties.

The Committee notes the information provided by the Government that labour inspectors are authorized by law to ensure the application of the labour legislation only once there is an employment relationship. Consequently, labour inspectors do not carry out any checks in the informal sector. The Committee notes, however, the information provided by the Government that an emergency plan has been adopted for the period 2009–12 which consists of ten projects aimed at giving effect to compulsory schooling up to the age of 15 years, including, in particular, the development of the preschool level, equality of opportunity with regard to access to compulsory education and measures to reduce repetition and drop-out rates. The Committee observes that, according to the consideration of the reports submitted by the States parties in accordance with Article 16 of the International Covenant on Economic, Social and Cultural Rights of 3 May 2006, the enrolment rate for children aged 6 years has increased from 90 to 91 per cent, the rate for children aged between 6 and 11 years has increased from 93 to 94 per cent, and the rate for children aged between 12 to 14 years has increased from 70.6 per cent to 73 per cent (E/C.12/MAR/Q/2/Add.2, page 42). Furthermore, according to this report, the enrolment rates in rural areas have also increased, rising from 46.5 per cent to 86.9 per cent for children aged 6 years, from 62.5 per cent to 89 per cent for children aged between 6 and 11 years, and from 31.5 per cent to 51.6 per cent for children aged between 12 and 14 years. Finally, the Committee notes that, according to the most recent data in the 2008 UNESCO report entitled "Education for All by 2015: Will we make it?", although the rate of school attendance has increased significantly in Morocco (20 per cent), it remains the case that the rate of repetition of the first year of primary school is one of the highest in the region and stands at 16 per cent. The Committee once again notes the progress made with regard to the enrolment rate, but once again notes that the enrolment rate of children aged between 12 and 14 years shows that a number of children leave school before reaching the minimum age for admission to employment and are found in the labour market. ***Considering that labour inspectors in Morocco do not supervise the informal sector and that education is one of the most effective means of combating child labour, the Committee urges the Government to redouble its efforts to increase the enrolment rate, particularly among children aged between 12 and 14 years, in order to prevent them from working, particularly on their own account and in the informal sector. It requests the Government to continue providing information on the progress made in this regard.***

Article 2, paragraph 1, and Part V of the report form. Minimum age for admission to employment and application of the Convention in practice. In its previous comments, the Committee noted the information provided by the International Trade Union Confederation (ITUC), according to which child labour was common in the informal craft industry. It also noted that, according to the report entitled "Understanding children's work in Morocco" (see pages 19, 20, 22 and 23), some 372,000 children aged between 7 and 14 years, representing 7 per cent of the reference group, were working, while for the 12 to 14 age group, 18 per cent of children were economically active. According to this study, 87 per cent of working children were in rural areas where they were found in the agricultural sector. In urban areas, children were engaged in the textile, commercial, repairs and domestic service sectors.

The Committee notes the information contained in the TPR of 30 September 2008 on the ILO–IPEC project entitled "Combating child labour in Morocco by creating an enabling national environment and developing direct action against the worst forms of child labour in rural areas", according to which a national unit for combating child labour has been created and provincial focal points have been appointed. The Committee also notes the information provided by the Government that the first activity report of the focal points responsible for combating child labour indicates that, in 2008, 870 violations were reported in 287 undertakings employing children. Furthermore, the Committee notes with *interest* the information provided by the Government that, in the context of the implementation of the ILO–IPEC project and since 2008, 11,714 children (6,244 boys and 5,470 girls) have been removed from child labour and 19,656 children (10,721 boys and 8,935 girls) have been prevented from becoming engaged in child labour. The Committee reiterates its appreciation of the efforts made and measures taken by the Government to abolish child labour, efforts which it considers to be a reflection of the political resolve to develop strategies to overcome these problems. ***The Committee requests the Government to continue its efforts to combat child labour and requests it to continue providing information on the implementation of the above projects and any other relevant projects, as well as on the results achieved in terms of the gradual abolition of child labour. It also requests the Government to continue providing information on the manner in which the Convention is applied in practice and, in particular, on the results of the activity reports of the focal points responsible for combating child labour.***

Article 9, paragraph 1. Penalties. The Committee previously noted that section 151 of the Labour Code provides that the employment of a child under 15 years of age, in breach of section 143 of the Labour Code, is punishable by a fine of 25,000–30,000 dirhams (US\$3,000–US\$3,600), and a second offence is subject to a term of imprisonment of six days to three months and/or a fine of 50,000–60,000 dirhams (US\$6,000–US\$7,200). It nonetheless noted that sections 150 and 183 of the Labour Code provide for a fine of 300–500 dirhams (US\$36–US\$60) for breaches of section 147 of the Labour

Code (prohibiting the employment of children under 18 years of age in hazardous work) or of section 179 (prohibiting the employment of children under 18 years of age in quarries and mines or in work likely to hamper their growth).

The Committee notes the information provided by the Government that, before resorting to penalties, labour inspectors shall give advice and information to employers on the dangers to which child workers are exposed. Furthermore, the Government indicates that, under sections 542 and 543 of the Labour Code, a labour inspector who detects a violation of the legislative or regulatory provisions relating to health and safety, which poses an immediate risk to the health or safety of the workers, shall issue an order to the employer to take all the necessary measures immediately. If the employer refuses or fails to comply with the instructions contained in the order, the labour inspector will immediately refer the matter to the president of the court of first instance, who may give the employer a deadline for taking all the necessary measures to prevent the imminent danger and may order the closure of the undertaking and determine, if necessary, the necessary duration of that closure. While taking due note of this information, the Committee observes that persons who employ children in breach of the provisions giving effect to the Convention are not generally prosecuted if such employment is brought to an end. The Committee considers it necessary to ensure the application of the Convention by applying the penalties provided for in the legislation. In this regard, it considers that the penalties established by sections 150 and 183 of the Labour Code, relating to the employment of children under 18 years of age in hazardous work, are still not adequate and dissuasive enough to ensure the application of the provisions of the Convention concerning hazardous work in accordance with *Article 9(1)* of the Convention, particularly considering that the penalties established by section 151 of the Labour Code are much heavier. ***The Committee therefore requests the Government to take the necessary steps to ensure that anyone who violates the provisions giving effect to the Convention is prosecuted and that sufficiently effective and dissuasive penalties are applied. It requests the Government to provide information on the type of violations detected by the labour inspectorate, the number of persons prosecuted and the penalties imposed.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention and Part V of the report form. Worst forms of child labour and application of the Convention in practice. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Domestic work of children. In its previous comments, the Committee noted information from the International Trade Union Confederation (ITUC) to the effect that domestic work by children under conditions of servitude is common practice in the country, with parents selling their children, sometimes as young as six years of age, to work as domestic servants. The ITUC also stated that some 50,000 children, mainly girls, are working as domestic servants. Of these, about 13,000 girls under the age of 15 are employed as servants in Casablanca; 80 per cent of them come from rural areas and are illiterate; 70 per cent are under the age of 12; and 25 per cent under the age of 10. The Committee noted that section 10 of the Labour Code prohibits forced labour. It further noted that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age. It also observed that a bill on domestic work had been adopted and was in the process of validation. The bill sets the minimum age for admission to this type of employment at 15 years, establishes the conditions of work, and provides for supervisory measures and penalties.

The Committee notes that, according to the Government, the bill on domestic work is still in the process of adoption. The Government also states that the Dahir of 24 December 2004 establishing a list of hazardous types of work is to be updated in the course of 2010 so as to reflect the intent of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee also notes the Government's statement that the Ministry for Social Development, Family and Solidarity (MDFS), in collaboration with ILO-IPEC organized a training course in 2008 for NGOs involved in the protection of children in the towns of Tahanaout, Fez, Safi, Casablanca, Kenitra, Khouribga, Taza and Agadir, identified as key areas, focusing on the supply and demand of domestic work by children and geared to building institutional capacity for more effective action in combating domestic work by little girls. Lastly, the Committee notes the Government's statement that the MDFS is planning to conduct an inquiry in the course of 2010 into the situation of little girls engaged in domestic work in Casablanca.

While taking due note of the steps taken by the Government, the Committee must again point out that according to *Article 3(a) and (d)* of the Convention, work or employment in conditions that approximate slavery or are hazardous are among the worst forms of child labour and are therefore to be eliminated *as a matter of urgency*, in accordance with *Article 1*. ***The Committee therefore urges the Government to take the necessary steps to ensure that the bill on domestic work is adopted as a matter of urgency. It expresses the hope that the Dahir of 24 December 2004 establishing a list of hazardous types of work will be updated to include domestic work by children under the age of 18 in conditions that approximate slavery or are hazardous. Furthermore, the Committee once again requests the Government to step up its efforts and take the necessary measures to ensure, as a matter of urgency, that the forced labour of children under 18 years of age in domestic work and the employment of such children in hazardous work shall be prosecuted and punished by sufficiently effective and dissuasive sanctions. Lastly, it requests the Government to provide a copy of the inquiry into the situation of little girls engaged in domestic work in Casablanca and to send information on the application of the provisions governing these worst forms of child labour, including statistics on the number and nature of the infringements reported, the investigations conducted, prosecutions, convictions and penal sanctions imposed.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and removing them from these worst forms, and ensuring their rehabilitation and social integration. Child prostitution and sex tourism. In its previous comments, the Committee expressed concern at the persistence of child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, despite an amendment made to the Penal Code in 2003 to introduce sex tourism as a criminal offence. It noted that, according to the Government, as part of the National Action Plan for Children (PANE) for the decade 2006–16, a preliminary study on problems relating to the sexual exploitation of children was carried out in February 2007 with a view to framing a national strategy to prevent and combat such exploitation.

The Committee notes the information sent by the Government to the effect that child protection units have been set up in Casablanca and Marrakesh to provide better medical, psychological and legal assistance for children who have been the victims of violence or ill-treatment, including children who have suffered from sexual or economic exploitation. The Committee nonetheless observes that the Government provides no information on the results of the preliminary study on problems relating to the sexual exploitation of children, or on the preparation of the national strategy to prevent and combat the sexual exploitation of children, a concern shared by the Committee on the Elimination of All Forms of Discrimination Against Women in its concluding observations of 8 April 2008 (CEDAW/C/MAR/CO/4, paragraph 22). ***The Committee accordingly requests the Government to take immediate, effective and time-bound measures to ensure that the national strategy to prevent and combat the sexual exploitation of children is adopted and that it includes measures to: (a) prevent children from falling victim to prostitution, particularly in the context of sex tourism; and (b) provide the necessary and appropriate assistance for the removal of children from this worst form of child labour and ensure their rehabilitation and social integration. The Committee again requests the Government to provide information on progress made in this regard.***

Clause (d). Children at special risk. Child domestic workers. In its previous comments, the Committee noted that according to the ITUC, the physical and sexual abuse of young girls working as housemaids (*petites bonnes*), is among the most serious problems confronting Moroccan children. The Committee noted that a national programme to combat the use of little girls as housemaids (INQAD) had been adopted as part of the PANE.

The Committee notes the information sent by the Government to the effect that as part of its Strategic Plan 2008–12 and following implementation of the INQAD programme, the MSDF plans to organize a second nationwide awareness-raising campaign to combat domestic work by little girls, and to prepare regional action plans. The Committee notes that to this end, as part of the Multisectoral Programme to combat gender-based violence by empowering women and girls in Morocco implemented in collaboration with the UNDP, ILO–IPEC has started up an action programme to combat domestic work by girls in the Marrakesh–Tensift–El Haouz region for the period from 1 January 2009 to 31 December 2010. The programme is to benefit 1,000 school children to discourage them from dropping out of school; 100 school girls under 15 years of age from very poor families for whom the risk of drop-out is high are also to benefit from this awareness-raising; 30 girls under 15 years of age are to be removed from domestic work and rehabilitated and socially reintegrated; 20 girls aged between 15 and 17 are to be withdrawn from domestic work in which conditions are hazardous and which are among the worst forms of child labour; and 50 girl domestic servants aged between 15 and 17 years working in conditions that are acceptable will nonetheless have both their living and their working conditions improved. While taking due note of the measures taken by the Government to combat domestic work by children, the Committee notes that this form of labour remains a very serious scourge in Morocco. ***It accordingly requests the Government to redouble its efforts to protect these children, in particular against economic and sexual exploitation, and requests it to continue to provide information on progress made in this area, in terms of the number of children under 18 years of age prevented from engaging in or removed from worst forms of child labour in the domestic work sector.***

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

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

Mozambique

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Article 3 of the Convention. Worst forms of child labour. The Committee previously noted the information in the Government's report that it has undertaken a reform of the national legislation that is in force and, in the context of this reform, measures will be taken to bring the Penal Code into conformity with the Convention. It requested the Government to provide information on progress in this regard, and to provide a copy of the Penal Code currently in force. The Committee notes an absence of information in the Government's report on this point, though notes that the Trafficking in Persons Act (Trafficking Act) and the Child Protection Act was adopted in 2008. ***The Committee once again expresses its hope that the planned amendments to the Penal Code will be adopted in the near future and requests the Government to provide information on any progress achieved in this respect. It also requests the Government to provide a copy of the new Penal Code once it has been adopted. In the meantime, the Committee once again requests the Government to provide a copy of the Penal Code that is currently in force.***

Clause (a). Sale and trafficking of children for economic and sexual exploitation. In its previous comments, the Committee observed that Mozambican boys are trafficked to South Africa to work on farms and that Mozambican women and children are trafficked to South Africa for sexual exploitation. It also noted that a Bill on the trafficking of persons, with particular reference to women and children, had been submitted to the National Assembly. It requested the Government to provide information on any progress towards the adoption of this Bill and to supply a copy, once adopted.

The Committee notes with *satisfaction* that the Trafficking Act was approved by the National Assembly in April 2008, and was published in the Official Gazette on 9 June 2008. The Committee notes that section 10 of the Trafficking Act prohibits the trafficking in persons, including the recruitment, transportation, receiving or providing, of persons (including under the false pretence of domestic work in another state), for the purposes of forced labour, slavery and prostitution. The Committee notes that section 5(a) of the Trafficking Act provides that when the victim of the trafficking is a child, this is an aggravating circumstance of the crime, and that the annex defines a child as all persons under 18.

Forced recruitment of children for use in armed conflict. The Committee noted previously that, under Act No. 24/97 on military service, a citizen may normally only enrol in the armed forces in the year of his 20th birthday. Conscripts could, however, join the armed forces from the age of 18, although under no circumstances could citizens under 18 years of age take part in military action. The Committee noted however that, under section 2(2) of the Act on military service, the age for conscription may be altered “in time of war”. According to the Government’s indications, this provision has given rise to debate in various Mozambican bodies as it allows persons under 18 years of age to be enrolled to participate in military activities. The Committee notes the Government’s statement that, as the country is currently at peace, there is no need for legislation with regard to compulsory recruitment.

Clause (b). Use, procuring or offering of a child for prostitution. The Committee previously noted the Government’s indication that Decree No. 417/71 on the jurisdictional statute of assistance to minors addresses sexual exploitation of children, as does Act No. 6/99. The Committee notes the information available from the UN Regional Crime and Justice Institute that the Mozambican juvenile justice system (civil and criminal), previously regulated by Decree No. 417/71, was reformed in June 2008 by the Child Protection Act (Law No. 7/2008) and by the Judicial Organization of Minors Act (Law No. 8/2008).

The Committee notes that section 63(1)(b) of the Child Protection Act requires the State to adopt legislative or administrative measures to protect children against all forms of sexual exploitation, including prostitution and other illicit sexual activity. The Committee also notes that section 63(1)(a) of the Child Protection Act states that legislative measures to protect children must include punishing parents, legal guardians or other family members who induce children to engage in illegal sexual exploitation. Section 63(2)(b) of the Child Protection Act states that the legislative measures adopted need to provide for rigorous sanctions. ***The Committee requests the Government to indicate the legislative or administrative measures that have been adopted pursuant to section 63 of the Child Protection Act, prohibiting the use, procuring or offering of children for the purpose of prostitution.***

Use, procuring or offering of a child for the production of pornography or for pornographic performances. The Committee previously noted that, although national legislation provided for the protection of minors from being exposed to pornography, it did not prohibit the use, procuring or offering of children under 18 years of age for the production of pornography or for pornographic performances. The Committee requested the Government to indicate the national legislative measures which prohibited the use, procuring or offering of children under the age of 18 years for the production of pornography or for pornographic performances, and if no such prohibitions existed, to adopt such legislation as a matter of urgency. The Committee notes that section 63(1)(c) of the Child Protection Act states that the State must take legislative measures to protect children from all forms of sexual exploitation, including the exploitation of children in pornography or pornographic performances, and that section 63(2) states that this legislation must include rigorous penalties. ***The Committee requests the Government to indicate the legislative measures enacted, prohibiting the use, procuring or offering of persons under the age of 18 for the production of pornography or pornographic performances, pursuant to section 63 of the Child Protection Act.***

Clause (c). Use, procuring or offering of a child for illicit activities. In its previous comments, the Committee noted the adoption in March 1997 of Act No. 3/97 which reportedly provides for prison terms of between 25 and 30 years for persons found guilty of using minors for the production, transport, distribution and consumption of the substances and by-products set out in the schedules to the Act. ***Noting the absence of information in the Government’s report on this point, the Committee once again requests the Government to provide a copy of Act No. 3/97 and of any other provision prohibiting the use, procuring or offering of children under 18 years of age for illicit activities, in particular for the production and trafficking of drugs.***

Clause (d). Hazardous work. Children in domestic service. The Committee previously noted that pursuant to section 3 of Act No. 23/2007 of 27 August 2007 (Labour Law), domestic work would be governed by regulation. The Committee also noted the information in the Government’s report that regulations to implement the new Labour Law were under preparation, including regulations on domestic work. The Committee observed that children, and particularly young girls, engaged in domestic service are often victims of exploitation, and that it is difficult to supervise their conditions of employment due to the clandestine nature of such work, and expressed the hope that the regulations on domestic work would determine the working conditions of children engaged in domestic work, particularly with regard to hazardous work.

The Committee notes an absence of information on the status of regulations pursuant to the Labour Law. However, the Committee notes the Government's statement in its 23 March 2009 report to the Committee on the Rights of the Child that domestic work is one of the most common types of child labour in Mozambique, and that children are frequently forced to work in this sector (CRC/C/MOZ/2, paragraphs 356 and 358). ***The Committee requests the Government to take the necessary measures to ensure that the regulations on domestic work, stipulating the working conditions of children engaged in hazardous domestic work, will soon be elaborated and adopted. It requests the Government to provide information on any progress made in this regard.***

Article 4, paragraph 1. Determination of hazardous types of work. The Committee previously noted that, pursuant to section 23(2) of the Labour Law, employers shall not engage persons under 18 years of age in hazardous work, as defined by the competent authorities after consultation with the organizations of employers and workers. The Committee noted the information provided by the Government that, in the context of the legislative reform, work was being carried out on the formulation of specific legislation on this subject.

Noting an absence of information on this point in the Government's report, the Committee reminds the Government that by virtue of *Article 4(1)* of the Convention, the types of hazardous work prohibited to persons under the age of 18 shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. The Committee draws the Government's attention to Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which indicates that in determining the types of hazardous work prohibited for persons under 18 years of age, consideration should be given, among other issues, to the types of work enumerated in that Paragraph. ***The Committee requests the Government to take the necessary measures to ensure that specific legislation determining the hazardous types of work prohibited for persons under 18 years of age will be prepared and adopted in the near future. It also requests the Government to provide a copy of this legislation once it has been adopted.***

Article 5 and Part V of the report form. Monitoring mechanisms and application of the Convention in practice. Trafficking. The Committee notes the information in the Government's reply to the list of issues of the CRC of 29 September 2009, that several measures have been taken to strengthen the capacity of law enforcement agencies with regard to the monitoring of trafficking. The Committee notes that a criminal investigation police brigade in Maputo was established, that deals with trafficking cases, and lectures were given on the subject of trafficking at police training schools. Training and capacity-building programmes combating the phenomenon of trafficking have been held for officials from the public prosecutor and the judiciary as well as other justice administration agents, and social workers (CRC/C/MOZ/Q/2/Add.1, paragraph 44). The Committee also notes that border guard police received training to improve their capacity to identify, assist and guide persons who have been trafficked (CRC/C/MOZ/Q/2/Add.1, paragraph 52). The Committee further notes the information in the Technical Progress Report on the ILO-IPEC programme "Combating the worst forms of child labour in Portuguese-speaking countries in Africa" of 30 July 2007 (ILO-IPEC TPR) that the Government participated in a regional conference, on preventing the trafficking in children in southern Africa. In addition, the Trafficking in persons report of 2009, available from the web site of the Office of the UN High Commissioner for Refugees (www.unhcr.org) (Trafficking in persons report), indicates that police and ministry of justice officials began regularly meeting with NGOs to develop a viable anti-trafficking strategy for the 2010 World Cup, which is expected to increase the incidence of Mozambicans trafficked to South Africa for sexual exploitation.

The Trafficking in persons report indicates that police forces rescued 200 Mozambican children being trafficked to South Africa in the first half of 2008. However, the statistics on child victims of crime, provided by the Government in its reply to the list of issues of the CRC, indicate that no cases of trafficking of children were recorded in 2006 and 2007, and only three victims were recorded in 2008 (CRC/C/MOZ/Q/2/Add.1, paragraph 50). The Committee also notes that the CRC, in its concluding observations of 4 November 2009, expressed concern at the continuous trafficking of children from rural to urban areas for forced labour, the trafficking of girls to and from other states for sexual exploitation and domestic servitude and that investigations of cases of human trafficking or abductions were rarely being followed by prosecutions and convictions (CRC/C/MOZ/CO/2 paragraph 86). ***Therefore, the Committee urges the Government to pursue its efforts to strengthen the capacity of law enforcement agencies to ensure that those who sell and traffic children are effectively prosecuted. The Committee also requests the Government to provide information on the practical application on the Trafficking in Persons Act 2008, including information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

Commercial sexual exploitation. The Committee previously noted that a community monitoring system for reporting incidents of sexual exploitation and abuse of children was established. The Committee notes the Government's statement in its report to the CRC of 23 March 2009 that, in order to prevent the commercial sexual exploitation of children, the Ministry of the Interior and the Ministry of Labour are supporting the police to document all incidents pertaining to such violations (CRC/C/MOZ/2, paragraph 363). The Committee also notes that the Government also identifies prostitution as one of the forms of work that children are frequently forced to work in (CRC/C/MOZ/2 paragraph 358). The Committee further notes that the CRC, in its concluding observations of 4 November 2009, expressed deep concern that child prostitution is increasing in Mozambique, especially in the Maputo, Beira and Nacala regions as well as in some rural areas (CRC/C/MOZ/CO/2, paragraph 84). ***The Committee urges the Government to redouble its efforts to prevent the commercial sexual exploitation of all persons under the age of 18, and requests it to provide***

information on measures taken in this regard. Furthermore, the Committee requests the Government to provide information on the functioning of the monitoring mechanisms set up by the ministries of the interior and labour and police to detect and combat child commercial sexual exploitation.

Data collection and labour inspectorate. The Committee previously observed that there were no available statistics relating to children engaged in the worst forms of child labour in Mozambique, although noted the ILO-IPEC information that a study on the worst forms of child labour would be prepared. It requested the Government to provide a copy of this study as soon as it became available. The Committee notes an absence of information in the Government's report on this point. However, the Committee notes that the CRC, in its concluding observations of 4 November 2009, expressed concern about the lack of reliable data on child labour and expressed concern that the labour inspectorate and police face shortages of qualified staff, adequate funds and training to carry out their mandate with regard to child labour (CRC/C/MOZ/CO/2, paragraph 80). **The Committee expresses its concern at the lack of data available on the prevalence of the worst forms of child labour, and requests the Government to take measures to ensure that sufficient data is available. In this regard, the Committee hopes that the study on the worst forms of child labour will soon be completed, and requests the Government to provide a copy when it is available. Furthermore, the Committee urges the Government to ensure that the labour inspectorate and police are allocated sufficient resources to carry out their mandate with regard to the monitoring of the worst forms of child labour.**

Article 6. Programme of action. National Action Plan for Children. The Committee notes the Government's information in its reply to the list of issues of the CRC, that through Decree No. 8/2009 of the Council of Ministers of 31 March 2009, a National Council of the Rights of the Child (CNAC) was established. The CNAC is chaired by the Minister of Women and Social Affairs, and includes the ministers of education and culture, justice, health and youth and sports. The Committee notes that the CNAC is responsible for the dissemination and implementation of the rights of the child, including the National Action Plan for Children (PNAC), which provides clear provisions on child labour prevention and child education. The Committee also notes that the CNAC will take measures aimed at preventing child prostitution, child labour, trafficking and other forms of child exploitation (CRC/C/MOZ/Q/2/Add.1, paragraph 6). **The Committee requests the Government to provide information on the measures taken within the framework of the National Action Plan for Children to combat the worst forms of child labour.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Access to free basic education. In its previous comments, the Committee noted that the CRC, expressed concern that girls continue to have less access to education than boys beyond primary education and that the literacy rates of girls, particularly those over 15 years of age, were extremely low. Certain practices, such as the imposition of excessive domestic work on girls, contributed to limiting their access to education. The Committee nevertheless noted that the Government had taken measures to improve the education system, particularly with regard to school attendance rates.

The Committee notes the information in the Government's reply to the list of issues of the CRC of 29 September 2009, that the gross rate of completion of primary education continued to rise, from 75 per cent in 2006 to 78 per cent in 2008. In secondary education, the gross rate of children who completed the seventh grade increased from 35 per cent in 2006 to 55 per cent in 2008 (CRC/C/MOZ/Q/2/Add.1, paragraph 55). The Committee also notes that the Government, through the direct support programme to schools, distributed additional school material to vulnerable children to facilitate their access to education. The Committee further notes the information in the Government's report to the CRC of 23 March 2009 that, to particularly encourage girls to attend school, the Government has adopted teacher training policies that prioritize teacher training for women (CRC/C/MOZ/2, paragraph 306). The Committee notes the positive results with regard to the education of girls: the net rate of schooling for females in primary education (ages 6–12) increased from 86.3 per cent in 2006 to 96.2 per cent in 2008 (CRC/C/MOZ/Q/2/Add.1, paragraph 57).

Nonetheless, the Committee notes the statement in the Government's progress report for the UN General Assembly Special Session on HIV and AIDS prepared by the National AIDS Council of Mozambique in January 2008 (UNGASS report) that the number of children attending school is much lower than the number enrolled (page 67). The Committee also notes that, in its concluding observations of 4 November 2009, the CRC expressed concern that one in five children remain deprived of education, that nearly half of primary school-aged children drop out of school before they complete grade five, and that significant disparities in accessing education persist between provinces, particularly affecting the provinces of Niassa, Nampula and Zambezia (CRC/C/MOZ/CO/2, paragraph 71). The CRC also expressed concern at the high prevalence of sexual abuse and harassment in schools which reportedly leads some girls to refuse to go to school, and that gender disparity remains high in the higher levels of education (CRC/C/MOZ/CO/2, paragraph 73). The Committee expresses **concern** at the continued low school attendance rates, particularly among girls, and the reports of sexual abuse and harassment deterring girls' access to education. **Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to redouble its efforts to improve the functioning of the education system, particularly by increasing school enrolment rates and reducing school drop-out rates, with special attention to the situation of girls. It also urges the Government to address the regional disparities of access to education, to facilitate access to education to all children in Mozambique.**

Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Sale and trafficking of children for labour and sexual exploitation. The Committee notes that

section 21 of the Trafficking in Persons Act specifies that services for the rehabilitation and social reintegration of victims of trafficking should be provided, including shelter, medical and psychological assistance, legal assistance, assistance with repatriation and access to vocational and educational opportunities. The Committee also notes the information in the Government's report that the Protection of Minors Act provides for special treatment for children who are victims of trafficking, sexual exploitation and abuse, in order to ensure that they are duly protected. The Government's report also indicates that, pursuant to the Protection of Minors Act, a support service for women and children was established. The Committee further notes that the Women's and Children's Support Service (an organizational unit of the General Police Command) was created to protect the rights of women and children, and provides support and assistance to victims of sexual exploitation and trafficking, and facilitate their access to justice.

However, the Committee notes that the CRC, in its concluding observations of 4 November 2009, expressed concern at the limited resources available for efforts to protect victims of trafficking and the absence of safe houses and of a formal referral system for victims of trafficking (CRC/C/MOZ/CO/2, paragraph 86). ***Therefore, while noting the measures taken by the Government to provide services for victims of trafficking, the Committee requests the Government to take the necessary measures to establish a formal referral system and to ensure that adequate resources are allocated to the institutions responsible for the provision of these services. The Committee also requests the Government to provide information on the effective and time-bound measures implemented pursuant to the Trafficking in Persons Act, and Protection of Minors Act to provide rehabilitation and repatriation services for child victims of trafficking. The Committee further requests the Government to provide information on the number of child victims of trafficking who have been effectively removed, rehabilitated and socially reintegrated as a result of the measures implemented.***

Debt bondage. In its previous comments, the Committee noted the CRC and ILO-IPEC information that children in rural areas are sometimes used to settle financial and other disputes, with families sending their children to work for periods of time to settle debts. The Committee notes that the CRC, in its concluding observations of 4 November 2009, expressed concern at the continued practice of sending children to work to settle families' financial debts and other obligations and urged the Government to take measures to end this practice (CRC/C/MOZ/CO/2, paragraph 65). ***In this regard, the Committee requests the Government to take immediate effective and time-bound measures, to bring an end to the practice of sending children to work to settle debts and to provide for the rehabilitation and social integration of children who have been victims of this practice.***

Clause (d). Children at special risk. Child victims/orphans of HIV/AIDS. The Committee previously noted that, according to the report on the global AIDS epidemic published by UNAIDS, the number of children orphaned in Mozambique due to the virus was approximately 510,000. It also noted that the Government had formulated a second Strategic National Plan on HIV/AIDS (2005–09) and a National Action Plan for Children, Vulnerable Children and Orphans (POA OVC). The Committee notes the information in the UNGASS report that the POA OVC aims to provide six basic services to OVCs: health, education, nutritional/food support, legal and psychological and financial support, and hoped to provide services to 1.2 million OVCs. The Committee notes that by 2006, 23 per cent of the OVCs identified in the POA OVC (or over 220,000) had gained access to at least three basic services (page 24).

The Committee notes the Government's statement in its report to the CRC of 23 March 2009 that HIV/AIDS is a significant cause of child labour, as HIV/AIDS orphans are frequently forced into child labour, since they have been left without any family support (CRC/C/MOZ/2, paragraph 348). The Committee also notes the Government's statement in the UNGASS report, that HIV/AIDS orphans have very limited means of generating income, and thus often have to resort to risky coping strategies, such as transactional sex or hazardous child labour (page 65). The Committee further notes the indication in the UNGASS report that the number of children who have lost their parents to HIV/AIDS is estimated to reach 630,000 by 2010 (page 65). In addition, the Committee notes that the CRC in its concluding observations of 4 November 2009 expressed concern that services for orphans and vulnerable children, including child heads of households, remained inadequate (CRC/C/MOZ/2, paragraph 67). The CRC also expressed serious concern at the situation of orphaned children being economically exploited by foster families (CRC/C/MOZ/CO/2, paragraph 79). The Committee expresses ***serious concern*** at the high number of children orphaned due to HIV/AIDS and observes that the negative consequences on orphans include a higher risk of being engaged in the worst forms of child labour. ***The Committee therefore requests the Government to take the necessary measures to ensure that children who have been orphaned by HIV/AIDS are not exploited economically by their foster families. The Committee also requests the Government to strengthen its efforts to take specific effective and time-bound measures in the context of the implementation of the National Action Plan for Children, Vulnerable Children and Orphans, to prevent HIV/AIDS orphans from being engaged in the worst forms of child labour.***

Street children and begging. The Committee previously noted that the Government indicated that many children live or work in the streets in Mozambique and that the exploitation of child beggars is increasingly frequent in several provincial capitals.

The Committee notes the Government's statement in its report to the CRC of 23 March 2009 that, due to poverty, there has been an increase in begging, though the Government has taken measures to reduce poverty, to increase social protection and to improve housing policies to address this issue (CRC/C/MOZ/2, paragraphs 278 and 279). The Committee also notes the Government's statement in its report to the CRC that street children continue to be a problem in Mozambique in urban areas, and that intervention in this area involves partnerships between the Government and civil

society, and with the children and their families, in order to reintegrate the street children into families. It further notes the Government's indication that these children, throughout the reintegration process, are provided with assistance at shelters for children and that these children are also encouraged to participate in professional and productive activities, as well as schooling, in order to prepare for successful reintegration into the community (CRC/C/MOZ/2, paragraph 387). However, the Committee notes that the CRC, in its concluding observations of 4 November 2009, expressed concern that insufficient measures have been taken to address the situation of children living in the streets (CRC/C/MOZ/CO/2, paragraph 82). ***The Committee recalls that children who live or work in these streets are particularly exposed to the worst forms of child labour and therefore requests the Government to take effective and time-bound measures to protect children living in the streets from these worst forms, and to provide for their rehabilitation and social integration.***

Netherlands

Aruba

Minimum Age Convention, 1973 (No. 138)

Article 2, paragraph 3, of the Convention. Age of completion of compulsory schooling. In its previous comments, the Committee had noted that the Government of Aruba had made a commitment to ensure that all children receive compulsory education up to the age of 17 years. The Committee once again notes the Government's indication that the State Ordinance on Compulsory Education has not yet been approved and that it will supply a copy of the Ordinance once it has been adopted. ***The Committee trusts that the State Ordinance on Compulsory Education will be in conformity with Article 2(3) of the Convention. Considering that there is presently no specified age of completion of compulsory schooling in Aruba and that the Government has been referring to the enactment of the State Ordinance on Compulsory Education for a number of years, the Committee once again urges the Government to take the necessary measures to ensure that it is adopted in the very near future.***

Article 3, paragraphs 1 and 2. Hazardous work. In its previous comments, the Committee had noted that section 17(1) of the Labour Ordinance provides that it is prohibited to cause women and juvenile persons to perform night work or work of a hazardous nature, which is to be described by a state decree. Section 4 of this Ordinance defines juveniles as persons who have reached the age of 14, but not yet the age of 18. The Committee had noted the Government's information that one of the tasks of the Committee for the Modernization of Labour Legislation (CMLL) is to fill the existing voids in the legislation, creating the state decrees (which are yet formalized) referred to in the Labour Ordinance. The Committee notes the Government's indication that the labour legislation review is still under way and that the state decree specifying the types of hazardous work prohibited to young persons under 18 years of age has not yet been enacted. ***Considering that the Government has been referring to the enactment of the state decree provided for under section 17(1) of the Labour Ordinance determining the types of hazardous work for a number of years, the Committee urges the Government to take the necessary measures to ensure that it is adopted in the very near future. It requests the Government to provide a copy, once it has been adopted.***

Article 6. Vocational training and apprenticeship. In its previous comments, the Committee had noted the Government's indication that the state decree provided for under section 16(a) of the Labour Ordinance allows exemptions for certain tasks which are necessary for the learning of a trade or profession, and can be done by children of 12 years or over who have completed the sixth class of primary school. It had also noted the Government's information that there were no instances recorded to indicate that children between 12 and 14 years of age are employed for training purposes. The Committee notes the Government's information that the state decree provided under section 16(a) of the Labour Ordinance has not yet been addressed in the CMLL. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the state decree specifying the employment permitted for vocational education or technical training purposes under section 16(a) will be addressed in the CMLL and adopted thereafter in the near future. It requests the Government to provide information on any progress made in this regard.***

Article 7. Light work. In its previous comments, the Committee had requested the Government to provide information on the progress made with regard to the state decree provided for under section 16(b) of the Labour Ordinance to specify certain tasks which can be carried out by children of 12 years of age and above who have completed the sixth class of primary school. The Committee had recalled that *Article 7(3)* of the Convention requires that the competent authority determine the activities allowed as light work in which young persons between 12 and 14 years of age may be permitted to participate, and to prescribe the number of hours of work and the conditions of employment or work. The Committee notes the Government's information that the state decree under section 16(b) of the Labour Ordinance has not yet been addressed in the CMLL. ***The Committee expresses the firm hope that the state decree specifying the light work activities permitted to children of 12 years and above provided for under section 16(b) of the Labour Ordinance will be adopted at the earliest possible date and requests the Government to provide information on all progress made in this regard.***

Part V of the report form. Practical application of the Convention. The Committee notes the Government's information that the labour inspection did not report any violations with regard to national legislation on child labour or

the provisions of the Convention. It also notes the information provided by the Government that, according to the annual report of the Inspection Division of the Labour Department, in 2008, one child, aged 14 years and 11 children, aged 15 years were employed. It further notes the Government's indication that control and enforcement of the labour legislation by the labour inspectors continues to be weak due to regulatory and financial challenges. *The Committee requests the Government to take the necessary measures to adapt and strengthen the labour inspection services in order to ensure the effective implementation of the provisions of the Convention. It also requests the Government to provide more detailed information on the manner in which the Convention is applied in practice including statistical data disaggregated by sex and age on the nature, extent and trends in child labour and extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied.*

New Zealand

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's detailed report. It also notes the comments made by the New Zealand Council of Trade Unions (NZCTU) and the Government's response thereto.

Article 3(d) and Article 4, paragraph 1, of the Convention. Hazardous work. The Committee had previously noted that, by virtue of section 54(d) of the Health and Safety in Employment Regulations of 1995 (HSE Regulations), "every employer shall take all practicable steps to ensure that no employee under the age of 15 works in any area at a place of work under the control of that employer ... at any time when any work is being carried out in that area that is likely to cause harm to the health and safety of a person under the age of 15 years". It had observed that the prohibition did not extend to children under 18 years of age. The Committee had also noted the Government's statement that the HSE Act addresses the health and safety of young persons over 15 years of age through a combination of duties imposed on the employer, including various requirements of training and supervision. It had further noted the Government's indication that it intended to review the HSE Regulations in order to prohibit hazardous work for employees aged under 16 years of age (raising the prohibition from 15 years).

The Committee notes the NZCTU's allegation that statistics on work-related injuries indicated that, in 2006, about 300 children under 15 years visited their local doctor for a work-related injury. Moreover, in the same year, accident compensation entitlements and rehabilitation assistance were provided to about ten children under the age of 9; 15 children between the ages of 10 and 14, and between 1,000–2,000 children between the ages of 15 and 19. According to the NZCTU, the common location of such fatalities is farm work. The NZCTU further contends that there is also widespread under-reporting of accident compensation claims and workplace accidents.

The Committee notes that, while the Government shares the concerns raised by the NZCTU with regard to the workplace injuries of children and young persons, which in some cases prove fatal, it believes that the existing legislative protections generally ensure that young people are not exposed to hazardous work. The Committee notes the Government's statement that it is aware of the under-reporting of accident claims and workplace injuries. It nevertheless considers that several activities are in place to raise young people's awareness of workplace health and safety and their rights at the workplace, such as the "Grim Harvest" campaign which alerts workers including young persons about seasonal fatalities during work on farms, and the Children's Employment Work Programme. The Committee also notes the Government's statement that, during the period from 2007 to 2009, it has analysed young people's work patterns, where they sustain work-related harms and at what age young people mature physically and psychologically, in order to understand age as a risk factor. The Committee finally notes the Government's indication that it has decided not to review the HSE Regulations in order to prohibit hazardous work for young employees, but to seek non-regulatory options for the protection of young people under the age of 16 years from hazardous work through developing practice guidelines and information. The Committee further notes the Government's information on the prosecutions in 2007 and 2008 related to workplace injuries sustained by a 14-year-old child with partial amputation of three fingers on a snip saw; death of a 12-year-old who fell from a truck; and a 17-year-old who had his fingers and wrist crushed by a pastry machine.

Finally, the Committee notes the Government's statement that employees under 15 years of age are prohibited from working in a number of high-hazard workplaces such as construction, logging and tree-felling operations, work where goods are being manufactured and prepared for sale, working with any machinery, lifting heavy loads or performing other tasks likely to be injurious to the employee's health, night work (prohibited for children under 16 years) and driving or riding any tractor or heavy vehicles (sections 54–58 of the HSE Regulations).

The Committee must express its *serious concern* over the fact that children between 15 and 18 years of age are allowed, in law and in practice, to perform the abovementioned types of work which are clearly hazardous, as acknowledged by the Government itself. It also expresses its *serious concern* at the number of injuries and fatalities, including death suffered by children under 18 years working in hazardous types of work as underlined by the NZCTU and not contested by the Government. The Committee, therefore, emphasizes that, by virtue of *Article 3(d)*, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, constitutes one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. It reminds the Government that, while determining the types of work referred to under *Article 3(d)* of

the Convention, in accordance with *Article 4(1)*, the relevant international standards shall be taken into consideration, in particular Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), which enumerates activities to which the Government should give special consideration when determining types of hazardous work. It also recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as from the age of 16 under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. Considering the significant number of injuries and fatalities suffered by children, it would appear that the conditions of protection and prior training, as set out in Paragraph 4 of Recommendation No. 190, are not fully met in all circumstances. ***The Committee accordingly urges the Government to take immediate and effective measures to comply with Article 1 of the Convention, read with Article 3(d), to prohibit children under 18 years of age from engaging in hazardous and dangerous work. However, where such work is performed by young persons between 16 and 18 years of age, the Committee urges the Government to take the necessary measures to ensure that such work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young persons be protected and that they receive adequate specific instruction or vocational training in that activity. The Committee requests the Government to provide information on the progress made in this regard.***

Self-employed children. The Committee had previously noted that the HSE Regulations, which contain provisions for the employment of children in hazardous occupations, only apply to a “place of work under the control of that employer” (section 54). It had also noted the Government’s statement that the Minors Contracts Act of 1969 provides protection for minors (persons under the age of 18) entering a contract for service (self-employment). The Committee had noted the comments made by the NZCTU in 2007 that the Government’s action was long overdue on introducing an amendment to the HSE Regulations to extend their coverage to child workers who are contractors rather than employees. Noting the Government’s information that the Department of Labour would review the HSE Regulations in order to extend such Regulations to children working as independent contractors as well as self-employed children under 16 years of age, the Committee had hoped that the HSE Regulations would soon be reviewed in order to cover young self-employed persons.

The Committee notes the Government’s statement that the provisions restricting the employment of children in hazardous work (15 years) and night work (16 years) under the HSE Regulations have been amended in order to cover self-employed children working as independent contractors (sections 58A–58F of the Health and Safety in Employment Amendment Regulations of 2008). ***The Committee once again urges the Government to take immediate and effective measures to comply with Article 1 of the Convention, read with Article 3(d), to ensure that self-employed workers under the age of 18 years are protected from hazardous work. However, where such work is performed by young persons between 16 and 18 years of age, the Committee urges the Government to ensure that self-employed persons under 18 years of age enjoy the protection afforded by Paragraph 4 of Recommendation No. 190. It requests the Government to provide information on progress made in this regard. The Committee further requests the Government to provide a copy of sections 58A–58F of the Health and Safety in Employment Amendment Regulations of 2008.***

Article 5. Monitoring mechanisms. Occupational safety and health service. In its previous comments, the Committee had noted the Government’s information that the Department of Labour (DoL) intended to begin investigating workplace practices relating to persons between 16 and 18 years of age engaged in hazardous work. In this regard, it had also noted the NZCTU’s recommendation, in its communication of 2007, that input be sought from experts in child and youth development in order to assess the physical and psychological limits of young persons in relation to hazardous work. The Committee notes the Government’s statement that, from March to May 2008, the DoL introduced certain communication methods to reinforce the application of the HSE Regulations under a “Know your Rights” theme. This included preparing a factsheet using a comic/graphic style, and running a radio song competition aimed at promoting the health and safety of young persons at work. The Government further states that the DoL is continuing to investigate workplace practices relating to persons between 16 and 18 years of age engaged in hazardous work which forms part of the review of the age threshold on hazardous work and their physical and psychological limits in relation to such work. ***Noting that children of 15 years and above are allowed to perform hazardous work, the Committee requests the Government to provide information on the results of the investigations carried out by the Department of Labour on workplace practices related to persons between 15 and 18 years engaged in hazardous work.***

Parts IV and V of the report form. Application of the Convention in practice. The Committee notes the NZCTU’s allegation that the 2009 Youth in the Labour Market Report does not include children aged less than 15 years of age, in spite of New Zealand having no minimum age for work, nor does it provide disaggregated information on a year-by-year basis for young people under 18 years of age. It notes the Government’s response that the Youth in the Labour Market Report is primarily based on the data from Statistics on New Zealand’s Household Labour Force Survey, which only collects information on persons of 15 years and above. Moreover, disaggregated information of young people between 15 and 18 was not included as the majority of stakeholders did not require it. The Committee further notes the Government’s indication that, during the period 2007–08, there were three prosecutions under the HSE Act and HSE Regulations regarding injuries sustained by young persons under 18 years at the place of employment. ***The Committee expresses its regret at the insufficient data on working children and young persons and it strongly urges the Government to take the necessary measures to ensure that sufficient data on the situation of working children in New Zealand, including***

children under 15 years of age is available. It requests the Government to supply statistics on the employment of children and young persons and extracts from the reports of inspection services as soon as this information becomes available. To the extent possible, all information provided should be disaggregated by age and sex.

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

Nicaragua

Minimum Age Convention, 1973 (No. 138) (ratification: 1981)

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee noted that, according to the national study on child labour of 2005 (ENTIA 2005), 239,220 children between the ages of 5 and 17 years were engaged in work in the country. The Committee also noted with interest that, according to the final evaluation report of the National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (2001–05) (Strategic Plan 2001–05) of October 2006, child labour has decreased by around 6 per cent since 2000. According to this final report, over 100,000 children in poor families received direct or indirect assistance from the various actors in civil society who were engaged in the implementation of the Strategic Plan 2001–05. Furthermore, 14,075 children benefited from action programmes on the worst forms of child labour implemented by ILO/IPEC in the country.

The Committee also noted the draft Decent Work Country Programme for Nicaragua and noted that measures were envisaged to improve the application of standards relating to child labour and to continue efforts for the progressive elimination of child labour by 2015, with particular reference to the worst forms of child labour. Furthermore, the Committee noted the information provided by the Government according to which a second National Strategic Plan for the Prevention and Elimination of Child Labour and the Protection of Young Workers (PEPETI 2007–16) was being prepared. The Committee requested the Government to provide information on the measures taken in the context of the draft Decent Work Country Programme to eliminate child labour. It also requested it to provide information on the PEPETI 2007–16, as well as on the action programmes implemented in the context of this Plan and the results achieved in terms of the progressive abolition of child labour.

The Committee notes the final text of the Decent Work Country Programme, which was prepared with ILO assistance. It notes that, in the context of this programme, it is envisaged to strengthen the work of the National Committee on the Progressive Elimination of Child Labour (CNEPTI) and the National Committee against the Sexual Exploitation of Children and Young Persons. The Decent Work Country Programme also aims to promote the creation and implementation of a system of monitoring and evaluation of the PEPETI 2007–16 and the improvement of the information system so that information is available concerning the magnitude, distribution and characteristics of child labour in the country.

The Committee also notes the information provided by the Government that the specific objectives of the PEPETI 2007–16 are namely: the removal of children from work and their integration into the education system; access to free health services for children who are removed from work and their families; access to income-generating projects and programmes for the families of working children and young persons; the adaptation of the national legislation; the participation of the social partners and particularly working children and young persons and their families in measures and the process of preventing and eliminating child labour; and the establishment of bodies for the supervision, monitoring and evaluation of child labour.

The Committee also notes that the Government supports the “Love Programme” (*Programa Amor*), which involves the Ministry of Family, Adolescence and Childhood, as well as the Ministries of Health, Education, the Interior and Labour, the Nicaraguan Social Security Institute (INSS), the Nicaraguan Institute for Youth and Sport, the Institute of Culture, the Nicaraguan Women’s Institute, the Office of the Human Rights Prosecutor and the Public Prosecutor’s Office. The programme aims to restore the rights of children and adolescents, to ensure the right of children and young persons to an education and to ensure that children have access to health, security, sport, art and leisure. To that end, it provides for the creation of child development centres and community daycares to provide professional care for the children of working mothers. To date, comprehensive care has been provided for 83,884 children under 6 years of age in 1,099 community daycares. Furthermore, the children have been provided with food, furniture, educational material and toys, as well as vaccinations for the purpose of preventing disease and chronic malnutrition. Through the 41 child development centres, the programme has also provided comprehensive health care, education and food security for 4,737 children under 6 years of age whose mothers are working in urban areas.

Finally, the Committee notes that discussions are currently taking place between the Government and the Inter-American Development Bank aimed at securing financing for the implementation in urban areas of a programme targeting families living in extreme poverty, due to be implemented in 2010–11. Child labour will be taken into account as an indicator when selecting the beneficiary families.

The Committee notes with *interest* the various measures taken by the Government to combat child labour. *It strongly encourages the Government to continue its efforts to combat child labour and requests it to provide*

information on the measures which will be taken in this regard, particularly in the context of the PEPETI 2007–16, and on the results achieved.

Article 2, paragraph 1. Scope of application. In its previous comments, the Committee noted the information provided by the Government that Ministerial Agreement JCHG-008-05-07 on the implementation of Act No. 474 provides that the General Directorate of Labour Inspection shall be responsible for the implementation of Act No. 474 and the organization of a system of inspection for the prevention of child labour and its supervision in accordance with the rights of young persons engaged in work in the formal and informal sectors. It also noted the Government's indication that, with a view to increasing labour inspection activities in the informal sector, and particularly to eliminating child labour, the labour inspection system had been strengthened through links with various governmental and non-governmental organizations. The labour inspectorate for children and the general labour inspectorate will therefore collaborate with a view to protecting children from work and its worst forms and removing them from exploitation. Taking due note of the information provided by the Government, the Committee requested it to provide information on the measures taken by the labour Inspectorate for children and the general labour Inspectorate to protect and remove children from child labour who are not bound by an employment relationship, such as those working on their own account.

The Committee notes the indication in the Government's report that the Ministries of Labour, Education and Health have supported and promoted an informal education pilot strategy entitled "Educational bridges" in the context of the coffee harvesting plan 2007–08, promoted by the CNEPTI. This strategy has been implemented on five coffee plantations and has benefited a total of 555 children in the Department of Jinotega.

The Committee observes that the Government has not provided any other information. **Consequently, it once again requests it to provide information on the measures taken by the labour Inspectorate for children and the general labour Inspectorate to protect and remove from work children who are not bound by an employment relationship, such as those working on their own account.**

Minimum age for admission to employment and light work. In its previous comments, the Committee noted that the Government had indicated in its report that Act No. 474 regulates work by children and establishes 14 years as the minimum age for admission to employment, without any exception to this age being envisaged. While noting the Government's indication, the Committee nonetheless noted once again that, according to the ENTIA 2005, a number of children aged between 12 and 14 years, which is below the minimum age for admission to employment, are engaged in work. It therefore recalled that, under *Article 2(1)* of the Convention, no one under the minimum age shall be admitted to employment or work in any occupation, with the exception of light work, and requested the Government to provide information on the measures that it intended to take to bring an end to work by children under 14 years of age. The Committee observes that the Government provides no information in this regard. It also notes the statistics provided by the Government with its report, according to which children under 14 years of age were found to be working in enterprises in various sectors, including agriculture and the industrial sector, during 2008 and 2009. **Consequently, the Committee urges the Government to take the necessary measures to ensure that the work of children under 14 years of age is brought to an end in practice and to provide information on any progress made in this regard.**

Article 2, paragraph 3. Age of completion of compulsory schooling. In its previous comments, the Committee requested the Government to take the necessary measures to increase the school attendance rate and reduce the school drop-out rate so as to prevent children under 14 years of age from working, particularly on their own account. It also requested it to step up its efforts to combat child labour by strengthening measures that allow child workers to be integrated into the school system, whether formal or informal, or into vocational training, provided that the minimum age criteria with regard to employment or work are respected.

The Committee notes the Government's indication that one of the first measures taken was to promote and facilitate the education of children and young persons at the national level through its education policy for 2007–11 entitled "A ministry in the classroom". As a result of the implementation of this policy, nearly one million children and young persons of school age have benefited from free schooling, in accordance with the provisions of article 121 of the National Constitution.

The Committee also notes that a subcommittee (composed of members of the CNEPTI and of advisory bodies such as the ILO–IPEC programme, Save the Children, the CARE international intergovernmental development agency, UNICEF, as well as of engineers of the *Programa Amor* and projects aimed at child workers (ENTERATE, PRONIÑO, CUCULMECA, Fundación Eduquemos)), set up to define the methodologies and strategies to be implemented by the Ministry of Education in taking care of children excluded from the education system, while coordinating the actions provided for under the strategic plan and roadmap for declaring the country a child labour free zone. The Committee also notes that the Ministry of Education and Sport has in turn launched a national literacy and education campaign for children and young persons excluded from the education system. **The Committee requests the Government to continue taking measures to increase the school attendance rate and facilitate the access of children to education, to prevent children from turning to work. The Committee requests the Government to provide information on any progress made in this regard.**

Article 3, paragraph 2. Determination of hazardous types of work. In its previous comments, the Committee noted with satisfaction the adoption of Ministerial Agreement No. VGC-AM-0020-10-06 of 14 November 2006, on the

list of hazardous types of work applicable in Nicaragua which was drawn up in consultation with the organizations of employers and workers and civil society and contains a detailed list of hazardous types of work. According to the Government's report, tripartite consultations on the matter of updating this list are currently being held within the National Occupational Safety and Health Council and the CNEPTI, but also with the labour Inspectorate for children. ***The Committee requests the Government to provide information on the outcome of these consultations and to provide, if applicable, a copy of any related text or draft text.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (b). Sale and trafficking of children and the use, procuring or offering of a child for the production of pornography or for pornographic performances. In its previous comments, the Committee noted that the national legislation does not contain provisions prohibiting the sale or trafficking of young persons under 18 years of age for economic exploitation or the procuring or offering of a child under 18 years of age for the production of pornography or for pornographic performances. It expressed the strong hope that the draft amendment to the Penal Code would be adopted in the near future and that it would give effect to *Article 3(a) and (b)* of the Convention.

The Committee notes with **satisfaction** the promulgation of Act No. 641 of 16 November 2007 issuing the new Penal Code. The new Penal Code, which entered into force again in July 2008, defines commercial sexual exploitation in the chapter on "Offences against freedom and sexual integrity". These offences cover sexual exploitation, pornography and the sexual act with young persons in return for payment (section 175); the promotion of tourism for the purpose of sexual exploitation (section 177); aggravated procurement (section 179); procurement (section 180); and the trafficking of persons for the purposes of slavery or sexual exploitation (section 182). Furthermore, section 315 of Title X of the same Code on "Offences against labour rights" provides for the imposition of a prison sentence of five to eight years on anyone who, in the context of an employment relationship, subjects, forces or maintains another person in a situation of slavery or in conditions similar to slavery or forced labour. The same section provides for the imposition of penalties on persons who traffic other persons for the purpose of labour exploitation. It also provides for heavier penalties if the victims are children. ***The Committee requests the Government to provide information on the application of the above provisions of the new Penal Code in practice, including, in particular, statistics on the number and nature of violations reported, the investigations conducted, prosecutions, convictions and penal sanctions imposed.***

Clause (d). Hazardous work in agriculture. In its previous comments, the Committee noted that, according to the statistics available to the Office, 60 per cent of children who work in Nicaragua are engaged in activities in the agricultural sector, which is a branch of economic activity in which the working conditions may be hazardous for young persons under 18 years of age. It also noted that the list of hazardous types of work prohibited for young persons under 18 years of age, set out in the Ministerial Agreement of 14 November 2006, includes types of hazardous work in the agricultural sector. In view of the above statistics, the Committee urged the Government to take the necessary measures as a matter of urgency to ensure that no young person under 18 years of age is engaged in the worst forms of hazardous work in agriculture, that those responsible for availing themselves of such labour are prosecuted and that effective and dissuasive penalties are imposed on such persons.

The Committee notes the Government's indication that tripartite consultations on the matter of updating the list of hazardous types of work are currently being held within the National Occupational Safety and Health Council and the National Committee on the Progressive Elimination of Child Labour (CNEPTI), but also with the labour inspectorate for children. The Committee also notes with **interest** that sections 315 and 317 of the new Penal Code provide respectively for a penalty of 2 to 4 years' imprisonment for anyone who recruits a minor under 18 years of age for the purpose of labour exploitation with the exception of cases authorized by law, as well as a prison sentence of 3 to 6 years and a financial penalty of 400 to 600 fine days for anyone who uses or allows children under 18 years of age to carry out work in unhealthy environments which pose a threat to their life, health or physical, psychological or moral integrity. These types of work include work in mines, underground, rubbish dumps, evening entertainment centres, involving the use of dangerous machinery, equipment and tools, the manual transport of heavy loads, toxic objects and substances, psychotropic substances, as well as night work in general or in any other task defined as hazardous work for children, in accordance with the relevant provisions. ***The Committee requests the Government to provide information on the outcome of the consultations held with regard to the updating of the list of hazardous types of work, in particular hazardous work in agriculture, and to provide a copy of any relevant text or draft text. Furthermore, while welcoming the legal measures adopted with a view to ensuring that no child under 18 years of age is engaged in hazardous work and that any person who avails himself of such labour shall be liable to the above administrative and penal sanctions, the Committee hopes that the Government will provide information and statistics in its next report showing the impact, in practice, of these new provisions.***

Domestic work. In its previous comments, the Committee encouraged the Government to continue its efforts to ensure that young persons under 18 years of age, particularly young girls, who are engaged in domestic service do not perform hazardous types of work, and expressed the hope that the preparatory work on the draft amendment to Title VIII of the Labour Code would be completed in the near future and that measures would be taken for its adoption very soon.

The Committee notes with *satisfaction* the adoption of Act No. 666 of 4 September 2008 on domestic work and amending Chapter I of Title VIII of the Labour Code. This Act protects young persons working in domestic service by laying down the recruitment and working conditions, as well as the penalties applicable in the case of abuse, violence or humiliation of these young workers by the employer or his family. It also prescribes the obligation of the employer to notify the labour inspectorate of such recruitment and also provides for cash remuneration and a 6-hour day between 6 a.m. and 8 p.m. The employer is also under the obligation to promote and facilitate the education of his young domestic workers and register these workers under the social security scheme. Moreover, the wage paid must not be below the wage set by the National Minimum Wage Committee. The Act also provides for joint periodic inspections of the employer by the labour inspectorate and the Ministry of Family, Adolescence and Childhood. ***The Committee requests the Government to provide information on the application of the Act No. 666 on domestic work in practice, including any difficulties encountered and, in particular, statistics on the inspections carried out, violations reported, administrative sanctions imposed, any criminal charges laid, prosecutions and penal sanctions imposed.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Assistance for the removal of children from the worst forms of child labour. Commercial sexual exploitation. In its previous comments concerning the number of children removed from the sex trade and their rehabilitation and social integration, the Committee noted that, according to the 2007 evaluation reports on the ILO–IPEC regional project on the commercial sexual exploitation of children (the regional project), a greater number of children are being targeted in Nicaragua. Accordingly, 1,720 children should receive direct assistance, of which 580 are in Nicaragua, and 18,000 should receive indirect assistance. The Committee strongly encouraged the Government to continue its efforts to combat commercial sexual exploitation. It requested it to provide information on the implementation of the ILO–IPEC regional project on the commercial sexual exploitation of children and the National Plan to combat commercial sexual exploitation (2003–08), as well as on the number of children who are in practice removed from this worst form of child labour. The Committee also requested the Government to provide information on the economic alternatives envisaged and on the measures taken to ensure the rehabilitation and social integration of children removed from this worst form of child labour.

The Committee notes, among the information available to the ILO, that the general objectives of the National Plan to combat commercial sexual exploitation (2003–08) were: the gradual development of strategies and actions for the prevention and detection of commercial sexual exploitation of children and young persons, as well as for the protection and comprehensive care of victims; the modification of attitudes and values of the population in order to promote the elimination of commercial sexual exploitation of children and young persons; the improvement of access to the judicial system and the facilitation of the filing of complaints; the application of the relevant procedures; prevention; the punishment of those responsible; and the strengthening of the institutions responsible for implementing the plan so that they are in a position to take appropriate measures to achieve their objectives.

The Committee notes that, according to the Technical Progress Report (TPR) of 1 March 2009 on the ILO–IPEC regional project entitled “Contribution to the prevention and elimination of commercial sexual exploitation of children in Central America, Panama and the Dominican Republic”, a total of 320 children were removed or prevented from becoming engaged in the worst forms of child labour, such as trafficking and commercial sexual exploitation, through the provision of educational services and training opportunities between September 2008 and February 2009, including 51 children in Nicaragua. It also notes that, during the same period, a further 87 children were removed or prevented from becoming engaged in the same worst forms of child labour, through the provision of services unrelated to education, including 14 children in Nicaragua.

The Committee also notes with *interest* that the *Programa Amor* (Government programme which since October 2008 has had the functions of the National Council for the Comprehensive Protection of Childhood and Adolescence (CONAPINA) and which, as a result, is now responsible for monitoring the national policy and the National Plan to combat commercial sexual exploitation) aims to restore the rights of 25,000 street children and young persons, who are very vulnerable to commercial sexual exploitation, and that the Government has set the objectives of integrating all children into the education system and ensuring that they receive social benefits by 2011.

The Committee also notes that programmes such as the “Zero interest” programme and the “Zero hunger” programme, implemented in the context of the *Programa Amor*, also constitute Government efforts to help the most vulnerable families. The “Zero interest” programme is designed to help and benefit thousands of women who are unable to obtain credit from the private financial system to strengthen their small enterprises, while the “Zero hunger” programme is a proposal for the provision of ecologically friendly agricultural technologies for poor rural families which can be turned into capital, but also a proposal for assistance and support in organizing their production activities.

The Government also points out in its report that one of the actions aimed at protecting working children and young persons is the amendment of the technical inspection guide with regard to the inspection of work carried out by children and young persons. It also indicates that the Ministry of Labour has implemented programmes of special inspections targeting 101 night clubs, massage centres, restaurants, hotels and snooker halls in markets in the Departments of Managua and Río San Juan, and that fines have been imposed on eight enterprises for obstructing the work of labour inspectors. The Government also indicates that statistics on child labour and the worst forms of child labour are gathered and dealt with in a manner that enables the Ministry of Labour to apply the necessary corrective measures. It also notes that issues relating to child labour and its gradual elimination are included in the Decent Work Programme, although they

still come under the ILO–IPEC programme. *The Committee requests the Government to continue providing information on any other measures implemented under the ILO–IPEC regional project on the commercial sexual exploitation of children and the Programa Amor and on the results achieved. It also requests it to provide information on the number of children who have benefited from rehabilitation and social integration, following their removal from the worst forms of child labour.*

Child labour in agriculture. In its previous comments, the Committee noted that Nicaragua had signed a memorandum of understanding with the ILO–IPEC for the elimination of the worst forms of child labour, particularly in the agricultural sector. It requested the Government to take effective and time-bound measures to prevent children from being engaged in hazardous types of work in the agricultural sector and to provide information on the number of children who are in practice removed from this worst form of child labour. It also requested the Government to provide information on the economic alternatives envisaged, as well as on the measures taken to ensure the rehabilitation and social integration of children removed from this worst form of child labour. *Noting that no information has been provided by the Government concerning other measures aimed at eliminating, in practice, child labour in agriculture, or on the number of children who are in practice removed from this worst form of child labour, the Committee requests the Government to provide this information in its next report.*

Article 8. International cooperation. Commercial sexual exploitation. In its previous comments, the Committee noted that the ILO–IPEC regional project on the commercial sexual exploitation of children envisages the strengthening of horizontal collaboration between participating countries. The Committee was of the view that international cooperation between law enforcement agencies is indispensable to prevent and eliminate commercial sexual exploitation, through the collection and exchange of information and assistance with a view to detecting, prosecuting and convicting the individuals involved and repatriating the victims. The Committee requested the Government to provide information on the measures taken in the context of the implementation of the ILO–IPEC regional project on the commercial sexual exploitation of children with a view to cooperating with the countries participating in the project and thereby strengthening security measures so as to bring an end to this worst form of child labour. *Noting that the Government has not replied to its request for information, the Committee once again requests it to provide information on any measures implemented in the context of the ILO–IPEC regional project on the commercial sexual exploitation of children relating to cooperation with other beneficiary countries with a view to strengthening security measures so as to bring an end to this worst form of child labour and on the results achieved.*

Protocol respecting the repatriation of child victims of trafficking. The Committee previously noted the Protocol respecting repatriation procedures for children and young persons who are victims of trafficking (Protocol) adopted by the Ministry of the National Coalition to Combat the Trafficking of Persons. It also noted that, under section 2 of the Protocol, its objective is to establish interinstitutional coordination mechanisms to offer special protection to child victims of trafficking and to facilitate their repatriation. The Committee also noted that the Protocol applies to both Nicaraguan child victims of trafficking abroad and to foreign victims of trafficking to Nicaragua. The Committee requested it to provide information on the implementation of the Protocol by indicating, in particular, the number of Nicaraguan and foreign child victims of this worst form of child labour who have been repatriated. *Noting that the Government has not provided the information requested, the Committee once again requests it to provide information on any measures implemented under the above Protocol with a view to providing special protection for child victims of trafficking and facilitating their repatriation, and statistics on the number of children repatriated.*

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

Nigeria

Minimum Age (Underground Work) Convention, 1965 (No. 123) (ratification: 1974)

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

The Committee recalled that for a number of years, it had been requesting the Government to indicate measures taken to give effect to the Convention (*Article 4(5)*), under which the employer shall make available to the workers' representatives, at their request, lists of the persons who are employed in work underground and who are less than two years older than the minimum age specified by the Government which is 16 years. The lists should contain the dates of birth of persons aged between 16 and 18 years and the dates at which they were employed or worked underground in the undertaking for the first time.

The Committee noted that under section 62 of the Labour Act, every employer is required to keep a register of all young persons in his employment with particulars of their ages, the date of employment and the conditions and nature of their employment and to produce the register for inspection when required by an authorized labour officer. The Committee further noted that under section 91(1) of the same Act, "young person" means a person under the age of 18 years and "industrial undertaking" includes mines, quarries and other works for the extraction of minerals from the earth. *The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62 of the Labour Act is amended so that such registers may also be made available to workers' representatives, at their request. The Committee once again asks the Government to provide information on progress made in this regard in its next report.*

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

Oman

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous work. Determination of types of hazardous work. The Committee previously noted the Government's information that Omani law provides that juveniles under the age of 18 may not be employed in mines and quarries or in hazardous work. It also noted that an Occupational Safety and Health (OSH) Committee had been established between government ministries and private sector establishments, and was in charge, amongst others, of determining activities that were hazardous or physically demanding. The Committee requested the Government to provide information on a provisional list of 43 hazardous occupations, types of work and industries prohibited for juveniles under the age of 18 years, which had been determined by the OSH Committee. The Committee notes the information in the Government's report that it is currently preparing a new list of hazardous occupations, in consultation with the social partners, following the establishment of the Confederation of the Workers of the Sultanate of Oman. ***The Committee firmly hopes that this list, determining the types of hazardous work prohibited for children under 18 years of age, will be adopted as soon as possible. It requests the Government to provide a copy of this list, once adopted.***

Camel jockeys. In its previous comments, the Committee expressed concern for the health and safety of children under 18 years of age involved in camel racing and subject to exploitation. The Committee noted that while the Regulations on holding and organizing camel races in the Sultanate of Oman (Camel Race Regulations), issued by the Oman Equestrian and Camel Federation (OFRC) on 7 August 2005, state that no jockey under 18 years of age will be allowed to take part in camel races, section 2 of these Regulations states that this minimum age would be reached progressively starting from a minimum age of 14 years, over four years starting from the 2005–06 season. The Committee also noted that the OFRC had issued a decision which specifies the gradual increase in the age of camel jockeys to 18 years in 2010, in order to take part in camel races.

The Committee noted the Government's information that the OFRC fully observes the measures set down to protect the health and safety of camel jockeys under 18 years of age, by obliging them to wear protective headgear and suitable clothing. It also noted the Government's information that races only occur in Oman when the OFRC – working under the direct supervision of the Ministry of Sport Activities – agrees that all conditions are respected, including the age and health of camel jockeys, and conditions regarding the safety measures are fulfilled. According to the Government, the OFRC continued to undertake unannounced inspection visits to verify that the age of camel jockeys is not less than 15 years (the minimum age for camel jockeys at the time). Meanwhile, in 2007, all camel jockeys participating in camel races were required to register their names with the OFRC and hand over their passports, personal photographs and birth certificates to the OFRC. The Committee requested the Government to continue providing information on the progress in raising the minimum age for taking part in camel races to 18 years. It also requested the Government to pursue its efforts to ensure that the measures aimed at protecting the health and safety of camel jockeys under 18 years of age are strictly enforced, pending the progressive increase in the minimum age to 18 for camel racing.

The Committee notes the Government's statement that the targeted minimum age of 18 years will be reached in the forthcoming 2009–10 season. The Committee also notes the information in the Government's report that the OFRC takes measures to ensure the application of the current rules and that the necessary precautions are taken in relation to the organization of races. The Committee further notes that organizers and supervisors verify the age of camel jockeys through their identity card issued by the State, based on a birth certificate and that a person shall be excluded from the race if he does not meet the conditions of racing, particularly the age requirements. ***The Committee expresses the firm hope that the Regulations on holding and organizing camel races in the Sultanate of Oman (Camel Race Regulations), issued by the Oman Equestrian and Camel Federation on 7 August 2005, prohibiting the use of children under the age of 18 as camel jockeys will be strictly and effectively enforced in the 2009–10 camel racing season. The Committee requests the Government to take measures to ensure the effective implementation of these regulations, including through unannounced inspections carried out by the labour inspectorate. It also requests the Government to provide information on the measures taken in this respect, and the results obtained, with regard to the elimination of the use of camel jockeys under the age of 18.***

Article 7, paragraph 1. Penalties. The Committee previously noted that Decision No. 30-2002 of 8 August 2005 of the OFRC states that any person who violates the Camel Race Regulations shall be convicted by the courts. The Committee noted that the Government supplied a document showing the list of names of camel jockeys prohibited from participating in camel races by the OFRC, including two cases concerning a violation of the rules on the legal age to participate in camel races. The Committee observed that the Government's report contained no information on the penalties imposed on persons who use under age children as camel jockeys in camel races in violation of Decision No. 30-2002 of 8 August 2005, and requested the Government to provide information on the penalties imposed.

The Committee notes the Government's statement that the relevant bodies shall promulgate regulations and a statute on penalties with regard to the use of under age racing, after the application of the progressive age of 18 years during the

2009–10 season, and that it will communicate any developments in this regard. The Committee notes an absence of information in the Government's report on the application of penalties imposed, pursuant to Decision No. 30-2002 of 8 August 2005, on persons who use under age camel jockeys. The Committee reminds the Government that, according to *Article 7(1)*, of the Convention, the Government is required to take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including by laying down and imposing penal sanctions or, if appropriate, other sanctions. ***As the minimum age of 18 for camel jockeys comes into effect in the forthcoming 2009–10 season, the Committee urges the Government to take immediate measures to ensure that sufficiently effective and dissuasive penalties exist for the use of persons under 18 as camel jockeys, and that these penalties are applied in practice. In this regard, the Committee requests the Government to provide information on the practical application of penalties for the use of camel jockeys under the age of 18, including statistics on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

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

Pakistan

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

The Committee noted the Government's report and the communications of the All Pakistan Federation of Trade Unions (APFTU) of 30 March 2007 and of the Pakistan Workers' Federation (PWF) of 2 May 2007.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee had previously noted the allegations of the International Trade Union Confederation (ITUC), according to which trafficking in persons is a serious problem in Pakistan, including the trafficking of children. Women and children reportedly arrive from Bangladesh, Myanmar, Afghanistan, Sri Lanka and India, many to be bought and sold in shops and brothels. The Committee had also noted that the ITUC's allegations that several hundred boys from Pakistan were trafficked to the Gulf States to work as camel jockeys. Moreover, in some rural areas, children are sold into debt bondage in exchange for money or land. The Committee had noted that the ILO–IPEC launched in 2000 the subregional project to combat child trafficking (TICSA) in Bangladesh, Nepal and Sri Lanka and that the project was subsequently extended to Pakistan, Indonesia and Thailand. According to the project report of September 2002 (pages 14–15), approximately 100,000 women and children were internally trafficked in Pakistan, and approximately 200,000 women and children were trafficked from Bangladesh to Pakistan between 1990 and 2000. The Committee had also noted that the Committee on the Rights of the Child (CRC/C/15/Add.217, 27 October 2003, paragraph 76), while noting the serious efforts undertaken by the State party to prevent child trafficking, had expressed its deep concern at the very high incidence of trafficking in children for the purposes of sexual exploitation, bonded labour and camel jockeying.

The Committee had observed that sections 2(f) and 3 of the Prevention and Control of Human Trafficking Ordinance of 2002 provide that human trafficking for the purpose of exploitative entertainment (i.e. activities in connection with sex), slavery or forced labour is prohibited. Section 370 of the Penal Code also prohibits the sale and trafficking of persons for the purpose of slavery.

The Committee notes that, according to the Technical Project Report of March 2006 for the second phase of the TICSA project (TICSA-II), a regional legal review was commissioned in early 2005 and has been completed to contribute to the improvement of national capacity to make legal reforms in the light of the international instruments to combat trafficking and towards effective enforcement of relevant laws and regulations to combat child trafficking for sexual and labour exploitation. By reviewing the Prevention and Control of Human Trafficking Ordinance of 2002, it was observed that the definition of "human trafficking" fails to recognize the transfer and transportation of persons as important parts of the trafficking process. Moreover, the definition focuses only on transportation in and out of Pakistan and ignores trafficking within Pakistan, which is prevalent in the country. The Committee noted that in order to discuss the findings of the review, a tripartite regional workshop was organized and that recommendations were made to amend the legislation and strengthen implementing and monitoring mechanisms.

The Committee consequently observes that, although national legislation exists to prohibit the trafficking of children for labour or sexual exploitation, it is not comprehensive and trafficking remains an issue of concern in practice. ***The Committee once again requests the Government to take immediate measures to ensure that the transfer and transportation of children under 18 years of age for labour and sexual exploitation, as well as the internal trafficking of children under 18 for the same purposes, is effectively prohibited in national legislation. The Committee also once again invites the Government to redouble its efforts to improve the situation and to take the necessary measures to eliminate the internal and cross-border trafficking of children under 18 for labour and sexual exploitation. It once again asks the Government to provide information on progress made in this regard.***

Debt bondage. In its previous comments, the Committee had noted the ITUC's indications that Pakistan has several million bonded labourers, including a large number of children. Debt slavery and bonded labour are mostly reported in agriculture, construction (in particular in rural areas), brick kilns and carpet-making sectors. The Committee had also noted that the Federal Cabinet approved a National Policy and Plan of Action for the Abolition of Bonded Labour and Rehabilitation of Freed Bonded Labourers (National Policy for the Abolition of Bonded Labour) in September 2001, but that its implementation has been slow. The Committee had noted that, by virtue of section 4(1) of the Bonded Labour System (Abolition) Act (BLSA), 1992, "the bonded labour system shall stand abolished and every bonded labourer shall stand free and discharged from any obligation to render any bonded labour". Section 4(2) of the BLSA states that no one shall make an advance under or in pursuance of the bonded labour system or other forms of forced labour.

The Committee noted that, in its report submitted under Convention No. 29, the Government specifies recent initiatives against bonded labour it is taking or contemplating, apparently within the framework of its National Policy for the Abolition of Bonded Labour, including the establishment of a legal aid service and the incorporation of the issue of child bonded labour into

the syllabi of the judicial, police and civil service academies. The Committee also noted that an ILO project to promote the elimination of bonded labour in Pakistan (PEBLIP) is being implemented for the period of March 2007 to April 2010 as an expansion and continuation of ongoing technical cooperation undertaken by the ILO in Pakistan since 2001. One of the key strategies of this project is to focus on policy and law revision to create a national conducive environment and to develop institutional capacity for its effective implementation, while the key implementation mechanism will be the National Committee on Bonded Labour, a tripartite-plus standing committee established under the National Policy on Abolition of Bonded Labour. The project aims to protect bonded labourers, prevent women and men who are at risk of falling into bondage and assist the families that have been released from bondage.

The Committee once again reminds the Government that, by virtue of *Article 3(a)* of the Convention, child debt bondage is prohibited, and that, under *Article 1* of the Convention, it is obliged to take *immediate* measures to prohibit and eliminate this worst form of child labour. ***While recognizing the initiatives taken by the Government pursuant to the National Policy on Abolition of Bonded Labour, the Committee once again requests the Government to continue to take measures to ensure its effective implementation. The Committee also requests the Government to indicate the impact of the ILO PEBLIP project on the situation of child bonded labourers in Pakistan, notably with regard to the removal of children under 18 from bonded labour and their rehabilitation.***

Article 3(d) and Article 4, paragraph 1. Hazardous work. The Committee had previously noted that article 11(3) of the Constitution states that “no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment”. The Committee had also noted that sections 2 and 3 of the Employment of Children Act of 1991 provide that children under 14 years of age shall not be employed in the occupations listed in Parts I and II of the Schedule of the Employment of Children Act which provide for a detailed list of the types of work that children under 14 years of age shall not perform. Section 12 of the Employment of Children Rules of 1995 also provides for types of work that shall not be performed by children under 14. The Committee had also observed that night work between 7 p.m. and 8 a.m. is prohibited for children under 14 years of age under section 7 of the Employment of Children Act of 1991. The Committee had further noted the Government’s indication that the Ministry of Labour, Manpower and Overseas Pakistanis was working on the consolidation and rationalization of labour laws which will include amending the definition of a child so as to bring its legislation into line with the Convention. The Government had added that the process requires the approval of Parliament, which takes time.

The Committee noted that, according to the information provided by the Government, the Employment of Children Act, as amended by Act No. 1280(1) of 2005, includes in the list of types of hazardous work prohibited to children under 14 years of age “work in underground mines and quarries including blasting and assisting in blasting”. The Committee once again recalls that, under *Article 3(d)* of the Convention, children under 18 shall not perform work which, by its nature of the circumstances in which it is carried out, is likely to harm their health, safety or morals. ***The Committee accordingly once again requests the Government to take immediate measures as a matter of urgency to ensure that the legislation is amended to raise the minimum age for admission to hazardous work to 18. It also once again asks the Government to take the necessary measures to ensure that the types of hazardous work, in particular those provided in Parts I and II of the Schedule of the Employment of Children Act, are prohibited to children under 18 years of age.***

Article 5. Monitoring mechanisms. Local vigilance committees. The Committee had noted, in its previous comments, the ITUC’s indication that the BLSA prohibits bonded labour but remains ineffective in practice. It had also noted that local vigilance committees were constituted to monitor the implementation of the BLSA but that there were reports of serious corruption within these committees. The Committee had noted that the vigilance committees are composed of the deputy commissioner of the district, representatives of the police, the judiciary, the legal profession, the municipal authorities; and under the recommendation of the ILO Conference Committee on the Application of Standards, membership was extended to include workers’ and employers’ representatives. The Committee had also noted the Government’s statement that efforts were being made to implement the BLSA with an Anti-Corruption Strategy that was formulated in 2003. The Committee had noted that, in the framework of the 2007 ILO PEBLIP project, the vigilance committees will also ensure better on-ground implementation of project activities. Furthermore, according to the Government’s report submitted under Convention No. 29, one of the recent initiatives taken by the Government within the framework of the National Policy for the Abolition of Bonded Labour is to organize training workshops for key district government officials and other stakeholders to enhance their capacity and enable them to draw up district-level plans to identify bonded labourers and activate the district vigilance committees. ***The Committee once again requests the Government to provide information on the concrete measures taken by the local vigilance committees to ensure the effective implementation of the BLSA and of the ILO PEBLIP project to promote the elimination of bonded labour, and the results achieved. It also requests the Government to indicate whether the Anti-Corruption Strategy has contributed to improving the implementation of the BLSA.***

Labour inspection. The Committee had noted, in its previous comments concerning the application of the Labour Inspection Convention, 1947 (No. 81), the measures taken by the Government in cooperation with ILO-IPEC to reinforce labour inspection so as to efficiently combat child labour. The Committee had noted, however, the ITUC’s indications that the number of inspectors is insufficient, that they lack training and are reported to be open to corruption. The ITUC had added that inspections do not take place in undertakings employing less than ten employees, where most child labour occurs. The Committee notes the indication of the PWF, according to which the Government of Pakistan should take more effective measures to monitor the use of child labour in the informal sector with the cooperation of the “Independent Labour Inspection Machinery”. Furthermore, in communications sent to the Office with the Government’s report under Convention No. 81, the PWF indicated that the governments of the two largest provinces of the country, namely Sindh and Punjab, have no system for supervising the application of the legislation. According to the PWF, these governments apply a policy of not inspecting a business for one year following its establishment. The PWF, in a communication of May 2007, further indicated that in the two abovementioned provinces, inspectors may not enter a workplace without prior permission from the employer or prior notice on the employer. The Committee also noted that, in its communication of 21 September 2008, the PWF observed that the Employment of Children Act of 1991 needs to be implemented more effectively. In this regard, the PWF indicated that it held a bilateral dialogue with the Federal Minister and the provincial governments to enforce the provisions of this Act through an effective labour inspection mechanism.

The Committee had noted that, according to the Technical Progress Report of March 2007 for the ILO-IPEC project to combat child labour in the carpet industry, the ILO’s external monitoring system is in place in each district of Pakistan and independent verification of the child labour situation is being done continuously through the ILO’s external monitoring system. In the case of the carpet weaving industry, the Committee noted that 4,865 monitoring visits have been made to 3,147 workplaces in the project areas, while 2,569 visits have been made to non-formal education centres to verify that children who were prevented

or withdrawn from carpet weaving were actually attending schools. The Committee also noted that, according to the information available to the Office under Convention No. 81, a tripartite workshop organized jointly with the ILO-IPEC on "Revitalizing Labour Inspections System in Punjab" was held on 22 and 23 August 2007 in Lahore. In the course of the workshop, various issues were addressed including the Government's labour inspection policy. The Committee nevertheless noted the information provided by the Government that 49,547 inspections were carried out in 2005, 9,286 in 2006 and 322 in 2007. It observed with concern that, according to those statistics, the number of inspections had decreased dramatically from 2005 to 2007. ***The Committee once again requests the Government to continue taking measures to train labour inspectors and provide them with adequate human and financial resources in order to enable them to monitor the effective implementation of the national provisions giving effect to the Convention, in all sectors where the worst forms of child labour exist and, more specifically, to strengthen the monitoring systems in the Punjab and Sindh provinces. It also requests the Government to provide more information on the number of workplaces investigated per year, and on the findings of labour inspectors with regard to the extent and nature of violations detected concerning children involved in the worst forms of child labour.***

Article 6. Programmes of action. TICSА-II project. The Committee had previously noted that the subregional project to combat child trafficking (TICSА) aimed at, amongst other things, determining the demand side of trafficking of children and women in Pakistan for labour and sexual exploitation. The Committee noted that, according to the Technical Project Report of March 2006 for the second phase of the TICSА project (TICSА-II), the regional study on the demand side of trafficking in Asia has been completed. The Committee also noted that an Information Kit on Human Trafficking was developed in English and Urdu to provide training to district officials, representatives of workers' and employers' organizations, non-governmental organizations and other relevant groups in the districts of Sindh and Punjab. ***The Committee once again requests the Government to provide information on the measures taken as a result of the regional study on the demand side of trafficking in Asia and information on the use and efficacy of the Information Kit on Human Trafficking.***

Article 7, paragraph 1. Penalties. The Committee had previously noted the ITUC's indication that persons found guilty of violating child labour legislation are rarely prosecuted and that when they are prosecuted, the fines imposed are usually insignificant. The Committee noted the APFTU's indication, in its recent communication, that, although child labour is prohibited by national legislation, the reality of the situation shows that child labour and its worst forms are still widespread.

The Committee noted that, according to the information provided by the Government, the number of prosecutions decreased from 377 in 2005, to 55 in 2006, to none in 2007. The Committee observed that the statistics provided by the Government offer no particular indication as to whether the prosecutions that were reported relate to cases which involved the engagement of children under 18 years of age in the worst forms of child labour. The Committee once again recalls that, by virtue of *Article 7(1)*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the application of dissuasive sanctions. ***The Committee once again emphasizes the importance of taking the necessary measures to ensure that whoever violates the legal provisions giving effect to the Convention is prosecuted and to press for the imposition of sufficiently effective and dissuasive penal sanctions. It also once again requests the Government to provide information on the practical application of the laws, including the number of infringements reported of the abovementioned provisions, investigations, prosecutions, convictions and penal sanctions applied.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Bonded labour. The Committee had previously noted that, according to the Rapid Assessment Studies on Bonded Labour in Different Sectors in Pakistan of 2004, workers in the brick kiln sector were not aware of the general legislation that applies to bondage. It noted that, in the framework of the 2007 ILO PEBLIP project, one of the followed strategies is to field-test tripartite models for the prevention of bonded labour, in particular through pilot initiatives in the brick kiln sector in Punjab. The project also aims to launch a national-level programme on awareness raising. ***The Committee once again requests the Government to supply information on the impact of the ILO PEBLIP project on preventing children under 18 years of age from being engaged in bonded labour, especially in the brick kiln sector.***

Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Child victims of trafficking. The Committee had noted that, according to the Technical Progress Report of March 2006 for the ILO-IPEC TICSА-II project, the Child Protection and Rehabilitation Bureau (CPRB) that has been established in Lahore to rehabilitate street children has also been assigned the task of housing returned camel jockeys from the United Arab Emirates and of facilitating their reintegration within their families and communities. The Committee also noted that the Regional Child Friendly Guidelines for the Rehabilitation of the Victims of Trafficking have been developed in the framework of the TICSА-II project. The objective of this activity is to contribute to the improvement of the overall services at the rehabilitation shelters during the process of recovery and rehabilitation of the child victims of trafficking. ***The Committee once again requests the Government to provide information on the number of child victims of trafficking for labour or sexual exploitation who were effectively withdrawn and rehabilitated by the CPRB or other rehabilitation shelters.***

Child bonded labourers. The Committee had previously noted that the European Union and the ILO were assisting the Government in the setting up of 18 community education and action centres for combating exploitative child labour through prevention, withdrawal and rehabilitation of former child bonded labourers. The Committee had also noted that the Government had established a "Fund for the education of working children and rehabilitation of freed bonded labourers". The Committee had noted that the 2007 ILO PEBLIP project to promote the elimination of bonded labour in Pakistan aims to provide social and economic assistance to the families that have been released from bondage to help them re-establish their lives. ***The Committee once again requests the Government to provide information on the impact of the abovementioned measures on removing children from bonded labour and on providing for their rehabilitation and social integration.***

Children working in the carpet industry. The Committee had previously noted the ITUC's indication that 1.2 million children were reported to work in the carpet industry, which is a hazardous industry. It had noted that the Pakistan Carpet Manufacturers' and Exporters' Association (PCMEA) and ILO-IPEC launched in 1998 a project to combat child labour in the carpet industry which had, so far, contributed to the withdrawal of 13,000 carpet-weaving children (83 per cent of whom were girls) from hazardous working conditions. The Committee had noted that, according to the March 2007 Technical Progress Report for the second phase of the ILO-IPEC project to combat child labour in the carpet industry, a baseline survey on child labour in the carpet weaving industry in the province of Sindh has been completed. According to this survey, there are over 25,752 carpet weaving households in the Sindh province with an estimated 33,735 carpet weaving children, out of which 24,023 are estimated to be below 14 years of age and 9,712 are between 14 and 18 years of age. The Committee had noted with *interest* that 11,933 children (8,776 girls and 3,157 boys) have been withdrawn from carpet weaving and enrolled in non-formal education

centres. **The Committee once again encourages the Government to pursue its efforts to rehabilitate children under 18 years of age who undertake hazardous work in the carpet weaving industry and to provide information on the results achieved.**

Children working in the surgical instruments industry. The Committee had previously noted the ITUC's indication that children constitute about 15 per cent of the workforce in the surgical instruments industry, which is one of the most hazardous industries. The Committee had also noted that the ILO-IPEC, with the assistance of the Italian social partners and the Surgical Instruments Manufacturers' Association of Pakistan, launched in 2000, a project to combat hazardous and exploitative child labour in surgical instruments manufacturing through prevention, withdrawal and rehabilitation. Under its direct action programmes, 1,496 children employed in surgical instruments production workshops had received non-formal education and pre-vocational training. The Committee had noted that this project had been extended up to 2006 to cover a larger number of children. It notes that, according to the progress report for the second phase of the ILO-IPEC project of January 2005 to May 2006, 2,033 children working in the surgical instruments industry received non-formal education through their placement in non-formal education centres or non-formal education cells with mobile teaching systems. The Committee had noted with *interest* that, of these children, 633 were mainstreamed from the non-formal education centres to neighbouring schools, thereby withdrawn completely from work, while 137 children have left the surgical trade due to other project interventions. **The Committee encourages the Government to pursue its efforts to withdraw and rehabilitate once again children under 18 years of age performing hazardous types of work in the surgical instruments industry and to provide information on the results achieved.**

Clause (d). Children at special risk. Child bonded labourers in mines. The Committee had previously noted that, according to the Rapid Assessment Studies on Bonded Labour in Different Sectors in Pakistan (Chapter 4 on the mining sector, pages 1, 24 and 25), some miners ask their children of 10 years of age to work with them in mines to lighten the burden of *peshgi* (i.e. any advance whether in cash or in kind made to the labourer). Thus, in Punjab and in the North-West Frontier Province (NWFP), children are usually assigned the job of taking donkeys underground and bringing them out laden with coal. The rapid assessment also indicates that children working in mines are sexually abused by miners. **The Committee once again asks the Government to take the necessary effective and time-bound measures to eliminate child debt bondage in mines, as a matter of urgency.**

Children working in brick kilns. The Committee had previously noted that nearly half of children aged 10–14 working in brick kilns work more than ten hours a day without any safeguards and that working in the kilns is a particularly hazardous occupation for children. The Committee had noted that, according to the Technical Progress Report of March 2007 for the ILO-IPEC project to combat child labour in the carpet industry, 3,315 children have been withdrawn from trades, including agriculture, scavenging and the brick kilns industry. **The Committee once again requests the Government to pursue its efforts to protect children under 18 engaged in the brick kilns sector from hazardous work and to provide information on progress made in this regard.**

Article 8. International cooperation and assistance. Regional cooperation. The Committee had previously noted that Pakistan participates in the South Asian Association for Regional Cooperation (SAARC). The Committee had noted that the Government signed the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution in 2002. It had noted that according to the ILO-IPEC TICSAs report of September 2002, the signatories had committed themselves to develop a regional plan of action and to establish a regional task force against trafficking. The Committee had also noted that, according to the ILO-IPEC Technical Progress Report of September 2004, Pakistan signed Memoranda of Understanding with Thailand and Afghanistan to promote bilateral cooperation and address various issues of mutual interest including human trafficking. The Committee had noted that, according to the March 2006 Technical Progress Report for the ILO-IPEC TICSAs-II project, national governments in the Asia-Pacific region increasingly recognize the interrelationship between unregulated labour migration and child trafficking and this new realization is leading towards an approach in dealing with the human trafficking issues within the migration framework. According to the report, newly signed bilateral agreements could contribute positively to efforts to combat child trafficking. **The Committee once again asks the Government to provide information on the progress achieved in the launching of a regional plan of action and regional task force against trafficking. It also asks the Government to provide information on the impact of the Memoranda of Understanding signed with Afghanistan and Thailand, as well as of any other bilateral agreement, on the elimination of child trafficking.**

Part V of the report form. Practical application of the Convention. In its previous comments, the Committee pointed out that accurate data on the extent of bonded labour is essential to develop effective programmes to eliminate debt bondage. **The Committee once again encourages the Government to undertake a nationwide survey in cooperation with employers' and workers' organizations and with human rights institutions and organizations to determine the extent of child debt bondage and its characteristics.**

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

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

Peru

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2002)

The Committee notes the communications of the International Trade Union Confederation (ITUC) dated 24 August 2006 and 26 August 2009.

Article 3 of the Convention. Worst forms of child labour. Clause (d). Hazardous types of work. Children who work in mines. In its observations, the ITUC indicates that workers and their families exploit artisanal mines, which are mines abandoned by industrial producers in the country. The children work from the age of 5 and help their mothers to pick up rocks containing gold deposits. When they are older, they work with their father and sometimes dive into flooded shafts to retrieve stones. In the case of gold, the children use mercury, which is toxic, to extract the gold from the rocks. They also transport gold outside the mine, carrying very heavy loads of stone and rocks on their backs. The mines are located in unhealthy places and the children are therefore exposed to serious injury and harm. The children breathe in the

contaminated air and are exposed to soil and water that is contaminated with metals and chemical products. The mining industry is concentrated in the districts of *Madre de Dios, Puno, Ayacucho, Arequipa and La Libertad*.

In its report, the Government indicates that Act No. 28992 of 27 March 2007, replacing the third final and transitional provision of Act No. 27651 on the formalization and promotion of small-scale and artisanal mining, prohibits the employment of persons under 18 years of age in mining of any description. The Committee also notes that, in accordance with Supreme Decree No. 007-2006-MINDES (Supreme Decree No. 007-2006), approving a detailed list of the types work and activity that are hazardous or harmful for the physical and moral health of young persons and are prohibited for such persons, namely any person between 12 and 18 years, work in mines is considered to be a hazardous type of work.

However, the Committee notes that, according to an ILO/IPEC study of 2007 on girls in mining, both boys and girls are in practice engaged in hazardous types of work in small artisanal mines, with girls being increasingly frequently involved in extraction, transport and transformation activities. It notes that, according to the information contained in a document relating to the National Plan for the Prevention and Elimination of Child Labour (2005–10), the number of children working in artisanal mines in Peru is estimated at around 50,000. The Committee further notes that, in its concluding observations on the third periodic report of Peru of March 2006 (CRC/C/PER/CO/3, paragraph 62), the Committee on the Rights of the Child expressed deep concern at the information that hundreds of thousands of children and adolescents are on the labour market, especially in the informal sector, where they are the victims of exploitation. The Committee on the Rights of the Child also expressed concern that legislative provisions protecting children from economic exploitation are often violated and that children are exposed to dangerous and/or degrading work, including in mines.

The Committee expresses **deep concern** with regard to the use of children in hazardous types of work in mines. It reminds the Government that under the terms of *Article 3(d) of the Convention*, hazardous types of work constitute one of the worst forms of child labour and that, under the terms of *Article 1* of the Convention, immediate and effective measures shall be taken to secure the prohibition and elimination of the worse forms of child labour as a matter of urgency. ***The Committee requests the Government to take the necessary measures as a matter of urgency to ensure that no young person under 18 years of age is engaged in hazardous types of work in mines, and particularly in artisanal mines. It further requests the Government to provide information on the effect given in practice to the national legislation governing hazardous types of work, including statistics on the number and nature of the violations reported, investigations undertaken, prosecutions, convictions and the penalties imposed.***

Child domestic workers. In its comments, the ITUC indicates that the practice exists in Peru of parents sending their children to work as domestic workers in the city with a view to helping the family. However, the children do not usually receive any benefits, except for food and accommodation from their employer. These children have to cook, clean, wash clothes, look after other children and go shopping. According to the ITUC, child domestic workers have long hours of work in the day. They work at least 12 hours a day and are on call 24 hours a day. Many work without any time off and without any leave. A very large number of these children are the victims of abuse and exploitation, such as verbal abuse and physical punishment. Sexual abuse also occurs, although to a lesser extent. In most cases, the children lose contact with their parents. The ITUC adds that at the national level the number of domestic workers is estimated at 300,000, of whom 110,000 are reported to be under 18 years of age. Although the national legislation recognizes the rights of domestic workers, such as eight hour working days, public holidays and 15 days holiday a year, it is not applied as very few workers are aware of their rights and very few employers worry about complying with the obligations imposed upon them by law. The ITUC concludes that the authorities responsible for supervising the application of the law need to implement it more rigorously.

The Committee notes that, according to the 2007 ILO–IPEC study on approaches to prevention and the vulnerability of children engaged in domestic work in families which live in rural and urban areas, domestic work by children is widespread in the country. It further notes that, in accordance with Supreme Decree No. 007-2006, domestic work is considered to be a hazardous type of work in view of the working conditions involved. ***The Committee urges the Government to take immediate and effective measures to protect these children from the worst forms of child labour, and especially hazardous types of work, and to provide information on this matter.***

Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these forms of child labour and ensuring their rehabilitation and social integration. Children who work in mines. The Committee notes the indication by the ITUC that there are at present no concrete policies for the eradication of child labour in mines. The Committee notes that, in accordance with the National Plan for the Prevention and Elimination of Child Labour (2005–10), work by children in mines is one of the worst forms of child labour and its objectives include the prevention and elimination of these forms of child labour. ***The Committee requests the Government to provide information on the impact of the time-bound measures adopted in the context of the implementation of the National Plan for the Prevention and Elimination of Child Labour with a view to preventing children from being employed in mines and providing the necessary and appropriate direct assistance for the removal of children from this worst form of child labour. In particular, it requests the Government to indicate the number of children who are prevented in practice from being engaged in hazardous***

types of work in mines and who are removed from these types of work. Finally, the Committee asks the Government to provide information on the measures adopted to ensure the rehabilitation of these children.

Clause (d). Children at special risk. Child domestic workers. In its comments, the ITUC indicates that there are no programmes intended to help children engaged in domestic work. The ITUC adds that very few or no shelters have the means to provide assistance to child domestic workers, such as education and training services, advice or financial assistance. The Committee notes that the elimination of work by children as domestic workers, as a hazardous form of work, is included in the objectives of the National Plan for the Prevention and Elimination of Child Labour (2005–10). The Committee observes that children, and particularly young girls, when engaged in domestic work are often the victims of exploitation, which can take on very diverse forms, and that it is difficult to supervise their conditions of work due to the clandestine nature of such activities. ***The Committee requests the Government to take immediate and effective time-bound measures in the context of the National Plan for the Prevention and Elimination of Child Labour (2005–10) with a view to protecting children engaged in domestic work from the worst forms of child labour, removing them and providing the necessary and appropriate direct assistance for their rehabilitation and social integration, particularly through the establishment of shelters provided with the necessary resources.***

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

Philippines

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 2, paragraph 1, of the Convention. Scope of application. The Committee had previously noted the Government's information that the Department of Labor and Employment is implementing a Working Youth Center programme which caters to employed, self-employed and under-employed persons between 15 and 30 years of age. It had further noted that, according to the statistical information contained in the Labor Force Survey for 2005 provided by the Government, there were 155,000 self-employed children aged 5–17 years found to be working. The Committee had requested the Government to provide information on the manner in which self-employed children are covered by the protection provided for in the Convention.

The Committee notes the information provided by the Government in its report, that several ordinances are in place at the local level which prohibit the employment of children both within and outside an employment relationship in certain sectors, such as: begging or any other services for pay in the streets; hiring or employing children in any business or entertainment establishments; work as waiter/waitresses/entertainers; and manufacturing of pyrotechnics or fire crackers. It also notes that by virtue of section 4 of the Department Order No. 4 of 1999, persons aged 15–18 years may be allowed to engage in domestic or household service. The Committee observes, however, that there appear to be no provisions which provide for the application of the minimum age provision to children working in the agricultural sector. In this context, the Committee notes that according to the Government's report of 20 March 2009 to the Committee on the Rights of the Child (CRC/C/PHL/3-4, paragraph 255), the 2001 survey on working children reported that there were 4 million children engaged in economic activity, out of which 2.3 million children were found to be working in the agricultural sector. ***Observing that a very large number of children work in the agricultural sector, the Committee urges the Government to take the necessary measures to ensure that children under the minimum age specified by the Government (15 years) working in the agricultural sector enjoy the protection afforded by the Convention. In this regard, it requests the Government to envisage taking measures to adapt and strengthen the labour inspection services so that they can secure the protection set out in the Convention for children working in the informal sector, such as agriculture.***

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee had previously noted that schooling is compulsory for children aged 6–12 years. It had also noted the Government's indication that no measures had been taken to raise the age of completion of compulsory schooling to 15. The Committee had therefore requested the Government to strengthen its measures in order to increase school attendance and reduce drop-out rates, so as to prevent the engagement of children in child labour. The Committee notes the Government's information on the various measures undertaken to keep children in school, which include: (a) an alternative learning system for the disadvantaged children and out-of-school children; (b) Project EASE which provides self-learning modules; (c) the Modified In-school Off-School Project which provide self-learning modules for elementary students; (d) an Education Voucher System which provides vouchers to poor or deserving elementary students to enrol in private schools; and (e) the Special Programme for Employment of Students to facilitate drop-outs and other employed students to pursue their education. The Committee further notes the statistical data provided by the Government on the school enrolment and drop-out rates estimated by the Department of Education. According to this data, the net enrolment ratio at the elementary and secondary levels for the year 2006–07 was 83.22 per cent and 58.59 per cent, respectively. With regard to school drop-out rates, in 2006–07 the school drop-out rates at the elementary level was 6.37 per cent, and at the secondary level it was 8.55 per cent. The Committee observes that the school drop-out rates fell by 0.96 per cent at the elementary level and by 3.96 per cent at the secondary level. However, the Committee notes the Government's indication in its report of 20 March 2009 to the Committee on the Rights of the Child (CRC/C/PHL/3-4, paragraph 211) that there is a serious concern about the increasing number of children who are not able to go to school which is currently estimated at 4.2 million. ***Considering***

that free and compulsory education is one of the effective means of combating child labour, the Committee requests the Government to take the necessary measures to raise the age of completion of schooling to 15 years. It also requests the Government to continue taking measures to improve the functioning of the education system, in particular by increasing school enrolment and attendance rates among children under 15 years of age at the primary as well as the secondary level.

Part V of the report form. Application of the Convention in practice. The Committee notes that according to the information provided by the Government in its report under Convention No. 182, the Sagip Batang Manggagawa, an inter-agency mechanism to monitor and rescue children from child labour and its worst forms has been operational in 16 regions around the country. From 1998 to 2008, a total of 806 rescue operations were conducted with a total of 2,711 child labourers rescued. It also notes that the Philippines has stepped into a second phase of the **Philippine Time Bound Programme (PTBP)** for the years 2009–13, which aims to work towards 75 per cent reduction in child labour, with a main focus on agriculture, mining, fishing and domestic labour. The Committee notes, however, that according to the 2001 survey on children, out of 4 million economically active children aged 5–17 years, 246,000 were children between the ages of 5–9 years, and 1.9 million in the age group of 10–14 years. **Expressing its deep concern at the situation and high number of children under the age of 15 years working in the Philippines, the Committee urges the Government to redouble its efforts to improve the situation. It requests the Government to provide information on progress made in this regard. It also requests the Government to provide information on the implementation of the PTBP and the results achieved, particularly in terms of the PTBP's contribution to the effective abolition of child labour.**

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

The Committee notes the Government's report. It also notes the communication of the International Trade Union Confederation (ITUC) dated 29 August 2008 and the Government's reply thereto.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. In its previous comments, the Committee had noted that the sale and trafficking of children under 18 years for labour and sexual exploitation is prohibited by the Philippine legislation under various provisions (sections 7 and 18 of Act No. 7610; section 4 of the Anti-trafficking in Persons Act No. 9208 of 2003 (Republic Act 9208); section 59 of the Child and Youth Welfare Act). It had noted that the Government adopted a number of measures aimed at preventing and combating the trafficking of children, such as:

- (i) the adoption of Administrative Order No. 114 aimed at screening the purpose of the travel of a child abroad and ensuring that the child's best interest is protected before the issuance of a certificate to travel;
- (ii) amendments made to the Rules governing private recruitment and placement agencies to local employment by introducing provisions against child trafficking;
- (iii) Ordinances to implement the Anti-trafficking in Persons Act of 2003 in the local communities;
- (iv) Ordinance No. SP-1472 aimed at preventing and combating trafficking for the purpose of exploitation in domestic work; and
- (v) the rules issued by the Philippine Overseas Employment Agency for overseas Filipino households to protect them from trafficking and widespread employer abuse.

It had further noted that the Visayan Forum Foundation (VFF) had initiated the organization of a multi-sectoral network against trafficking in October 2003.

The Committee notes the ITUC's allegation that many children are easy targets for trafficking because of the common belief among parents that child domestic labour is the safest work for children. These children then find themselves in a situation of bonded labour where they are forced to endure exploitative work conditions because of the debts they have incurred. The Committee also notes the ITUC's contention that in the Visayan Forum-Philippine Ports Authority Port Halfway House, a safe house that provides protection and direct services to victims and potential victims of trafficking, 75 per cent of the 4,000 women and children provided with assistance were recruited for domestic work. The ITUC further alleges that, in April 2009, nine domestic workers who sought refuge in the Philippine embassies were repatriated from Jordan, the youngest of whom was 13 years old. The Committee also notes the ITUC's comment that given that 230 members of the Philippine National Police (PNP) have been trained for the investigation of child trafficking and that there are 17 dedicated anti-trafficking prosecutors in the Department of Justice (DOJ), the number of successful prosecutions of trafficking to date is disappointing.

The Committee notes the Government's statement that it continues to undertake initiatives to prevent and combat the trafficking of children, in particular for domestic work in coordination with the VFF through its *Kasambahay* (House-helpers) Programme. This programme provides for immediate responses to child domestic workers at risk, psychological services to child victims of trafficking in temporary shelters and eventual reintegration with their families or other foster institutions; and systematic coordination with school administrations and other partners to assist child domestic workers who combine work and study, as a strategy to prevent them from becoming involved in other worst forms of child labour. Furthermore, the Government and the VFF in collaboration with the Philippines Ports Authority opened a halfway house in different seaports across the country to assist and protect women and children stranded at the port and thus prevent the possibility of trafficking. These halfway houses offered 24-hour services including:

- (i) emergency temporary shelter;
- (ii) information about travel, employment and possible support networks;
- (iii) quick referral cases, including legal remedy;
- (iv) counselling;
- (v) regular outreach for stranded passengers; and
- (vi) training and advocacy to port community members such as the police, coastguards, shipping crews, porters and security guards.

The Government further states that the Anti-Trafficking Task Force at the ports enables the effective and coordinated responses for the investigation, rescue and removal, prosecution, healing and reintegration of victims of human trafficking. The Committee also notes the Government's statement that the Department of Labour and Employment (DOLE), DOJ, and the Department of Social Welfare and Development (DSWD) along with its regional offices, cooperate and coordinate well in providing assistance, guidance in prosecution, reintegration, locate and coordinate with the family and repatriation of child victims of trafficking.

The Government further states that in cooperation with Asia Acts against Child Trafficking, (Asia ACTS) since 2001, several campaigns and training activities against child trafficking were conducted in 30 provinces which led to the discovery of several child trafficking cases. The Committee notes the Government's statement that following the Asia ACTS campaign, the Government signed in 2006 a Presidential Proclamation declaring December 12 as the National Day against Child Trafficking. It further states that the DOLE signed a Memorandum of Understanding with the Public Employment Service Office (PESO) in order to strengthen their partnership in controlling illegal recruitment in the country. The Committee further notes the Government's indication that the DOLE is currently reviewing the proposed amendments of the revised rules and regulations governing private recruitment and placement agencies for local employment, which also includes a provision requiring the employment agencies not to engage in the recruitment and placement of workers that are in violation of the provisions of Republic Act 9208 and Republic Act 9231 (Child Labour Law).

The Committee notes, however, that in its Concluding Observations of 22 October 2009 (CRC/C/PHL/CO/3-4, paragraph 78), the Committee on the Rights of the Child while noting the various legislative, administrative and policy measures adopted by the State party for combating child trafficking, expressed concern at the high number of women and children who continued to be trafficked from, through and within the country for purposes of sexual exploitation and labour. It further expressed concern at the low number of prosecutions and convictions of traffickers and at the existing risk factors contributing to trafficking activities, such as persistent poverty, temporary overseas migration, growing sex tourism, impunity and weak law enforcement in the State party.

The Committee takes due note of the comprehensive measures taken by the Government to combat trafficking in children. It nevertheless observes that although the law prohibits the trafficking of children for labour and sexual exploitation, it still remains an issue of concern in practice. ***The Committee therefore requests the Government to redouble its efforts to prevent and combat the trafficking of children under 18 years for labour or sexual exploitation and to provide information on progress made in this regard. It also requests the Government to provide information on the impact of the pending projects on trafficking in eliminating the trafficking of children. The Committee finally requests the Government to take the necessary measures for the effective implementation of the Anti-Trafficking in Persons Act, and other laws which prohibit trafficking of children and which provide for penalties for the offences related to trafficking of children.***

Compulsory recruitment of children for use in armed conflict. The Committee had previously noted that the compulsory recruitment of children under 18 years to serve in the Armed Forces of the Philippines (civilian units or other armed groups), as well as to take part in fighting or to be used as guides, couriers or spies, is prohibited by law (sections 3(a) and 22(b) of Act No. 7610). The trafficking of children for such purposes is also prohibited (section 4(h) of Republic Act 9208). The Committee had nevertheless noted the ITUC's comments dated 30 August 2006, that numerous children under 18 years continued to take part in armed conflicts. The New People's Army (NPA) included 9,000 to 10,000 regular child soldiers (representing between 3 and 14 per cent of NPA members). The ITUC had further stated that children were reportedly being recruited into the Citizens Armed Force Geographical Units (a government-aligned paramilitary group) and in the armed opposition groups, in particular the Moro Islamic Liberation Front (MILF). Moreover, the Committee had observed that, according to the United Nations Secretary-General's Report on children and armed conflict (A/59/695-S/2005/72, 9 February 2005, paragraphs 45 and 46), even though the Inter-Agency Committee for Children Involved in Armed Conflict was mandated to initiate projects for the rescue, rehabilitation and reintegration of children involved in armed conflict, as of September 2004, no measures for the disarmament, demobilization and reintegration of child soldiers had been taken by the NPA or the MILF. The Committee had requested the Government to take prompt and effective action to ensure that the practice of forced or compulsory recruitment of children under 18 years of age in armed conflict, directly or indirectly, is eliminated both in the national armed forces and in rebel groups.

The Committee notes the Government's indication that it has implemented a National Peace Plan through the Medium-Term Philippine Development Plan (2004–10) in order to prevent and stop the recruitment of children in armed hostilities. This plan includes:

- (i) the peace process with MILF through cessation of hostilities, rehabilitation and development of conflict-affected areas;
- (ii) implementation of the interim peace agreements with two local communist movements, particularly in terms of rehabilitation of conflict affected communities, cessation of hostilities, and reintegration;
- (iii) continuous monitoring of and advocacy on the implementation of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Philippine Government and the Communist Party of the Philippines-New Peoples Army-National Democratic Front;
- (iv) complementary measures to reduce the level of violence by supporting the local and indigenous peacemaking and peacekeeping mechanisms and supporting the implementation and civilian monitoring of ceasefire agreements;
- (v) efforts to complete the implementation of the existing peace agreements with Islamic MILF and the Cordillera Peoples Liberation Army (CPLA);
- (vi) efforts to mainstream former rebels through reintegration and rehabilitation programmes by creating the National Committee on Social Integration under the Office of the Presidential Adviser on the Peace Process; and
- (vii) measures for the rehabilitation, development and healing of conflict-affected people.

The Committee notes that the Committee on the Rights of the Child, in its Concluding Observations (CRC/C/PHL/CO/3-4, of 22 October 2009, paragraph 69) welcomed the visit by the Special Representative of the Secretary-General for Children and Armed Conflict to the Philippines, and the signature in July 2009, of an action plan by the MILF with concrete and time-bound steps to prevent the recruitment of children and promote their reintegration into civilian life. Nevertheless, the Committee on the Rights of the Child, while noting the positive steps taken by the Government, expressed concern at the continued reports on the recruitment of children by armed groups to serve as combatants, spies, guards, cooks or medics. The Committee, notes, however, that the Committee on the Rights of the Child, in its Concluding Observations under the Optional Protocol to the CRC on the involvement of Children in Armed Conflict (CRC/C/OPAC/CO/1 of 15 July 2008, paragraph 20) expressed its concern that children continued to join armed groups mainly due to poverty, indoctrination, manipulation, neglect or absence of opportunities. It further expressed concern at the lack of effective implementation of the legislation prohibiting the recruitment and use of children in hostilities especially in conflict areas, and at the fact that there have been no prosecutions for the recruitment or use of children in armed conflict. ***The Committee therefore urges the Government to intensify its efforts to improve the situation and to take immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and the armed forces. In this regard, it requests the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and sufficiently effective and dissuasive penalties are imposed in practice. It further requests the Government to pursue its efforts to rehabilitate and integrate children affected by the armed conflict, and to indicate how many of these children under 18 years have been rehabilitated and reintegrated in their communities through such measures.***

Article 3, clause (d), and Article 4, paragraph 1. Hazardous work and child domestic work. The Committee had previously noted that children under 18 years of age shall not perform the types of hazardous work listed in Department Order No. 4 of 1999 (section 3). It had also noted that, by virtue of section 4 of the same Order, persons aged 15–18 years may be allowed to engage in domestic or household service, but shall not perform the types of hazardous work listed in section 3 of the Order. The Committee had noted the ITUC's allegation that hundreds of thousands of children, mainly girls, worked as domestic workers in the Philippines and were subject to slavery-like practices. Particularly, these children were deprived of opportunities for education and isolated from their families. The ITUC further underlined that, based on a study undertaken under the ILO–IPEC ***Time-bound Programme (TBP)***, 83 per cent of child domestic workers lived in their employers' home and only half of them were allowed to take one day off per month. They were on call 24 hours a day, more than half of them dropped out of school. The Committee also notes the ITUC's more recent allegations dated 29 August 2008 based on the estimates provided by the VFF, that there are at least one million children in domestic work in the Philippines. The ITUC also refers to some examples of physical, psychological and sexual abuses and injuries suffered by children under 18 years, especially girls employed as domestic workers and some examples of children working in harmful and hazardous conditions. The ITUC once again points out that, notwithstanding the positive initiatives taken by the Government at the level of local legislation regulating the employment of domestic workers, there are limitations in both law and practice which need to be addressed as a matter of urgency. Particularly, while the Labour Code requires employers to treat their domestic workers fairly and humanely, it lacks specific measures to tackle existing exploitative practices. In this regard, the ITUC underlines that the Domestic Workers' Bill (Batas Kasambahay), first filed in Congress in 1995, which sets out the rights of domestic workers and defines for them decent working standards, has remained pending for over ten years. According to the ITUC, the enactment of this Bill would be a vital step in addressing the abuse and exploitation of child domestic workers in the Philippines. It further points out that according to a survey of 2005 conducted by the Social Weather Station, 87 per cent of the Filipinos strongly agreed that there should be a law addressing the domestic work sector.

The Committee notes the Government's statement that the Domestic Worker's Bill has been filed during the 14th congress and is currently under deliberation by the House Committee on Labour and Employment. The Committee also notes the Government's detailed information on the impact of several initiatives and programmes undertaken within

the ILO–IPEC assisted *Philippine Time-bound Programme (PTBP)* 2002–07 and other national programmes, on eliminating the worst forms of child labour, including child domestic work. It notes the Government's indication that under the *PTBP*, as of April 2007, a total of 40,549 children were withdrawn or prevented from the six priority sectors identified under this *TBP*, including child domestic work. The Committee also notes that the Philippines has stepped into a second phase of the *PTBP* for the years 2009–13, which aims to work towards 75 per cent reduction in child labour, with a main focus on agriculture, trafficking, mining, fishing and domestic labour. While observing the various efforts undertaken by the Government to combat child domestic work and the successful results achieved under the *PTBP* and other initiatives, the Committee expresses its *serious concern* at the economic and sexual exploitation which continues to be experienced by child domestic workers. ***The Committee urges the Government to take immediate measures to ensure the adoption of the Domestic Workers' Bill (Batas Kasambahay) which would specifically address the situation of domestic workers. It also requests the Government to take the necessary measures as a matter of urgency to ensure that anyone who uses the domestic labour of children under 18 years in the form of forced labour, or who employs children in hazardous work, is prosecuted and that effective and sufficiently dissuasive penalties are imposed. It finally requests the Government to provide information on the results achieved in terms of the prevention and withdrawal of children from domestic labour under the PTBP – Phase II.***

Article 5. Monitoring mechanisms. Following its previous comments, the Committee notes the Government's information that the Inter-Agency Council Against Trafficking (IACAT) continues to undertake different projects geared towards the prevention and elimination of trafficking in persons, protection and rehabilitation of victims of trafficking and conviction of offenders of trafficking. These projects include the: (a) development of a manual on the law enforcement and prosecution of trafficking in persons cases, and on the recovery and reintegration of victims of trafficking; (b) development of standards orientation module on trafficking in persons for service providers; (c) establishment of Ninoy Aquino International Airport Task Force against Trafficking; (d) development of a local ordinance on anti-trafficking in persons project; (e) development of guidelines for the protection of trafficked children; and (f) creation of a regional inter-agency committee against trafficking. The Committee also notes the Government's indication that as of October 2009, the IACAT has recorded 15 convictions for violation of Republic Act 9208. It further states that the IACAT ensures strict enforcement of the rules and guidelines related to the local and overseas employment of persons. It also submits periodical reports of cases of illegal recruitment and trafficking to the IACAT Secretariat and the Department of Justice.

The Committee also notes the Government's indication that as of June 2008, the Inter-Agency Quick Action Team established under the Sagip Batang Mangagagawa (SBM – an inter-agency mechanism to monitor and rescue children from the worst forms of child labour), conducted a total of 793 rescue operations which resulted in the rescue of 2,698 child labourers. Most of these children were integrated into their families and provided thereafter with educational assistance and skills training.

The Committee further notes the Government's indication that the DOLE, through the Bureau of Women and Young Workers conducted in February 2009, a series of advocacy orientations on Republic Act 9231, Republic Act 9208 and other child labour-related laws for about 270 village chiefs (barangay) followed by a series of training for labour inspectors, hearing officers and sheriffs on the effective enforcement of these legislations. These activities were aimed at strengthening the capacities of law enforcers and other implementers to effectively utilize and enforce anti-child labour laws towards prevention and elimination of child labour and its worst forms. The Committee finally notes that the DOLE through its labour inspectors, monitors the compliance of labour standards relating to children in private establishments, as well as coordinates with the PNP and the DSWD to remove children found in the worst forms of child labour. The DOLE, through its Labour Standard Enforcement Framework (LSEF) conducts inspections of households to monitor any violation of labour standards, including non-payment or under-payment of household salaries. The Government further states that the DOLE also assists working children and their parents or guardians with free legal services, facilitates with the provision of educational assistance and health services, provides livelihood assistance to parents and older siblings, and refers working children and victims of child labour to proper agencies of institutions for psychological services. ***The Committee requests the Government to continue providing information on the number of children rescued from the worst forms of child labour, the number of convictions recorded related to the worst forms of child labour, and the number of cases of illegal recruitment and trafficking of children reported by the IACAT. The Committee also requests the Government to indicate the impact of the various measures undertaken by the DOLE to eliminate the worst forms of child labour, and on the number of violations of child labour laws detected by the DOLE through the labour inspectors and LSEF.***

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

Romania

Minimum Age Convention, 1973 (No. 138) (ratification: 1975)

Article 2, paragraph 1, of the Convention. Scope of application. The Committee had previously noted that, under the terms of section 2, the Labour Code applies only to persons employed on the basis of a labour contract. It had also noted the Government's indication that the Labour Inspectorate monitors the work of persons employed by an individual labour contract and has no competence with regard to self-employment. The Committee notes the Government's statement

that, according to section 5(1) of Government Decision No. 600/2007, employment of children is prohibited. Exception to this provision is provided under section 5(2) of Government Decision No. 600/2007 in the case of children of at least 16 years of age who are subject to compulsory schooling to conclude an individual contract of employment for light work. The Committee notes, however, that section 5, subsections (1) and (2), read in conjunction with section 3 of Government Decision No. 166/2007 appears to apply only to children having an individual contract of employment. The Committee once again reminds the Government that the Convention applies not only to work performed under an employment contract, but to all types of work or employment, including self-employment. ***Observing that it has been raising this matter for a number of years, the Committee urges the Government to take the necessary measures to ensure that children carrying out an economic activity on their own account enjoy the protection afforded by the Convention. In this regard it requests the Government to envisage the possibility of taking measures to adapt and strengthen the labour inspection services so as to ensure the protection envisaged by the Convention for children who work on their own account or in the informal economy.***

Article 7, paragraph 3. Determination of light work. The Committee had previously noted that the National Steering Committee drew up a draft Decision on Hazardous Work by Children. It had also noted the Government's statement that all those activities or types of work not covered by this draft shall be considered as light work which young persons between 15 and 18 years of age will be allowed to perform. The Committee understands from the Government's statement "the draft Decision on Hazardous Work by children is under public debate" that this draft Decision has not yet been adopted. The Committee also notes that, according to section 3(c) of Government Decision No. 600/2007, "light work" is defined as any work, which on account of the inherent nature of the tasks which it involves and the particular conditions under which it is performed is not likely to be harmful to the safety, health or development of children; not such as to prejudice their attendance at school, their participation in vocational guidance or training programmes approved by the school management, or their capacity to benefit from the instruction received. ***The Committee hopes that the Decision on Hazardous Work by Children will soon be adopted and requests the Government to send a copy as soon as it has been adopted.***

Article 9, paragraph 3. Keeping of a register by employers. The Committee had previously noted the Government's information that Decision No. 161/2006 establishes the methodology of drawing up and keeping a general register of employees. It had also noted that, according to section 3, subsections (1) to (4), the register must be drawn up in electronic format and must contain the following data of the employee: full name, personal identification number which includes the age of the employee, hiring date, occupation details and type of contract. The employer shall send this register to the territorial labour inspectorate within 20 days after hiring the worker. ***The Committee once again requests the Government to provide a copy of Government Decision No. 161/2006.***

Part V of the report form. Application of the Convention in practice. The Committee notes the Government's information that, during the reporting period, the territorial labour inspectorates filed 87 complaints regarding the violation of the provisions concerning the employment of children; for 77 cases the trials were under way; and for six cases administrative penalties were imposed. It also notes that, during the period from 1 June to 31 December 2007, the labour inspectors carried out 44,476 inspections and identified 144 young people aged between 15 and 18 years working without a legal employment contract. During the period from January 2008 to April 2009, the labour inspectors carried out 107,582 inspections, identified 275 young people aged between 15 and 18 years working without a legal employment contract, and imposed penalties on 244 employers for illegally using young people at work. It further notes the information provided by the Government in its report under Convention No. 182 that the above cases of illegal employment of children were found in the manufacture of textile and footwear, agriculture, construction, manufacture of wood, manufacture of grain mill products, food products, wholesale warehouses, street commerce activities, markets, and in garages. ***The Committee requests the Government to continue providing information on the application of the Convention in practice, including the number and nature of contraventions reported and penalties imposed.***

Russian Federation

Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

Article 2, paragraph 1, of the Convention. Scope of application. The Committee previously noted that section 63(1) of the Labour Code prohibited children under 16 years of age from signing an employment contract. It asked the Government to supply information on the measures taken or contemplated to ensure the application of the Convention to all types of work outside an employment relationship. The Committee noted the Government's statement that the illegal employment of minors and the violation of their labour rights are frequent occurrences in the informal economy. This involves minors who wash cars, engage in trading and perform auxiliary work. The Committee therefore reminded the Government that the Convention applies to all sectors of economic activity and covers all forms of employment or work, whether or not there is a contractual employment relationship and whether or not the work is remunerated. The Committee notes the detailed statement in the Government's report indicating the measures taken to prevent children from signing employment contracts in breach of the national labour legislation, particularly with regard to the minimum age for admission to employment in hazardous types of work. However, the Committee observes that the Government does not supply any information regarding the measures taken to ensure that children who work without having signed an

employment contract enjoy the protection afforded by the Convention. ***The Committee therefore again requests the Government to take the necessary steps to ensure that the protection afforded by the Convention is enjoyed by children carrying out an economic activity without an employment contract, particularly self-employed children and children working in the informal economy, as soon as possible. The Committee requests the Government to supply information on the progress made in this respect in its next report.***

Part V of the report form. Application of the Convention in practice. With reference to its previous comments, the Committee notes that, according to a study on child labour carried out in St. Petersburg (Leningrad) from May to October 2009 in the context of the ILO–IPEC project on street children in the St. Petersburg (Leningrad) regions, the 1,003 children who were interviewed were engaged in the following kinds of work: collecting empty bottles and recycling paper and beer bottles (58.6 per cent); transporting goods (25.4 per cent); cleaning workplaces (21.3 per cent); looking after property (14.3 per cent); street trading (10.4 per cent); and cleaning cars (2.6 per cent). The study also indicates that 22 per cent of boys started working at 8 or 9 years of age, compared with 5.8 per cent of girls, and 40 per cent of boys started working at 10 or 11 years of age, compared with 15.4 per cent of girls. ***While expressing its deep concern at the situation of children engaged in work, particularly in the informal sector, the Committee urges the Government to take the necessary steps to ensure that child labour for young persons under 16 years of age is abolished in practice. Furthermore, the Committee again requests the Government to supply information on the application in practice of the national legislation giving effect to the Convention, including extracts from official reports and information on the number and nature of reported infringements, particularly with regard to children under 16 years of age working in the informal sector.***

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

The Committee notes the Government's report and also the discussions held in the Conference Committee on the Application of Standards at the 98th Session (June 2009) of the International Labour Conference.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. In its previous comments, the Committee noted that, according to the communication from the International Trade Union Confederation (ITUC), thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. Internal trafficking within the Russian Federation is also reportedly taking place and confirmed cases have been reported of children being trafficked for sexual exploitation. The Committee further noted that, according to the report of 24 January 2007 submitted by the UN Special Rapporteur on the sale of children, child prostitution and child pornography in Ukraine (A/HRC/4/31/Add.2, paragraphs 48–49), the Russian Federation is also a destination country for boys and girls between 13 and 18 years of age trafficked from Ukraine. According to the report, half of the children trafficked across borders from Ukraine are taken to neighbouring countries, including the Russian Federation. The children trafficked across borders are exploited in street vending, domestic labour, agriculture, dancing, employment as waiters/waitresses or for the provision of sexual services.

The Committee previously observed that section 127.1 of the Penal Code prohibits the sale and trafficking of human beings, defined as the purchase or sale of persons or their procuring, transportation, transfer, concealment or reception, if committed for the purposes of exploitation. Section 127.1(2) provides for a heavier penalty when the offence is committed in relation to a known minor (defined in section 87 as a person between 14 and 18 years of age). The Committee also noted that section 240(2) of the Penal Code prohibits the transportation of any person across the state border of the Russian Federation for the purpose of delivering that person into prostitution or illegal detention abroad. A heavier penalty is incurred when this offence is committed against a minor. The Committee also noted that a draft Act against the trafficking of persons which aims to establish appropriate measures to ensure legal protection and social rehabilitation for victims of trafficking, in accordance with the Palermo Protocol, was under consideration. However, the Committee noted that the special Act on assistance for victims of trafficking, pending before the Duma, was neither voted on nor enacted in 2006.

The Committee notes the statement from the Government representative present at the Conference Committee on the Application of Standards to the effect that the draft Act against the trafficking of persons is still under discussion in the Duma Commission on Family Issues for Women and Children, and a series of substantial amendments have been incorporated in the Penal Code with a view to imposing heavier penalties for violations of the law involving the trafficking of persons. In this regard, the Committee notes the Government's information in its report to the effect that Act No. 218 of 25 November 2008 amended section 127.1 of the Russian Penal Code in such a way as to prohibit any transaction involving a child, regardless of the purpose of the transaction.

Furthermore, the Government indicates that, over the years, several dozen criminal groups which were recruiting Russian citizens for the purpose of offering their sexual services in Western Europe, the Middle East, Africa, Asia and North America have been exposed. The Government also indicates that, according to the centre for information analysis of the Ministry of the Interior, the total number of instances of trafficking of persons revealed by judicial inquiries increased by 4.6 per cent (68 cases) in 2008. The Committee notes the Government's indication that in 2008 the courts examined the cases of five persons involved in three instances of the trafficking of minors.

While noting the measures taken by the Government, the Committee observes that the number of cases involving the trafficking of children reported by the authorities remains low. The Committee also notes the indication by the Worker members of the Conference Committee on the Application of Standards that the draft Act against the trafficking of persons appears frozen since 2006. The Committee therefore again observes that, although the trafficking of children for economic or sexual exploitation is prohibited by law, it remains a source of serious concern in practice. It reminds the Government that, under *Article 3(a)* of the Convention, the sale and trafficking of young persons under 18 years of age for economic or sexual exploitation are considered to be one of the worst forms of child labour and that, under the terms of *Article 1* of the Convention, immediate and effective measures must be taken to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*. ***With reference to the conclusions of the Conference Committee on the Application of Standards, the Committee urges the Government to step up its efforts and take immediate and effective measures to eliminate in practice the trafficking of young persons under 18 years of age without delay. In this respect, the Committee requests the Government to take steps to ensure that perpetrators are investigated and prosecuted that sufficiently effective and dissuasive penalties are imposed on persons found guilty of the trafficking of children for economic or sexual exploitation. The Committee also requests the Government to take immediate steps to ensure that the draft Act against the trafficking of persons is adopted in the very near future. Finally, it requests the Government to continue to supply information on the number of reported violations, investigations, prosecutions, convictions and penalties imposed for violations of the legal prohibitions on the sale and trafficking of children.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee previously noted the detailed information from the Government on the network of social institutions which provide for the rehabilitation and social integration of children removed from the worst forms of child labour. It also noted that the establishment of social rehabilitation centres for minors was stepped up in 2004 (with the addition of 163 new centres by comparison with 2002). The Committee notes that, according to the 2009 UNODC Global Report on Trafficking in Persons, another centre for the rehabilitation of victims of trafficking opened in April 2007. This centre has the capacity to cater for 19 victims at a time. ***The Committee requests the Government to supply information on the number of child victims of trafficking for sexual or economic exploitation who have been rehabilitated and socially integrated as a result of the action of the abovementioned rehabilitation and social integration centres.***

Article 8. International cooperation and assistance. International cooperation. The Committee previously noted that the Russian Federation is a member of Interpol, which facilitates cooperation between countries in different regions, particularly in combating the trafficking of children. It also noted that the Russian Federation has ratified the United Nations Convention against Transnational Organized Crime, its Protocol against the smuggling of migrants by land, sea and air, and its Protocol to prevent, suppress and punish trafficking in persons, especially women and children. The Committee notes that the Government representative present at the Conference Committee on the Application of Standards emphasized the importance of international and regional cooperation in combating the trafficking of persons. The Government indicates in its report that a Europol national contact point has been established within the Ministry of the Interior. ***The Committee requests the Government to supply information on the impact of the United Nations Convention against Transnational Organized Crime and its Protocol, and also the measures taken by Interpol and Europol in the Russian Federation relating to the elimination of the trafficking of children for economic or sexual exploitation.***

Regional cooperation. The Committee previously noted that joint operations have been under way since 1998 with the countries of the Council of the Baltic Sea States (CBSS) with a view to preventing cross-border smuggling of children. Under the auspices of that body's executive committee, "contact officers", including some from the Russian Ministry of Internal Affairs, deal with specific cases requiring action to prevent trafficking in children for the purpose of sexual exploitation.

The Committee notes the Government's statement that the Ministry of the Interior has also drafted a cooperation agreement between the Ministries of the Interior (police) of the member countries of the Commonwealth of Independent States to combat the trafficking of persons. Furthermore, the Ministry of the Interior participates in the activities of a number of special working parties, including the CBSS Special Group for combating the trafficking of persons and the Working Party of the Organization of the Black Sea Economic Cooperation for combating organized crime. ***With reference to the conclusions of the Conference Committee on the Application of Standards, the Committee requests the Government to continue to reinforce its cooperation with other countries concerned with the trafficking of children to or from the Russian Federation. It requests the Government to continue to supply information on the specific measures taken to eliminate the cross-border trafficking of children for economic or sexual exploitation, and on the results achieved.***

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

Saudi Arabia

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Forced or compulsory labour. The Committee previously observed that Order No. 1/738 of 4 July 2004 prohibits child labour and the exploitation of children, including any inhumane form of work and morally hazardous work, though observed that this regulation does not explicitly prohibit the forced or compulsory labour of children under 18 years. The Committee notes the copy of regulations submitted with the Government's report, identified by the Government as the Ministerial Order No. 244 of 20/7/1430 (2009) (Order No. 244) taken by the Council of Ministers approving regulations on human trafficking. The Committee notes that section 2 of Order No. 244 prohibits trafficking, including for the purpose of forced labour. The Committee observes that this provision does not appear to prohibit forced labour that occurs independently of human trafficking.

The Committee refers to its comments made in its 2008 observation under the Forced Labour Convention, 1930 (No. 29), that the new Labour Code does not contain provisions prohibiting forced labour. In this observation, the Committee further noted that section 7 of the Labour Code excludes agricultural workers and domestic workers, an exclusion that has particular significance for migrant workers who are often employed in those sectors. The Committee observed that the lack of such protection for migrant workers exposes them to exploitation in their working conditions, such as the retention of their passports by their employers, which in turn deprives them of their freedom of movement to leave the country or change their employment. The Committee notes that the Committee on the Rights of Elimination of Discrimination Against Women, in its concluding observations of 8 April 2008, expressed concern with regard to the economic and sexual exploitation and ill-treatment of young migrant girls employed as domestic servants (CEDAW/C/SAU/CO/2, paragraph 23). The Committee recalls that, by virtue of *Article 3(a)* of the Convention, all forms of slavery or practices similar to slavery such as the forced or compulsory labour of children under 18 years constitutes one of the worst forms of child labour and that, under the terms of *Article 1* of the Convention, immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour must be taken as a matter of urgency. ***The Committee requests the Government to take the necessary measures to adopt in national legislation a prohibition on the forced and compulsory labour of children who are not the victims of trafficking. It also asks the Government to take the necessary measures to ensure that persons who commit offences with regard to the forced or compulsory labour of children are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

Clause (b). Use, procuring or offering of a child for prostitution and pornography. The Committee previously noted the Government's information that the use, procuring or offering of a child for prostitution or for pornographic performances was prohibited by the Holy Koran and the Prophet's Sunna. It also observed that Order No. 1/738 of 2004 prohibits child labour exploitation, as well as inhumane or immoral treatment, but does not specifically prohibit the use, procuring or offering of children under 18 years for prostitution and pornography. The Committee noted the Government's information that draft regulations on child protection, containing provisions for the protection of children from maltreatment and neglect, including sexual, psychological and physical exploitation, had been submitted to the competent authorities for examination. The Committee notes the Government's statement that the regulations are still being examined in the Majilis El Shoura. ***The Committee expresses the firm hope that these regulations will include provisions specifically prohibiting the use, procuring and offering of children under 18 years for prostitution and for the production of pornography or pornographic performances, and urges the Government to take the necessary measures to ensure that the draft regulations on child protection are adopted in the near future. It requests the Government to provide a copy of these regulations as soon as they are adopted.***

Clause (d). Hazardous work. Domestic and agricultural workers. The Committee previously noted that by virtue of section 3 of the Labour Code the following workers do not benefit from the protection laid down in the Labour Code: (i) persons employed in pastures, animal husbandry or agriculture, except for persons working in agricultural establishments which process their own product or persons who are permanently engaged in the operation or repair of mechanical equipment required for agriculture; or (ii) domestic servants and persons considered as such. The Committee noted the Government's reference to Ministerial Order No. 20879 of 2003 which identifies the types of hazardous work in which the employment of young persons is not authorized, and requested the Government to indicate if this Ministerial Order applies to agricultural workers and domestic servants under 18 years of age. The Committee notes the Government's indication that following the adoption of a new Labour Code, (promulgated by virtue of Order No. m/51 of 26 September 2005), a new Ministerial Order concerning prohibited types of hazardous work was promulgated (No. 2839 of 1 October 2006). The Committee notes the Government's indication that this Ministerial Order does not apply to categories of workers excluded in the Labour Code, such as agricultural workers and domestic workers. ***Since children who work in these sectors do not appear to be protected in the relevant legislation, the Committee requests the Government to take the necessary measures to ensure that children under 18 years working as domestic servants and agricultural workers do not perform work which, by its nature and the circumstances in which it is carried out, is likely to harm their health, safety or morals. The Committee also requests the Government to supply a copy of the Ministerial Order No. 2839 of 1 October 2006, concerning prohibited types of hazardous work.***

Article 7, paragraph 1. Penalties. Trafficking. The Committee previously noted that Order No. 1/738 did not impose sufficiently effective and dissuasive penalties for the offence of the sale and trafficking of persons. It also noted that the Government of Saudi Arabia does not comply with the minimum standards for the elimination of trafficking, especially because of its failure to prosecute those guilty of trafficking. The Committee notes that section 3 of Order No. 244 states that any person who commits human trafficking shall be sentenced to imprisonment for a maximum period of 15 years, or to a maximum fine of 1 million riyals (SAR) (approximately US\$266,652), or both. The Committee also notes that section 4 of Order No. 244 states that penalties set out in the regulations shall be harsher if the act is committed against a child, even if the aggressor did not know that the victim was a child. Section 4 also prescribes harsher penalties if the offence is committed by a parent or guardian of the child victim. However, the Committee notes the information in the UNICEF report entitled “Preventing child trafficking in the Gulf countries, Yemen and Afghanistan” (UNICEF Trafficking Report), released in 2007, that a UNICEF rapid assessment survey estimated that tens of thousands of children, particularly boys from Yemen, are trafficked to Saudi Arabia for the purpose of labour exploitation each year. The Committee therefore observes that although the national legislation appears to prohibit trafficking in human beings, the trafficking of children under 18 very much remains an issue of concern in practice. ***The Committee urges the Government to take immediate and effective measures to enforce the law. It also asks the Government to provide information on the practical application of Order No. 244, including the number and nature of infringements reported, investigations, prosecutions, convictions and penalties imposed.***

Child begging. The Committee previously noted that Order No. 1/738 did not impose sufficiently effective and dissuasive penalties for the offence of hiring children for the purpose of begging. The Committee requested the Government to provide information on the measures taken to ensure that persons who use, procure or offer children under 18 years for this purpose are prosecuted and that sufficiently effective and dissuasive penalties are imposed. The Committee notes that section 2 of Order No. 244 prohibits the trafficking of humans for the purpose of begging. However, the Committee notes an absence of information on the Committee’s concerns with respect to the imposition of penalties for the use, procuring or offering children under 18 years for the purposes of begging unrelated to the offence of trafficking. The Committee reminds the Government that by virtue of *Article 7(1)*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***It requests the Government to take the necessary measures to ensure that persons who use, procure or offer children under 18 years for the purpose of begging are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

Employing children under 18 years as camel jockeys. The Committee had previously noted that, according to the Royal Decree No. 13000 of 17 April 2002, a camel owner who employs a jockey under 18 years of age to participate in camel racing will not, in case of winning, receive the prize. The Committee also noted the information in the Government’s report that young persons are entirely prohibited from camel jockeying by virtue of Royal Decree No. 13000 which punishes any person who violates the prohibition by penalties. These penalties include banning any camel jockey who has not attained 18 years from participating in races and denying the camel owner the prize money if the camel jockey proves to be under 18 years. The Committee observed that the Royal Decree only punishes the offender in the case in which the camel jockey under 18 years employed by him wins the race and that the existing provisions appear to penalize the victim more than the offender. The Committee also observed that the penalties imposed by Royal Decree No. 13000 on persons who employ children under 18 years as camel jockeys do not appear to be sufficiently effective and dissuasive, and drew the Government’s attention to its observation of 2006 made on the application by Qatar of Convention No. 182, in respect of the prohibition and elimination of the use of children under 18 years for camel racing as well as the use of robot jockeys.

The Committee notes the Government’s statement that a camel owner who employs a person under 18 is punished whether or not he wins the race. However, the text of the Royal Decree No. 13000, supplied by the Government with a previous report, does not appear to specify this, stating only that a camel owner who wins a race using a jockey under the age of 18 will not be able to collect his prize. ***The Committee urges the Government to take the necessary measures to ensure that a person who employs a child under 18 years of age as a camel jockey is liable to sufficiently effective and dissuasive penalties, particularly when the camel ridden by an underage jockey has not won.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Measures taken to prevent the engagement of children in the worst forms of child labour. Trafficking of children for labour or sexual exploitation. The Committee previously noted that there were reported cases of children trafficked from Bangladesh to the Middle East to work as camel jockeys, in addition to women under the age of 18 who were trafficked from Indonesia for the purpose of commercial sexual exploitation. The Committee noted the Government’s information that innumerable efforts are being deployed by the Government to eliminate the trafficking of children, including the drafting of new regulations on trafficking in persons. The Committee notes the copy of regulations on trafficking submitted with the Government’s report, and notes the information in the Government’s report that this document is the Ministerial Order No. 244 taken by the Council of Ministers, although it observes that the copy supplied does not contain a date. ***The Committee requests the Government to supply an official dated copy of Order No. 244 of 20/7/1430 (2009) taken by the Council of Ministers, approving regulations on human trafficking. The Committee also requests the Government to provide information on***

the impact of these regulations with respect to preventing the trafficking of children under 18 years, in addition to information on any effective and time-bound measures taken or envisaged in this regard.

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Street children and children engaged in begging. In its previous comments, the Committee noted the Government's information that measures have been adopted aimed at protecting child victims of violence and exploitation, including the establishment of a centre to receive complaints on violence, harm and exploitation of women and children, the establishment of a residence centre for foreign children who beg, in coordination with UNICEF, and the establishment of the "Women's Charity Association for Family Protection", specialized in the protection of women and children from violence through rehabilitation programmes. The Committee requested the Government to indicate the number of former victims of trafficking, especially for purposes of labour exploitation and begging, who have been protected and rehabilitated through these measures.

The Committee notes the absence of information in the Government's report on this point. However, the Committee notes the information in the UNICEF Trafficking Report released in 2007 that it is officially estimated that there are over 83,000 children selling small goods and begging on the streets of major cities in Saudi Arabia. The Committee also notes the information in the UNICEF report entitled "Trafficking in children and child involvement in beggary in Saudi Arabia" (UNICEF Beggary Report) that the Ministry of Social Action established the Office for Combating Beggary, and that these offices employ social workers and inspectors, who cooperate with law enforcement agencies to undertake daily raids in areas where beggars are found, and arrest them. Once arrested, children under 15 are sent to the Shelter Centre in Jeddah. The Committee also notes that the UNICEF Beggary Report indicates that the majority of persons involved in begging are foreign nationals, and if found to be undocumented or illegal residents, these children are deported within a period of two weeks from their arrest. The UNICEF Beggary Report also indicates that there is no effort made to distinguish between trafficked and non-trafficked children.

The Committee notes that since the establishment of the Shelter Centre in 2004, some 839 children have been deported to their country of origin. The Committee also notes that, at the time of the UNICEF Beggary Report, these children were not provided with psychological or legal assistance, and that there were few services for the rehabilitation and social integration of these children. ***Expressing its serious concern at the number of children engaged in begging and street work, and at the lack of legal, psychological and medical services provided to these children once arrested, the Committee requests the Government to take effective and time-bound measures to ensure the provision of appropriate services to these children, to facilitate their rehabilitation and social integration. With regard to children who are foreign nationals, the Committee requests the Government to take measures that include repatriation, family reunification and support for former child victims of trafficking, in cooperation with the child's country of origin.***

Parts IV and V of the report form. Labour inspectorate and the application of the Convention in practice. The Committee previously noted the Government's indication that the labour inspectorate had not detected any cases of prohibited child labour, and it requested the Government to continue to provide information on the application of the Convention in practice. The Committee notes the Government's statement that no cases of human trafficking have been detected. However, the Committee notes the information in the 2009 report on trafficking in persons in Saudi Arabia, available on the United Nations High Commissioner for Refugees' web site (www.unhcr.org), that Saudi Arabia is a destination country for Nigerian, Yemeni, Pakistani, Afghan, Chadian and Sudanese children, trafficked for the purpose of labour exploitation. The Committee also notes the information available in the UNICEF Trafficking Report that while trafficking of children remains a significant issue in Saudi Arabia, there is a severe lack of data on this topic.

The Committee expresses its concern at the lack of data available on the trafficking of children, and it urges the Government to take the necessary measures to ensure that sufficient data on the situation of child victims of trafficking is available. The Committee also expresses its concern regarding the lack of detection of cases of child trafficking, and requests the Government to redouble its efforts to ensure the effective monitoring of this phenomenon. In this regard, it requests the Government to expand the authority of the labour inspectorate in enforcing the laws and to increase the human and financial resources of the labour inspectorate. It further requests the Government to take the necessary measures to ensure that unannounced inspections are carried out by the labour inspectorate and that persons, regardless of their nationality, who traffic children are prosecuted.

Senegal

Minimum Age Convention, 1973 (No. 138) (ratification: 1999)

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

The Committee noted the observations by the National Confederation of Workers of Senegal (CNTS) set out in a communication of 1 September 2008.

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee had noted with interest that the Government is participating in an ILO-IPEC project entitled "Contribution to the abolition of child labour in French-speaking Africa", the overall objective of which is to contribute to abolishing child labour. It had also noted with interest that the Government is participating in the ILO-IPEC **Time-bound Programme (TBP)** on the worst forms of child labour. It had observed that in the context of these two projects, the Government

has adopted a strategy for the implementation of national initiatives to combat child labour through education, vocational training and apprenticeship. Lastly, it had noted that a national child labour survey was carried out in Senegal and that the data collected were being analysed.

The Committee noted the Government's information that, as a result of the implementation of the abovementioned ILO–IPEC project and the *TBP*, 6,208 children had been prevented from entering the labour market too early. The Government further indicated that in the context of the ILO–IPEC projects, two action programmes had been implemented and had prevented 6,023 children from working through the provision of education services. The Committee further noted that the Government had sent a number of statistics published in the 2007 analysis report on the national survey of child labour in Senegal carried out in 2005. It noted that of an estimated 3,759,074 children aged from 5 to 17 years, 1,378,724 (36.7 per cent) were involved in some activity or work in Senegal and that in 2005 more than two out of ten (21.4 per cent) children aged from 5 to 9 years had already worked. The Government also stated that boys appeared to be more affected by child labour since 26.4 per cent of boys 5–9 years of age, as opposed to 15.9 per cent for girls, and 51.7 per cent of boys of 10–14 years of age, as compared to 36.2 per cent for girls, are working. The report also showed that, overall, 1,739,571 children were forced to engage in housework, i.e. 46.3 per cent of all children aged from 5 to 17 years. Furthermore, in addition to the housework performed by some children, and regardless of their age or sex, the great majority of child workers were to be found in the agricultural sector (75.4 per cent) followed by the stockbreeding and fisheries sectors (8 per cent), handicrafts and work on looms (4 per cent), domestic and household jobs (3.1 per cent), sales and services to private persons (5.5 per cent), construction and public works (2.5 per cent), other (1.4 per cent). ***While noting the measures taken by the Government to abolish child labour, the Committee once again expresses concern at the number and percentage of children still working in the various sectors and requests the Government to redouble its efforts to combat child labour. It further asks the Government to continue to send information on the impact of the action programmes currently under way in terms of the numbers of children prevented from entering the labour market too early and the number of children withdrawn from work.***

Article 2, paragraph 1. Scope of application. In its previous comments, the Committee noted the Government's statement that self-employed workers are treated as traders and that children may not be self-employed because their status as minors precludes their entering freely into contracts. It had further noted that although the national legislation excludes all forms of self-employment by children, in practice, poverty has facilitated the development of such activities among children (shoe cleaners, hawkers), who engage in them illegally.

The Committee noted the allegations of 1 September 2008 by the CNTS that even if children working on their own account can be regarded as traders, the minimum age is not well-observed in the informal sector. The CNTS accordingly asked the Government to indicate what policy it intended to apply in order to protect such children, most of whom have had no basic education and are in no kind of training.

In this regard, the Government indicated that, in collaboration with ILO–IPEC, it had carried out a number of activities with a view to withdrawing self-employed children from work. They included:

- (a) taking charge of children working in the handicrafts sector, in refuse scavenging at the Mbeubess dump, and street children;
- (b) giving families access to replacement income and assisting them in developing income-generating activities;
- (c) raising public awareness through surveys, media reports and audiovisual documents, as well as displays, brochures and flyers, in French and the national languages, about child labour;
- (d) improving children's access to and maintenance in school;
- (e) providing children with basic training and training in skills that afford them better work prospects.

The Committee once again requests the Government to provide information on the impact of the abovementioned measures in terms of the number of children who are not bound by an employment relationship, such as those working on their own account, who have been withdrawn from work.

Minimum age of admission to employment or work. In its previous comments, the Committee had noted that section L.145 of the Labour Code allowed waivers from the minimum age of admission to employment by order of the Minister in charge of labour, taking account of local circumstances and the tasks to be performed. The Committee had reminded the Government that it had specified a minimum age of 15 years upon ratifying the Convention and that the waiver allowed by section L.145 of the Labour Code was inconsistent with this provision of this Convention. The Committee had noted the information from the Government to the effect that it was revising the legislation in order to make the necessary amendments. It had noted that a legislative study had been carried out in the context of the ILO–IPEC *TBP*, which identified shortcomings in Senegal's legislation in relation to the Convention. The findings of the study were submitted to the competent authorities so that they could take the appropriate action. The Committee had also noted that, according to the Government, no orders had been issued granting waivers from the minimum age for admission to employment or work and determining the nature of the light work that may be carried out in a family context.

The Committee noted the information sent by the Government to the effect that the matter was still under study by the competent authorities. ***The Committee once again urges the Government to take steps to ensure that the competent authorities' work leads to the amendment of section L.145 of the Labour Code in the near future to bring it into line with the Convention by allowing waivers from the minimum age for admission to employment or work only in the instances set forth in the Convention. It once again requests the Government to provide information on all developments in this respect in its next report.***

Article 3, paragraph 3. Admission to hazardous work from the age of 16 years. In its previous comments, the Committee had noted that section 1 of Order No. 3748/MFPTEOP/DTSS of 6 June 2003 on child labour provided for a minimum age of 18 years for admission to hazardous work. It had observed, however, that according to Order No. 3750/MFPTEOP/DTSS of 6 June 2003 determining types of hazardous work prohibited for children and young persons (Order No. 3750 of 6 June 2003), certain types of hazardous work could be performed by persons under 16 years of age. For example, section 7 of Order No. 3750 of 6 June 2003 allows work in underground mines, quarries and other mineral extraction plants by male children under 16 years of age. The Committee had also noted that children 16 years of age were allowed to perform the following types of work: work using circular saws provided that authorization in writing has been obtained from the labour inspector (section 14), operation of vertical wheels, winches and pulleys (section 15), operation of steam valves (section 18), work on mobile platforms (section 20) and the performance of hazardous feats in public performances in theatres, cinemas, cafes, circuses and cabarets (section 21). The Committee had observed that the requirements set forth in *Article 3(3)* of the Convention appeared not to be fulfilled. It had noted

the information supplied by the Government to the effect that in the course of the ongoing amendment of the laws and regulations, all these issues and inconsistencies would be remedied so as to harmonize the Convention and the national legislation. The Committee had also noted that on the matter of children's safety and health, 13 texts were in the process of adoption under the Labour Code to take account of the situation of children authorized to work.

The Committee noted the Government's information that the work in underground mines, quarries and other mineral extraction plants which may be done by male children under 16 years of age pursuant to section 7 of Order No. 3750 of 6 June 2003 consists of light work such as the sorting and loading of ore, the handling and haulage of trucks within the weight limits set by section 6 of the same Order, and the overseeing or handling of ventilation equipment. The Government added that permits for young people of 16 years or more for work with circular saws are issued only after an inquiry and may be revoked. Lastly, the Government indicated that the jobs provided for in section 15, 18, 20 and 21 of Order No. 3750 of 6 June 2003 which may be performed by young people of at least 16 years of age, are authorized in full observance of the letter and spirit of the Convention. The Committee noted that, according to the Government, all the other provisions that are inconsistent with the Convention are to be remedied in the context of the legislative revision, which was still ongoing, and account taken of the Committee's comments.

The Committee reminds the Government that under *Article 3(3)* of the Convention, hazardous work, such as the tasks provided for in Order No. 3750 of 6 June 2003, may be performed by young persons of over 16 years of age provided that their health, safety and morals are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity. ***The Committee once again requests the Government to take measures to ensure that, as part of the ongoing legislative revision, the minimum age for admission to work underground in mines, quarries and other mineral extraction plants is 16 years both for girls and for boys. It also asks the Government to take the necessary measures to ensure that the conditions set in Article 3(3) of the Convention are fully ensured for young persons aged 16–18 years engaged in the jobs provided for in sections 14, 15, 18, 20 and 21 of Order No. 3750 of 6 June 2003. It requests the Government to provide copies of the 13 texts on occupational safety and health that take account of the situation of children authorized to work, as soon as they are adopted. Lastly, the Committee once again expresses the hope that the legislative revision will be completed in the near future, and asks the Government to provide information on progress made in this regard.***

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

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

The Committee noted the communication of the National Confederation of Workers of Senegal (CNTS) of 1 September 2008.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced or compulsory labour. Begging. In its comments, the CNTS indicated that the Government needs to indicate clearly the action that it intends to take to eradicate the exploitation of children, and particularly the phenomenon of child *talibés*, which may be considered as one of the worst forms of child labour. The CNTS added that persons responsible for such exploitation of children are easily identifiable.

The Committee noted that according to the UNICEF report on trafficking in persons, especially women and children, in West and Central Africa, published in 2006, internal trafficking exists in Senegal from rural to urban areas, particularly in the case of child *talibés*, who beg in the streets of Dakar. Child *talibés* from Guinea, Guinea-Bissau, Gambia and Mali are also exploited in the large cities of Senegal. The Committee further noted that the Committee on the Rights of the Child, in its concluding observations on the second periodic report of Senegal in October 2006 (CRC/C/SEN/CO/2, paragraphs 60 and 61), expressed concern at the large number of working children and in particular the current practices of Koranic schools run by marabouts who use the *talibés* for economic gain by sending them to agricultural fields or to the streets for begging and other illicit work that provides money, thus denying them access to health, education and good living conditions.

The Committee noted that section 3(1) of Act No. 02/2005 of 29 April 2005 prohibits any person who, for economic gain, organizes another person to beg or who employs, procures or deceives a person with a view to delivering such person to beg or who exerts pressure on a person to beg or to continue to beg. Under subsection (2) of this section, there shall be no suspension of the implementation of the sentence where the offence is committed in relation to a minor.

The Committee observed that, although the legislation is in conformity with the Convention on this point, the phenomenon of child *talibés* remains a concern in practice. The Committee expressed concern at the use of these children for purely economic purposes. ***It once again requests the Government to take the necessary measures to give effect to the national legislation on begging and to punish marabouts who use children for purely economic purposes. The Committee also asks the Government to provide information on the time-bound measures adopted to prevent young persons under 18 years of age from becoming victims of forced or compulsory labour, such as begging. Furthermore, it once again asks the Government to indicate the effective and time-bound measures adopted to protect these children against forced labour and to ensure their rehabilitation and social integration.***

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

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

Sierra Leone

Minimum Age (Industry) Convention (Revised), 1937 (No. 59) (ratification: 1961)

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

In its previous comments, the Committee had taken note of the draft Employment Act prepared with the ILO's technical assistance. The Committee noted the information provided by the Government that section 34(4) of the draft Employment Act provides that "no child under the age of 18 years may work or be employed to perform any work that is likely to jeopardize his/her health, safety, or physical, mental, spiritual, moral or social development, or to interfere with his/her education. No employer shall continue to employ such a child after being notified in writing by a labour officer that the employment or work is injurious to health or dangerous". The Committee observed that this section 34(4) of the draft Employment Act gives effect to *Article 5 of the Convention*. ***It once again expresses the hope that the new Act will be adopted in the very near future in order to ensure complete conformity of the national legislation with the Convention on this point. The Committee requests the Government to communicate the text of the new Employment Act as soon as it is adopted.***

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

Spain

Minimum Age Convention, 1973 (No. 138) (ratification: 1977)

Article 2 of the Convention. Scope of application. In its previous comments, the Committee emphasized that the provisions of the national legislation governing the minimum age of admission to employment for children were not sufficient to guarantee the protection afforded by the Convention to children working on their own account. In this regard, the Government had indicated that, although it considered that the national legislation enables effective controls of work done by young people, it envisaged regulating the work of self-employed persons.

The Committee notes with **satisfaction** that, pursuant to section 9, paragraph 1 of the Statute 20/2007 of 11 July on self-employed workers, children under 16 years may not work on a self-employed basis or be engaged in professional activity, even within their own families. The Committee also notes that section 8 of the Statute on self-employed workers addresses the issue of the prevention of professional risks. The first paragraph of section 8 provides that public administrations will undertake an active role in the prevention of professional risks of self-employed workers through activities promoting prevention, technical advice, and the monitoring and control of the application of the legislative provisions on the prevention of professional risks by self-employed workers. According to section 8, paragraph 2, of the Statute on self-employed workers, the said administrations must promote training on risk prevention which is specific and adapted to independent work.

Sri Lanka

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes the Government's report and the communication of the National Trade Union Federation (NTUF) dated 22 July 2009.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Compulsory recruitment of children for use in armed conflict. In its previous comments, the Committee had noted with satisfaction that, by virtue of section 358A of the Penal Code, as amended by the Penal Code (Amendment) Act No. 16 of 2006, the recruitment of children under 18 years for use in armed conflict is punishable as an offence. However, the Committee had noted with concern that, according to the information from the United Nations Office of the Special Representative of the Secretary-General for Children and Armed Conflict of 27 June 2006 (OSRG/PR060623), the LTTE militant group continued to recruit and use child soldiers. Moreover, the Karuna faction, a breakaway group of the LTTE, continued to abduct and recruit children under 18 years. It had also noted the report of the Secretary-General for Children and Armed Conflict in Sri Lanka of 20 December 2006 (S/2006/1006; the "Secretary-General's report"), as well as the Conclusions of the UN Security Council Working Group on Children and Armed Conflict of 13 June 2007 (S/AC.51/2007/9), that, despite previous commitments by the LTTE, that group continued to use and recruit children. It had further noted the UNICEF estimates on the high number of boys and girls who had been abducted and recruited by the LTTE and the Karuna faction. The Committee, while sharing the concern of the UN Security Council Working Group on Children and Armed Conflict about the continuous pattern of abduction, recruitment and use of children by the LTTE and the Karuna faction, had requested the Government to redouble its efforts to ensure that the practice of forced or compulsory recruitment of children under 18 years of age in armed conflict was eliminated.

The Committee notes the NTUF's comment that the recruitment of children for armed conflict existed until recently in LTTE areas, but now with the end of the war no such recruitment is found. The Committee notes the Government's indication that after three years of continued humanitarian operations carried out by the Sri Lankan Armed Forces, the country is now free from the scourge of LTTE terrorism. The armed conflict between the Government and the LTTE came to an end on 18 May 2009 with the death of the LTTE leaders and surrender of the remaining LTTE cadres.

The Committee notes that with the end of the war the practice of the forced recruitment by the LTTE of children under 18 years of age in armed conflict has also come to an end.

Clause (b). Use, procuring or offering of a child for prostitution. The Committee had previously noted the International Trade Union Confederation's (ITUC) indication that child prostitution is prevalent in Sri Lanka and that, according to PEACE (an NGO), at least 5,000 children in the age bracket of 8–15 years were exploited as sex workers,

particularly in certain coastal resort areas. It had also noted that sections 360A, 360B and 288A of the Penal Code, as amended, prohibit a wide range of activities associated with prostitution, including the prohibition of the use, procuring or offering of minors under 18 years for prostitution. The Committee had further noted the Government's information that prosecutions on the commercial sexual exploitation of children are carried out by the Department of Police and the National Child Protection Authority (NCPA) of Sri Lanka. The police records had revealed that 70 per cent of child trafficking cases for commercial sexual exploitation concerned boys. The Committee had also observed that the Government had taken measures to combat the commercial sexual exploitation of children, especially paedophilia, through the NCPA and Cyber Watch activities. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to provide information on the investigations conducted with regard to cases of commercial sexual exploitation of children and penalties applied to offenders.***

Article 6. Programmes of action to eliminate the worst forms of child labour. Trafficking. The Committee notes the Government's information that it has developed a National Plan of Action to Combat Trafficking in Children for Sexual and Labour Exploitation, after consultation with the NCPA and ILO-IPEC. According to the Government, this National Plan of Action covers the following four areas: legal reform and law enforcement; institutional strengthening and research; prevention and rescue; and protection and reintegration. ***The Committee requests the Government to provide information on the implementation of the National Plan of Action to combat trafficking in children and on the results achieved in terms of the number of children withdrawn from trafficking and rehabilitated.***

Commercial sexual exploitation of children. The Committee notes the Government's indication that it has developed a two-year National Action Plan to Combat Child Sex Tourism, 2006, led by UNICEF and the Sri Lanka Tourist Board. The strategic objectives of this project on combating the commercial sexual exploitation of children in tourism (CCSECT) include: to ensure that all tourists are made aware of the tourist industry's zero-tolerance policy in relation to child sex tourism (CST); to maximize the involvement of the private tourism sector in combating CST; to bring in new policies, laws and regulations to combat CST and to maximize the coordination with the police, social authorities, District Child Protection Committees (DCPCs) and NGOs in tourist areas; and to empower children and adolescents through life skills-based interventions to take more control of their lives. The Committee notes that, within the framework of this project, several awareness-raising programmes were implemented in 2007 for hotel staff in high-risk areas, tourist van drivers and service providers, school children, teachers and tourist police officers. It also notes the information provided by the Government on the workplan activities on the CCSECT project for the year 2008. ***The Committee requests the Government to provide information on the impact of the National Action Plan to Combat Child Sex Tourism in terms of the elimination of the commercial sexual exploitation of children in tourism. It also requests the Government to indicate the number of children prevented or withdrawn from commercial sexual exploitation and rehabilitated pursuant to this National Action Plan.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (d). Identify and reach out to children at risk. Children who have been affected by armed conflict. The Committee had previously noted that various programmes were adopted with the assistance of ILO-IPEC, UNICEF and other international organizations to address the problems of children involved in armed conflict, and to prevent them from being involved in the worst forms of child labour, especially by providing them with education or vocational training. Following its previous comments, the Committee notes with ***interest*** the information provided by the Government on the following measures taken with regard to the rehabilitation and reintegration of former child combatants:

- The Commissioner General of Rehabilitation (CGR), together with the NCPA, is providing care and protection for all ex-child combatants in the three rehabilitation centres established in the Northern and Eastern provinces. According to the information available with the CGR, 128 children who were under the age of 18 years at the time of surrendering were reunified with their families or recruited for foreign employment.
- The Government amended, on 15 December 2008, the Emergency (Miscellaneous Provisions and Powers) Regulations, 2005, and inserted a new section 22A, according to which child combatants are granted an amnesty and are entitled to undergo the rehabilitation programme in the Protective Child Accommodation Centres established under the terms of these Regulations. These centres provide accommodation, support, catch-up education and vocational training for persons under 18 years of age who surrendered under the terms of this Regulation.
- With the support of ILO-IPEC, the Government developed a draft National Framework Proposal on the reintegration of ex-combatants into civilian life in Sri Lanka on 30 July 2009. This proposal aims to address the specific emotional, social and economic needs of this vulnerable group of people. The proposed reintegration process aims to equip this target group with social education and skills required for civilian life, and to identify suitable vocational and technical training, employment and income-generating activities in community-based reconstruction programmes in the North and East provinces.
- The Government, together with UNICEF, launched a national campaign to prevent child recruitment and to promote the release of all recruited children. The campaign "Bring back the child", which targets armed groups, vulnerable communities and the children affected, provides reintegration and rehabilitation services for children who are released.

- The Ministry of Education and the Department of Examinations has established ten special examination centres in Vavuniya for 1,263 displaced children, including 166 former child soldiers, who are presently housed in Internally Displaced Persons welfare houses in Vavuniya. They were provided with several extra classes to upgrade their knowledge and almost all the 166 ex-child soldiers appeared for the senior secondary-level exams held in August 2009.

The Committee requests the Government to continue its efforts to rehabilitate and reintegrate former child combatants. It also requests the Government to continue providing information on the number of former child combatants who have been rehabilitated in the Protective Child Accommodation Centres and in other rehabilitation centres in the Northern and Eastern provinces.

Children affected by the tsunami. The Committee had previously noted the Government's statement that the NCPA launched a project entitled "Strengthening the capacity of the National Child Protection Authority to mobilize tsunami-affected communities in Sri Lanka and to prevent the trafficking of tsunami-affected orphans into exploitative employment". The Committee notes the Government's statement that it adopted the Tsunami (Special Provisions) Act No. 16 of 2005 which provides for special protection mechanisms for every child and young person who was left an orphan, or with a single parent who is unable to take care of such a child, or who is in need of care and protection (section 7). The Committee further notes the Government's indication that the NCPA together with the Ministry of Justice and with the assistance received from the Asian Development Bank launched a project to appoint foster parents to those children through courts which would ensure better protection and care for children. The Committee further notes that according to the ILO-IPEC Technical Progress Report of June 2008 on the project entitled "Emergency response to child labour in selected tsunami-affected areas in Sri Lanka", 3,532 children were provided direct services such as formal education, non-formal education, vocational or training skills, and legal and health services; 6,588 children were provided with indirect services such as nutrition, uniforms, books and other school supplies; and 468 families were provided with vocational or skills training and income-generating activities. Moreover, 2,465 children were prevented from child labour through educational services or training opportunities, and 1,233 children through other non-education-related services.

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

Sudan

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2003)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery. Abduction and the exaction of forced labour. In its previous comments under Convention No. 29, the Committee had noted the International Trade Union Confederation's (ITUC) allegation that the report on the situation in Darfur issued by Amnesty International in July 2004 indicates cases of abduction of women and children by the Janjaweed militia, including some cases of sexual slavery. Abductions had continued in 2003 and 2004. The ITUC also indicated that, according to the Dinka Chiefs Committee (DCC) and the Committee for the Eradication of Abduction of Women and Children (CEAWC), there were some 14,000 people who had been abducted. The Committee had also noted the information contained in the ITUC's communication of 7 September 2005 that the signing of a Comprehensive Peace Agreement (CPA) in January 2005, the inauguration of a new Government on 9 July 2005 and the adoption of the interim Constitution provided a historic opportunity for the new Government of Sudan to resolve the problem of abductions, but it would not automatically lead to an end of abductions and the exaction of forced labour.

The Committee had noted that article 30(1) of the Constitution of the Transitional Sudan Republic of 2005 prohibits slavery, the slave trade in all its forms and forced labour (unless sanctioned by the tribunal). It had also noted the Government's information that section 32 of the Child Act of 2004 specifically prohibits "the employment of children in forced labour, sexual or pornographic exploitation, illegal trade, or armed conflict". The Committee had further noted that various provisions of the Penal Code prohibit forced labour (section 311), including abductions for that purpose (section 312).

The Committee notes that, according to the Report of Activities of the CEAWC annexed to the Government's communication of 27 April 2008, the CEAWC has successfully identified and resolved 11,237 of the 14,000 cases of abduction and reunified 3,398 abductees with their families. It notes that, according to the statement of the Government representative at the discussion under the Forced Labour Convention (No. 29) of the Committee on the Application of Standards of the June 2008 International Labour Conference, the number of cases of abduction identified was raised to 11,300. The Government representative recalled that the CEAWC had achieved a large measure of success in dealing with cases of abduction and affirmed that there have been no cases of forced labour in the country since the signature of the 2005 CPA. However, the Committee notes that both Worker and Employer members affirmed that there was evidence of the persistence of abductions of women and children and their forced labour in Sudan. In this regard, the Committee, while taking note of the measures taken by the Government, expressed the view that there was no verifiable evidence that forced labour was completely eradicated and expressed concern at the reports relating to the involuntary return of certain abductees, including cases of displaced and unaccompanied children.

The Committee further notes that, in its communication of 29 August 2008, the ITUC observed that, despite the Government's claim that "there were no further cases of abduction and forced labour in the country", information from

various sources provide evidence that abductions have continued in Darfur, in the context of the current conflict there. In response to the ITUC's allegations, the Government, in its communication of 2 November 2008, reiterated its commitment to completely eradicate the phenomenon of abductions and to provide continued support to the CEAWC. The Government also once again confirmed that abductions have stopped completely which, according to the Government, has also been confirmed by the DCC.

The Committee notes, however, that there is broad consensus among United Nations bodies, the representative organizations of workers and non-governmental organizations of the continuing existence and of the scope of the practices of abduction and the exaction of forced labour from children. Indeed, the Committee observes that the Secretary-General of the United Nations, in a Security Council report on children and armed conflict in the Sudan, of 10 February 2009, reported many instances of child abductions in southern Sudan and Darfur in 2007, as well as continuing concerns about incidents of abductions in 2008 (S/2009/84, paragraphs 35–37). Furthermore, the Committee notes that, in his Report to the Human Rights Council of June 2009, the Special Rapporteur on the situation of human rights in the Sudan highlights cases of abduction of children in March and April 2009 in Jonglei State, as well as between December 2008 and March 2009 in Western Equatoria and Central Equatoria States, in the context of continued attacks and fighting.

The Committee therefore once again observes that, while there have been positive and tangible steps to combat the forced labour of children, which include the conclusion of the results achieved by the CEAWC, there is no verifiable evidence that the forced labour of children has been eradicated. Therefore, although the national legislation appears to prohibit abductions and the exaction of forced labour, this remains an issue of concern in practice, in particular in the context of renewed violence and conflict. In this regard, the Committee once again reminds the Government that, by virtue of *Article 3(a)* of the Convention, forced labour is considered as one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***It strongly urges the Government to redouble its efforts to improve the situation and to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children under 18 years, as a matter of urgency. It also requests the Government to provide information on the measures taken to remove children from situations of abduction and forced labour and to provide for their rehabilitation and social integration, and to continue providing information on the results achieved.***

Forced recruitment of children for use in armed conflict. In its previous comments, the Committee had noted that the government armed forces, including the paramilitary Popular Defence Forces (PDF), the government-backed militias, the Sudan People's Liberation Army (SPLA) and other armed groups, including tribal groups not allied to government or armed opposition groups, have forcibly recruited child soldiers in the north and the south of Sudan. Recruitment took place predominantly in Western and Southern Upper Nile, Eastern Equatoria and the Nuba Mountains. An estimated 17,000 children remained in the government, SPLA and militia forces in 2004.

The Committee had noted that the National Service Law of 1992 stipulates that any Sudanese person having attained 18 years of age and who is not older than 33 years of age may be subject to conscription. However, section 10(4) of the People's Armed Forces Act of 1986 states that all those who are capable of bearing arms are regarded as a reserve force and may be called upon to serve in the armed forces whenever the need arises. Subsection (5) of section 10 further states that, without prejudice to the provisions of subsection (4), the President of the Republic may require any person who is capable of bearing arms to undergo military training and thus be prepared as a member of a reserve force in accordance with the conditions specified by any law or decree in force. Furthermore, the government-run PDF established as a paramilitary force by the Popular Defence Forces Act of 1989, were allowed to recruit 16-year-olds.

The Committee had noted the Government's information that section 9(24) of the Sixth Protocol of the CPA of 2005 requires "the demobilization of all child soldiers in the span of six months as from the date on which the Comprehensive Peace Agreement is signed". Section 9(1)(10) of the Protocol considers the conscription of children a violation of the provisions of the Agreement. The Committee had also noted the Government's information that a Committee was set up after the CPA which is specialized in disarmament, demobilization and reintegration. However, the Committee had considered that the prohibition of forcibly recruiting children should not be confined to the scope of the said CPA. Hence, the Committee had observed that, according to the legislation in force, children under 18 years may be recruited as "reserve forces" as well as members of the PDF (from 16 years of age). The Committee had accordingly requested the Government to take the necessary measures to prohibit in the national legislation the compulsory recruitment of children under 18 years including as "reserves", in any military force and to adopt appropriate penalties for contraventions of the prohibition.

The Committee notes that, according to the mission report of the Special Representative of the Secretary-General for Children and Armed Conflict of 24 January to 2 February 2007, the Government of Sudan was finalizing the Sudan Armed Forces Bill that fixes the age of recruitment at 18 years and criminalizes the recruitment of anyone under 18. The Committee notes with *interest* that the Sudan Armed Forces Act was adopted in December 2007. The Committee further notes with *interest* that the Child Act of Southern Sudan was adopted in 2008. Section 31 of this Child Act establishes a minimum age of 18 years for conscription or voluntary recruitment into armed forces or groups. Section 32 provides that any person involved in the recruitment of a child into the armed forces is liable to be sentenced to imprisonment for a term not exceeding ten years or to a fine, or both.

While taking note of these advances, the Committee nevertheless observes that the Secretary-General of the United Nations, in his Security Council report on children and armed conflict in the Sudan of 10 February 2009, indicates that United Nations field monitors reported the recruitment and use of 101 children by the SPLA and that the recruitment and use of 67 children has been reported in six separate incidents in the Abyei area. On 18–19 June 2008, the United Nations reported the presence of 55 uniformed children aged 14 to 16 years among SAF soldiers who had presented themselves for registration in the Joint Inspection Unit. Furthermore, the Secretary-General indicates that United Nations field monitors reported the recruitment and use of 487 children by various armed forces and groups operating in all three Darfur states, most of which have been used as combatants, and that it is known that many cases remain unreported. Moreover, over 14 Sudanese and foreign armed forces and groups are reportedly responsible for recruiting and using children in Darfur. In February 2008 alone, at least 89 children were recruited by various armed groups: 10 in southern Darfur, 30 in northern Darfur, and 49 in western Darfur. Some of the children recruited were as young as 12 years of age. The Secretary-General further reports that Government forces are also responsible for recruiting children in Darfur. For example, reports indicate that the Central Reserve Police recruited 49 children and the SAF recruited 45 children between 1 August 2007 and 30 December 2008 (S/2009/84, 10 February 2009, paragraphs 9–17).

The Committee notes that, despite the adoption of the Sudan Armed Forces Act in 2007 and the Child Act of Southern Sudan in 2008, children are still being recruited and forced to join illegal armed groups or the national armed forces in practice. It expresses its *profound concern* with regard to the persistence of this practice, especially as it leads to other violations of the rights of children, in the form of abductions, murders and sexual violence. The Committee refers to the Secretary-General's call upon the Government of National Unity and the Government of Southern Sudan to live up to the commitments they have made to end the recruitment and use of children in their forces in accordance with their obligations under international law as well as national legislation (S/2009/84, 10 February 2009, paragraph 68). ***The Committee therefore urges the Government to intensify its efforts to improve the situation and to adopt, as a matter of urgency, immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by armed groups and the armed forces. It urges the Government to take the necessary measures to ensure that persons who forcibly recruit children under 18 years for use in armed conflict are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, the Committee requests the Government to send a copy of the Sudan Armed Forces Act.***

Article 7, paragraph 1. Penalties. Forced labour. In its previous comments under Convention No. 29, the Committee had noted that the CEAWC was of the opinion that legal action was the best measure to eradicate abductions, while the tribes, including the DCC, had requested the CEAWC not to resort to legal action unless the amicable efforts of the tribes had failed.

The Committee had noted the ITUC's allegation that the impunity that those responsible for abductions and the exaction of forced labour have enjoyed – illustrated by the absence of any prosecutions for abductions in the last 16 years – has been responsible for the continuation of this practice throughout the civil war and more recently in Darfur. The Committee noted the Government's reply of November 2005 according to which the main reasons for which all the tribes concerned, including the DCC, have requested the CEAWC not to resort to legal action unless the amicable efforts of the tribes are not successful, are that: legal action is very long and expensive; it may threaten the life of young abductees; and it will not build peace among the tribes concerned.

The Committee had noted that the Penal Code of 2003 contains various provisions which provide for sufficiently effective and dissuasive penalties of imprisonment and fines for anyone who commits the offence of forced labour. It had also noted the Government's information that section 67(d) of the Child Act of 2004 states that any person who violates section 32 prohibiting forced labour shall be punished by imprisonment for a maximum period of 15 years and by a fine decided upon by the tribunal. The Committee had considered that the lack of enforcement of the penal provisions prohibiting the forced labour of children under 18 years, while sometimes ensuring that victims are effectively retrieved, has the effect of ensuring impunity for perpetrators instead of punishing them.

The Committee notes that the Government representative at the Conference Committee on the Application of Standards indicated that, with a view to giving effect to legal procedures and to bringing those procedures closer to the victims, four prosecutors had been appointed covering all the regions addressed by the CEAWC. However, not a single victim made use of these legal procedures and so, as of January 2008, the CEAWC recommenced its work to continue the methods that had been previously applied. The Worker members nevertheless pointed out that international provisions regarding sanctions should prevail to prevent perpetrators from enjoying impunity. The Worker members noted that the lack of prosecutions had undoubtedly contributed to the persistence of abductions during the civil war and until today in Darfur. The Conference Committee therefore considered it necessary to pursue effective and urgent action to put an end to impunity by punishing perpetrators, particularly those unwilling to cooperate, independently from the CEAWC's activities. In this regard, in her Report to the Human Rights Council of June 2009, the Special Rapporteur on the situation of human rights in the Sudan expressed ongoing and serious concern at the level of impunity in all areas of Sudan (A/HRC/11/14, paragraph 91).

The Committee once again reminds the Government that, by virtue of *Article 7(1)* of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions. ***The Committee once***

again requests the Government to take the necessary measures to ensure the protection of children under 18 years of age against abductions for the exaction of forced labour in practice, including by ensuring that thorough investigations and robust prosecutions of offenders are carried out, and that effective and sufficiently dissuasive sanctions are imposed on those engaged in the abduction and exaction of forced labour from children under 18 years. It also requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Removing children from the worst forms of child labour and providing for their rehabilitation and social integration. Child soldiers. The Committee notes that the Secretary-General of the United Nations, in his Security Council report on children and armed conflict in the Sudan of 10 February 2009, indicated that during the reporting period (1 August 2007 to 30 December 2008), almost 600 children formerly associated with armed forces and groups under the CPA, as well as 12,000 other vulnerable children, were supported through reintegration programmes across the Sudan. It notes that the National Council for Disarmament, Demobilization and Reintegration (DDR) Coordination and the Northern Sudan DDR Commission were established by the CPA in February 2006, while a DDR Commission for Southern Sudan was created in May 2006. The Northern and Southern Sudan DDR Commissions have jointly developed a national reintegration strategy for children associated with armed forces and groups, which will provide a common approach for child reintegration throughout the country. In this regard, the Southern Sudan DDR Commission has reintegrated 150 children and registered an additional 50, and the Northern Sudan DDR Commission has recently started the reintegration of some 300 children. The Secretary-General also indicates that a DDR process for children in Darfur was launched in June 2008 as a result of a workshop that brought together representatives of the six groups that are signatories to the Darfur Peace Agreement, all of whom have committed themselves to releasing children as a priority. However, although the CPA signed in January 2005 called for the immediate and unconditional release of all children from various fighting forces and groups within six months, the Secretary-General points out that children continue to be recruited and used by all parties to the conflict (S/2009/84, paragraphs 56–60). While noting the progress achieved in the country, the Committee observes that the current situation in Sudan remains a cause for serious concern. *The Committee strongly encourages the Government to continue its efforts and take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to supply information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities as a result of the Northern and Southern Sudan DDR Commissions.*

Furthermore, in accordance with the recommendation of the Conference Committee on the Application of Standards, the Committee invites the Government to avail itself of ILO technical assistance.

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

Switzerland

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (b). Use or procuring of a child for prostitution. In its previous comments, the Committee noted that section 187 of the Penal Code penalizes any person who commits a sexual act with a child under 16 years of age. In this respect, it noted that, in its report and message of 20 September 1999, the Federal Council indicates that section 187 establishes the age of sexual consent at 16 years, and that young persons between 16 and 18 years of age may engage in prostitution, provided that they do so of their own free will. The Committee also noted that section 195 of the Penal Code punishes any person who induces a young person (that is a person who has not yet reached the age of 18 years) to engage in prostitution. The Committee considered that section 195 of the Penal Code covers the prohibition of the procuring of a child under 18 years of age for prostitution, in accordance with the Convention. However, it observed that, with regard to the use of a child under 18 years of age for prostitution, Swiss penal law is not fully in conformity with the Convention because section 187 of the Penal Code only punishes those who have committed acts of a sexual nature with children under 16 years of age. The Committee emphasized that it is necessary to make a distinction between the age of sexual consent and the freedom to engage in prostitution. Indeed, the freedom of sexual activity accorded to a young person by the law cannot include the freedom to engage in prostitution without being in violation of one of the objectives of the Convention, namely the prohibition of the worst forms of child labour.

With regard to the consent of a young person between the ages of 16 and 18 years of age, the Committee referred to the preparatory work for the adoption of the Convention (ILC, 86th Session, 1998, Report VI(2), pp. 52–53) in which the Office indicated that “this provision [Article 3(b) of the Convention] would still prohibit the use, engagement or offering of a person under 18 for prostitution. A child’s consent to a sexual act would not preclude it from the prohibition”. The Committee also referred to the message of the Federal Council of 11 March 2005 in which it indicated that “it should be noted that, in the view of the working group, the agreement of the child is not sufficient to exempt prostitution from any penalty” (see p. 2656 of the message). The Committee therefore considered that, when adopting Convention No. 182, the ILO also intended that the consent of a young person would not affect the prohibition in Article 3(b).

Moreover, with regard to the meaning of the expression “use of a child for prostitution” the Committee referred to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000. Under the terms of Article 2(b) of the Protocol, child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration. Accordingly, the Committee considered that, in the context of Convention No. 182, the use of a child for prostitution applies to a person, in this case a client, who engages in a sexual act with a child under 18 years of age for remuneration or any other form of consideration.

The Committee therefore considered that, although the national legislation (section 187 of the Penal Code) recognizes that a child of over 16 years of age may lawfully consent to a sexual act, the age of consent does not affect the obligation to prohibit this worst form of child labour. It also considered that the act of engaging in a sexual act with a child under 18 years of age for remuneration constitutes the use of a child for prostitution, whether or not the child consents. Accordingly, section 195 of the Penal Code does not give full effect to the prohibition set out in *Article 3(b)* of the Convention.

The Committee notes the Government’s indication that the issue of extending the culpability of persons who have recourse to the prostitution of young persons under 16 years of age to those who have recourse to the prostitution of young persons between the ages of 16 and 18 years is currently under discussion. This question will be examined in the context of the possible adhesion of Switzerland to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) following which, and in the light of the responses received by the cantons, the Federal Council will decide on the action to be taken. The Government adds that parliamentary interventions have already been submitted on the subject, in which the Federal Council considered that the prostitution of young persons under 18 years of age may be prejudicial to their sexual development, traumatize them and result in their psychological and social destabilization. The Federal Council, however, noted that it would not be wise to anticipate the results obtained in the cantons from this hearing. The Committee reminds the Government, however, that, under the terms of *Article 1*, each Member which ratifies the Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour *as a matter of urgency*. ***The Committee therefore urges the Government to take the necessary measures to ensure that the discussions on the culpability of persons having recourse to the prostitution of young persons between the ages of 16 and 18 years results in the adoption of legal provisions prohibiting and penalizing the use of children under 18 years of age for prostitution as soon as possible. It requests the Government to provide information in its next report on any developments in this respect.***

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

Tajikistan

Minimum Age Convention, 1973 (No. 138) (ratification: 1993)

Article 2, paragraph 1, of the Convention. Minimum age for admission to employment or work. The Committee had previously noted, that at the time of ratification, Tajikistan had specified a minimum age of 16 years for admission to employment or work. The Committee had, however, noted that section 174 of the new Labour Code (Act of 15 May 1997) only prohibits the employment of persons under the age of 15 years in contrast to section 180 of the previous Labour Code of 1973 which fixed the minimum age of 16 years. The Committee notes the Government’s indication that, in accordance with sections 27 and 174 of the Labour Code of 1997, the conclusion of a labour contract and admission to employment or work is allowed only with respect to persons of not less than 15 years of age. Section 174 further permits the employment of children of 14 years of age with the consent of their parents or guardian, in light work provided that such employment is not dangerous or harmful to their health or is not prejudicial to attendance at school. The Committee recalls that, by virtue of *Article 2(1)* of the Convention, no one under the minimum age for admission to employment or work, specified upon ratification of the Convention (16 years), shall be admitted to employment or work in any occupation except for light work as authorized under *Article 7* of the Convention. It further reminds the Government that *Article 2(2)* of the Convention foresees the raising of the minimum age but does not allow the lowering of the minimum age once declared. ***The Committee therefore once again requests the Government to take immediate measures, pursuant to its declaration under Article 2 of the Convention, to fix the minimum age for employment or work at 16 years, with the exception of light work.***

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

United Republic of Tanzania

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee had previously noted that under the terms of section 139A(1)(b)(i) of the Penal Code, trafficking in children for labour exploitation was only prohibited if the consent of the parent or lawful guardian had not been given. It had requested the Government to indicate in what way trafficking in children for labour exploitation is prohibited where consent of their parents or guardian has been given, but which may, nonetheless, be clear cases of trafficking for the purposes of labour exploitation.

The Committee notes with *satisfaction* the enactment of the Anti-Trafficking in Persons Act, 2008, which repeals section 139(A) of the Penal Code. According to section 4(1) of this Act, a person commits an offence of trafficking if that person recruits, transports, transfers, harbours, provides or receives a person by any means under the pretext of domestic or overseas employment for the purposes of labour or sexual exploitation. Section 4(3) of the Act provides that, if the victim is a child under the age of 18 years, the consent of the child, parent or guardian shall not constitute a defence in prosecution. The Committee also notes that, according to section 6(2)(a) of the Act, trafficking in children under the age of 18 years shall be considered as “severe trafficking in persons”, which carries more severe penalties, namely a fine ranging between 5 million shillings and 150 million shillings or imprisonment ranging from ten years to 20 years, or both. Sections 5 and 7 of the Act further provide penalties for the offences related to procuring or facilitating or acting as an intermediary for the commission of trafficking in persons.

Compulsory recruitment of children for use in armed conflict. Referring to the report of the United Nations Secretary-General on children and armed conflict of 10 November 2003 (A/58/546-S/2003/1053, paragraph 47) that armed opposition groups were recruiting children from refugee camps in western Tanzania, the Committee had previously requested the Government to indicate the measures taken to prohibit the forced recruitment of children from refugee camps for use in armed conflict.

The Committee notes with *satisfaction* that section 4(1)(g)(ii) of the Anti-Trafficking Act of 2008, prohibits any person from recruiting, hiring, adopting, transporting or abducting a child under the age of 18 years for the purposes of engaging the child in armed conflict. According to subsection (5) of section 4 of the Act, this offence shall be punishable with a fine of not less than 5 million shillings but not more than 100 million shillings or imprisonment for a term ranging between two years and ten years, or both.

Clause (c). Use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs. The Committee had previously observed that the provisions of the Employment and Labour Relations Act, No. 6 of 2004 (sections 5(4) and 5(7)), and the Penal Code (sections 138, 139A(1)(b) and 139A(1)(b)(i)) do not appear to prohibit the use, procuring or offering of a child for the production and trafficking of drugs. The Committee notes the Government’s statement that efforts will be made to bring about the prohibition of the above offence. ***The Committee expresses the firm hope that the Government will take immediate measures to prohibit the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties and establish penalties for the same. It requests the Government to provide information on any progress made in this regard.***

Article 3(d) and Article 4, paragraph 1. Prohibition and determination of hazardous work. Mainland Tanzania. The Committee notes the Government’s statement that the process of adopting the rules and regulations of the Employment and Labour Relations Act are under way. The Committee also notes that, according to the ILO-IPEC Progress Report of September 2009 on the project entitled “Support for the Time Bound Programme on the Worst Forms of Child Labour in Tanzania-II” (***TBP-II***), the process of integrating the list of hazardous types of work in the national labour laws will be completed in October 2009. ***The Committee expresses the firm hope that the regulation on the list of hazardous types of work will be adopted shortly in consultation with the social partners and requests the Government to provide information on any developments in this respect. It also requests the Government to supply a copy of the list, once it has been adopted.***

Zanzibar. The Committee had previously noted that the draft Employment Act for Zanzibar, which contains a general prohibition of hazardous work for persons under 18, would be adopted shortly. The Committee notes with *interest* the Government’s statement that Employment Act No. 11, which prohibits child labour including the employment of persons under 18 years in hazardous work, has been adopted since 2005. ***The Committee requests the Government to supply a copy of Employment Act No. 11 of 2005 along with its next report.***

Article 6. Programmes of action to eliminate the worst forms of child labour. The Committee had previously noted the Government’s statement that, during Phase I of the ILO-IPEC project entitled “Supporting the Time-Bound Programme on the Worst Forms of Child Labour (2002–05)” (***TBP***), the National Inter-Sectoral Coordination Committee (NISCC) approved 15 action programmes on child labour. The Committee notes the Government’s information that, as a result of the programmes of action approved by the NISCC, the incidence of child labour has been reduced from 25 per cent in 2000–01 to 21 per cent in 2005–06.

Article 7, paragraph 1. Penalties. The Committee had previously observed that, due to devaluation, most of the monetary penalties mentioned in the Penal Code and the Employment and Labour Relations Act, 2004, have become very low. The Committee notes the Government’s indication that the Anti-Trafficking in Persons Act of 2008 provides for a higher penalty for the offences related to trafficking in children. ***However, the Committee requests the Government to indicate the measures taken or envisaged to review the monetary penalties prescribed for the other offences mentioned under clauses (a) to (d) of Article 3 of the Convention, which are dealt with under the Penal Code and the Employment and Labour Relations Act.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. The Committee had previously noted that according to the ILO-IPEC Progress Report, 2006 (***TBP*** Phase I, page 2), the Government had introduced the Primary Education

Development Programme (PEDP) from 2002 to 2006 and the Secondary Education Development Programme (SEDP) for the period from 2005 to 2009 which had contributed to increased enrolments in primary schools and secondary schools. It had also noted that the Government adopted a Complementary Basic Education (COBET) programme as a strategy to reach out-of-school children, including those in child labour. The Committee notes the Government's statement that, according to the Basic Education Statistics in Tanzania, 2007, as a result of the programmes to improve education under the PEDP, SEDP, as well as the Poverty Reduction Strategy Paper (PRSP), the number of children enrolled in primary education has increased to 12,418,679 pupils in 2007, and the secondary school enrolment has increased to 1,020,510 pupils. The Committee also notes the statistical data provided by the Government on the number of children learning under the COBET programme. According to this data, in 2007 a total of 185,206 children (106,463 boys and 78,743 girls) between the ages of 11 and 18 years were COBET learners. ***Considering that education contributes to preventing children from engaging in the worst forms of child labour, the Committee requests the Government to continue its efforts to ensure free basic education and to keep children in school. It requests the Government to continue supplying data on the enrolment rates in school disaggregated by sex.***

Clause (b). Direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Trafficking in children. The Committee notes that according to the provisions under Part IV of the Anti-Trafficking in Persons Act of 2008, the Government shall secure the protection, assistance and rehabilitation of child victims of trafficking; and establish or designate centres for the protection and assistance of victims of trafficking in persons (sections 19 and 20). ***The Committee requests the Government provide information on any measures taken, pursuant to the provisions of the Anti-Trafficking in Persons Act of 2008, to secure the protection, assistance and rehabilitation of child victims of trafficking, and on the number of centres established for this purpose.***

Commercial sexual exploitation and child labour in tobacco farming. The Committee notes with ***interest*** that according to the ILO-IPEC Progress Report, 2009, of the project ***TBP-II*** a total of 20,143 children (10,015 boys and 10,128 girls) were withdrawn or prevented from child labour through educational services or training opportunities; and 2,375 children (912 boys and 1,463 girls) were withdrawn or prevented from child labour through other non-education related services. It also notes that within this project 858 children (167 boys and 691 girls) were withdrawn and 648 children (414 boys and 234 girls) were prevented from commercial sexual exploitation. The Committee further notes that, according to the ILO-IPEC Progress Report of August 2008 of the project entitled "Towards Sustainable action for prevention and elimination of child labour in tobacco farming in Urambo district, Tanzania", a total of 600 children (224 girls and 376 boys) were withdrawn or prevented through educational services or training opportunities; and 1,000 children (488 girls and 512 boys) were withdrawn or prevented through other non-education related services, and a total of 612 families were provided with income-generating activities. ***The Committee requests the Government to continue providing information on the achievements of the TBP-II and other ongoing action programmes within the TBP-II, and their impact with regard to removing children from the worst forms of child labour, in particular, the commercial sexual exploitation of children and providing for their rehabilitation and social integration.***

Clause (d). Identify and reach out to children at special risk. Child orphans of HIV/AIDS. The Committee had previously noted that, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS) 1.5 million people were believed to be affected in the United Republic of Tanzania. It also noted that, according to the Rapid Assessment document entitled "HIV/AIDS and child labour in the United Republic of Tanzania", more than 60 per cent of children working in the informal sector were either single or double orphans. Most of their parents had died from HIV/AIDS. It had also noted the Government's initiative at the national level, through the National Policy on HIV/AIDS of 2001 and the National Multi-Sectoral Strategic Framework on HIV/AIDS (2003–07). The Committee had further noted the Government's statement that the Ministry of Labour, Employment and Youth Development in collaboration with local government councils and NGOs, had developed HIV/AIDS sexual and reproductive health education programmes for out-of-school children and those children at risk. The Committee notes that according to the information contained in the Epidemiological Factsheet on HIV/AIDS (UNAIDS), October 2008, over 970,000 children aged below 17 years are HIV/AIDS orphans in Tanzania. While noting the measures taken by the Government, the Committee observes with ***concern*** that one of the serious consequences of this pandemic on orphans is their increased risk of being engaged in the worst forms of child labour. ***The Committee therefore requests the Government to redouble its efforts to protect child victims and orphans of HIV/AIDS from the worst forms of child labour, in particular by increasing their access to education and vocational training. It also requests the Government to provide information in this regard and the results achieved.***

Thailand

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. The Committee noted with satisfaction that the draft Prevention and Suppression of Human Trafficking Act has been adopted by the National Legislative Assembly in November 2007. This Act defines "human trafficking" as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or the use of force or

other forms of coercion, abduction, fraud, deception, of the abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The consent of a child or woman victim of trafficking to the intended exploitation should be irrelevant where any of the abovementioned means have been used. Key elements of the Act include, amongst others, protective and rehabilitative measures (physical, psychological, legal, and educational services) provided to the victims of trafficking. ***The Committee once again requests the Government to provide a copy of the Prevention and Suppression of the Human Trafficking Act with its next report.***

Article 5. Monitoring mechanisms. The police and public officials. The Committee noted the Government's information on various measures aimed at training and raising public officials' awareness on preventing and eliminating child trafficking and commercial sexual exploitation. In particular, the Department of Labour Protection and Welfare has carried out various seminars on collaboration between concerned agencies aimed at raising the awareness of public officials in preventing, eliminating and punishing unfair labour practices concerning children and women. The seminars were attended by 50 officers, including the Immigration Bureau and Juvenile Aid Subdivision under the Office of the Royal Thai Police. Moreover, the various measures promoted by the Subcommittee to Coordinate Combating Trafficking in Children and Women (SCTCW) to implement the National Policy and Plan of Action on Preventing, Suppressing and Combating Domestic Transnational Trafficking of Children and Women (NPA on Trafficking in Children and Women 2003–07) include the following: (a) promoting cooperation with the Royal Thai Police to establish a specific unit responsible for combating trafficking of children and women (Suppression of Offences against Children, Youth and Women Division); (b) organizing workshops for officers responsible for protecting children, women and disadvantaged persons. ***The Committee once again requests the Government to provide information on the concrete measures taken by the newly established Division on the Suppression of Offences against Children, Youth and Women, to combat child trafficking.***

Protection and Occupational Development Committee (PODC). The Committee had previously noted that the Prostitution Act of 1996 established a Protection and Occupational Development Committee (PODC), composed of representatives of various ministries as well as representatives of the police and central and juvenile court police (section 14). The PODC was responsible for coordinating plans of action, projects, working systems and determining action plans to be implemented jointly by government agencies and the private sector involved in preventing and suppressing prostitution (section 15 of the Prostitution Act). ***Noting that the Government provides no information on the concrete measures taken by the PODC as well as their impact on preventing and eliminating child prostitution, the Committee once again requests the Government to provide information on this point in its next report.***

Article 6. Programmes of action to eliminate the worst forms of child labour. The ILO–IPEC TICW project and the National Plan on Prevention and Resolution of Domestic and Cross-border Trafficking in Children and Women (NPA on Trafficking in Children and Women 2003–07). The Committee had previously noted that the ILO–IPEC project to combat trafficking in children and women in the Mekong subregion (TICW project) was launched in 2000 and covered Thailand, Lao People's Democratic Republic, Viet Nam, Cambodia and Yunnan (province of China). In Thailand, the first phase of the project (2000–03) focused on rural communities in the provinces of Phayao, Chiang Mai, Chiang Rai and Nong Khai. The second phase of the project (2003–08) would expand project interventions to cover the complete perspective of Thailand as a source, transit and destination country of trafficking victims with the objectives of: (i) enhancing the capacity of governmental agencies, civil society organizations and community-based groups to combat and monitor human trafficking; (ii) providing direct assistance to vulnerable groups (including people living in poor rural areas, tribal and migrant peoples); and (iii) increasing the role of the organizations of employers and workers in combating the trafficking of children and women. In the framework of the second phase of the TICW project, the National Committee on Combating Trafficking in Children and Women launched, in 2003, its first National Policy and Plan of Action on Preventing, Suppressing and Combating Domestic Transnational Trafficking of Children and Women (NPA on Trafficking in Children and Women 2003–07), focusing on prevention, with short-term and long-term interventions, as well as on research, monitoring and evaluation systems. The Committee noted the Government's information that the following activities have been carried out at the national level in implementing the NPA: (a) signing of memorandum of understandings (MOUs) for nine northern provinces on common guidelines of practices for agencies in addressing trafficking in children and women; (b) MOU on the common guidelines and practice for government agencies concerned with cases of trafficking of children and women; (c) MOU on the procedural cooperation between governmental and non-governmental agencies concerned with cases of trafficking of children and women; (d) MOU on the operational guidelines of NGO agencies concerned with cases of trafficking of children and women. The Committee further noted the information contained in the TICW, phase II (TICW-II), progress report of 2007 that the Operational Centre for the Prevention and the Protection of Trafficking in Women and Children and the concerned governmental and non governmental agencies signed the domestic MOU on trafficking among 19 north-eastern provinces (3 July 2006). The MOUs will be expanded to cover all 17 northern provinces in the first half of 2007. ***The Committee once again requests the Government to continue to provide information on the concrete measures taken at the national level in implementing the second phase of the TICW and the NPA on Trafficking in Children and Women 2003–07, and their impact on eliminating child trafficking.***

Child prostitution. In its previous comments, the Committee had noted that the Office of the National Commission on Women's Affairs estimated that there were between approximately 22,500 and 40,000 prostitutes under 18 years of age (representing approximately 15–20 per cent of the overall number of prostitutes). These estimates did not include foreign child prostitutes. It had also noted that, according to UNICEF, estimates of the number of children engaged in prostitution varied from 60,000 to 200,000, with 5 per cent of them being boys (*Official summary of the state of the world's children 2005*). The Committee had noted that the National Plan of Action on the Elimination of the Worst Forms of Child Labour (2004–09), aims at preventing and eliminating the worst forms of child labour, including child prostitution and had asked the Government to provide information on the concrete measures taken under the National Plan of Action. The Committee is very concerned about the absence of information from the Government on this point. It observes that although the commercial sexual exploitation of persons under 18 is prohibited by law, it remains an issue of concern in practice. ***It once again requests the Government to provide information on the concrete measures taken under the National Plan of Action to eliminate the use, procuring or offering of a child under 18 for prostitution, and the results achieved.***

Article 7, paragraph 1. Penalties. Statistical information on child victims of trafficking and commercial sexual exploitation, prosecutions, convictions and penalties. The Committee had previously noted that the enforcement of the existing penalties was very ineffective. It noted the Government's information that, according to the statistical figures of the Office of the Court of Justice, in the period 2003–04 there were 823 prosecutions concerning the offences of procuring and trafficking children for the purposes of prostitution and sexual abuse under the Penal Code. The Committee also noted that the Government mentions the difficulty of collecting precise statistics on the worst forms of child labour, especially on national and international trafficking

through illegal channels. This is especially due to the unwillingness of victims of trafficking to identify themselves or their perpetrators, as well as the unwillingness of some citizens to become involved. Therefore, Thailand's next attempt is to improve and produce a more comprehensive system of data collection and analysis, disaggregated by sex, age, region and other socio-economic categories. The Committee considered that the issues of improving data collection on the number of children involved in trafficking and the effective enforcement of the penalties for child trafficking are linked. It welcomed the willingness of the Government to improve the system of data collection and analysis on trafficked children. ***In view of the high number of children under 18 years who are victims of trafficking and prostitution, the Committee once again requests the Government to redouble its efforts to ensure that persons who traffic in children or exploit children in prostitution are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. The Committee also encourages the Government to pursue its efforts to improve the system of data collection and analysis on children involved in the worst forms of child labour, especially in trafficking and commercial sexual exploitation. In this regard, it requests the Government to provide, in its next report, statistical information on the number of children involved in trafficking and commercial sexual exploitation, and on infringements reported, investigations, prosecutions, convictions and penal sanctions applied.***

Measures aimed at securing compensation for victims of trafficking. The Committee noted that the Government has taken a number of measures aimed at securing justice and compensation for victims of trafficking, including children, and protecting victims of trafficking during the trial period. In particular, it noted that the Prevention and Suppression of Human Trafficking Act, has been adopted in order to improve the judicial system to ensure justice for victims of trafficking and prosecute the offenders. More specifically, this Act covers the following aspects: (a) the possibility of prosecuting every offender of human trafficking, no matter where the offence has been committed; (b) the protection of victims of trafficking and witnesses during the trial; (c) the possibility for victims of trafficking to claim compensation from the offenders; and (d) the provision of funds amounting to 500 million baht set up by the Government under the draft Prevention and Suppression of Human Trafficking Act, for the rehabilitation, occupational training and development of victims of trafficking. In this regard, the Government adds that the Accused Act, BE 2544 (2001) states that children who are deceived into trafficking, prostitution, or forced labour, shall receive compensation. The Committee further noted the Government's information that the Central Juvenile and Family Court, in order to give effect to the provisions of the Convention, has taken several measures aimed at training court officers to deal with children involved in trials. ***The Committee once again requests the Government to indicate in its next report the number of former child victims of trafficking who have received compensation either from the offenders or through funds set up by the Government under the Accused Act BE 2544 (2001) or the Prevention and Suppression of Human Trafficking Act.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. Trafficking of children. The Committee had previously noted that the Government, with the assistance of ILO/IPEC and collaboration of the social partners and NGOs decided, on 17 January 2005, to establish, under the TICW, joint forces in Chiang Mai, Chaing Rai and Phayao. The objectives of the joint forces were to collect data concerning the supply of and demand for trafficked individuals, to establish victim support hotlines, raise awareness about the dangers of human trafficking, strengthen networks, develop provincial and district mechanisms for the prevention of trafficking, and promote community and school "watchdogs". The action programme would last 16 to 24 months and was expected to benefit 12,000 children and women from Chiang Mai, Chaing Rai and Phayao, who were at heightened risk of being trafficked. The Committee noted that, according to the TICW-II progress report of 2007, a provincial-level database has been developed, which contains data from various sources on persons and communities at risk of trafficking, victims of trafficking (especially for sexual exploitation), workplaces considered vulnerable to trafficking, and lessons learned. Moreover, the following activities have been carried out to raise awareness on child trafficking issues: (a) a seminar aimed at increasing the media's knowledge on trafficking and migration issues; (b) a campaign to stop violence against women and children; (c) the establishment of watchdog systems in the vulnerable communities of Phayao, Chiang Rai, and Chiang Mai; (d) the distribution of a safe migration guide for foreign migrant workers in the subregion. The Committee noted with interest that, according to the same report, 1,786 boys, 2,765 girls, and 921 young women have been prevented from trafficking through the provision of educational services or training opportunities. Furthermore, 396 boys, 286 girls, and 1,511 young women have been prevented from trafficking through the provision of other non-education-related services.

Clause (b). Providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. TICSAs project. The Committee noted that, according to the TICSAs, Phase II, progress report of 2006, TICSAs-II and the Centre for the Protection of Children's Rights jointly initiated the documentation of the "Multi Disciplinary Approach to Rehabilitation of the Victims of Trafficking". This systematic approach to rehabilitation with the support of a group of experts (physicians, psychologists, lawyers, police), has proven to be successful in various shelters. Moreover, as the "Case Information Management System" (a computer software that improves the capacity of collecting data of trafficked victims - CIMS), developed and implemented at two Government shelters, was successful, the Ministry of Social Development and Human Security (MSDHS) has planned to set up a computerized database at its shelters in other provinces.

Measures adopted by the Ministry of Social Development and Human Security (MSDHS). The Committee noted with interest the Government's information that the MSDHS has adopted the following measures to protect and assist children and women who are trafficked both into and out of Thailand:

- (a) establishment of the Operation Centre on Human Trafficking at the provincial, national and international levels, aimed at coordinating the concerned organizations to protect and assist the victims of trafficking;
- (b) provision of welfare protection to child and women victims of trafficking;
- (c) establishment of 99 welfare homes (the most important is the Kredtrakarn Protection and Occupational Development Centre) in 75 provinces to provide temporary assistance to Thai and non-Thai child and women victims of trafficking;
- (d) establishment of reception homes for women, and welfare protection and occupational development centres for women, in order to provide trafficked women with rehabilitative services;
- (e) provision of counselling on human trafficking concerns, especially through the telephone helpline "1300"; and
- (f) development of return and reintegration programmes with Cambodia, Lao People's Democratic Republic, Myanmar, and Yunnan Province in China.

The Committee noted the Government's information that the number of foreign victims assisted and housed in the MSDHS's shelters from 1999 to 2004 was 1,633. Moreover, according to the record of the MSDHS from 2000 to 2005, 3,062 foreign trafficking victims have been protected in Thai shelters and repatriated to their home countries. These include: 959 Cambodians, 567 Burmese, 501 Laotians, 20 Chinese, 12 Vietnamese, nine persons of other nationalities and four of

unidentified nationality. ***The Committee once again requests the Government to specify how many of these victims of trafficking are children under 18 years. It also requests the Government to continue providing information on the number of child victims of trafficking, including Thai children, who have been rehabilitated and reintegrated in their communities.***

Clause (d). Children at special risk. Children from ethnic minorities. The Committee had previously noted that, according to the ILO/IPEC's report of December 2004 on TICW, ethnic communities in the north of Thailand are particularly vulnerable to trafficking and labour exploitation. ***Noting the absence of information on this point in the Government's report, the Committee once again requests the Government to provide information on the measures taken or envisaged to protect children under 18 years of age of ethnic minorities from trafficking for labour or sexual exploitation, particularly from prostitution.***

Migrant workers. The Committee noted the information contained in the TICW, phase II, progress report of 2007 (page 16), that the document "The Mekong challenge – underpaid, overworked and overlooked: The situation of young migrant workers in Thailand", based on a research project targeting migrant workers in agriculture, fishing, fish-processing, small-scale manufacturing, and domestic work underlines several human rights violations, such as the forced labour and hazardous work of young migrant workers. However, ILO/IPEC is starting a new project entitled "Support for national action to combat child labour and its worst forms in Thailand". The project, which started in 2006 and will end in 2010, primarily targets migrant children found in the worst forms of child labour and will promote improved education and training policies. ***The Committee once again requests the Government to provide information on the impact of the ILO/IPEC project "Support for national action to combat child labour and its worst forms in Thailand" on protecting child migrant workers from the worst forms of child labour.***

Article 8. International cooperation and assistance. Regional cooperation. The Committee noted that, according to the Government's report, the following measures have been taken to combat child trafficking at the regional level: (a) the UN inter-agency project on trafficking in women and children in the Mekong subregion (UNIAP) has conducted meetings under the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) to strengthen cooperation and coordination among countries to deal more effectively with human trafficking; (b) a draft MOU on cooperation against trafficking in persons in the greater Mekong subregion has been proposed; and (c) the MSDHS has maintained coordination with five countries in the Mekong subregion through governmental, non-governmental, international organizations, embassies in Thailand and embassies in those countries, for providing assistance to foreign children and female victims of trafficking. In particular, physical and psychological rehabilitation is being provided for the foreign trafficking victims while maintaining coordination with the relevant agencies in the countries of origin in order to trace the families of the victims and assess how well prepared they are for the reintegration of the woman or child victim in the society. ***The Committee once again requests the Government to continue providing information on the concrete measures taken to eliminate the cross-border trafficking of children for labour and sexual exploitation, and the results achieved.***

Bilateral agreements. The Committee had previously noted that Thailand and Cambodia signed, on 31 May 2003, an MOU on bilateral cooperation for eliminating trafficking in children and women and assisting victims of trafficking, targeting the repatriation process, the prosecution process, and collecting and exchanging information. Moreover, an MOU on bilateral cooperation for the elimination of trafficking in children and women and assistance to victims of trafficking between Thailand and Lao People's Democratic Republic was signed on 13 July 2005. Finally, a draft MOU between Thailand and Viet Nam, based on the model MOU between Thailand and Cambodia, has been drawn up. ***The Committee once again requests the Government to provide information on the concrete measures adopted under the bilateral MOUs and the results achieved with regard to eliminating the trafficking of children between the countries parties to the bilateral agreements.***

Poverty alleviation. The Committee noted the Government's information that, according to the report of the Office of the National Economic and Social Development Board (NESDB), proactive socio-economic measures have been employed to integrate human trafficking strategies with development and poverty eradication. These include the policies of allocating 1 million baht to each village to use as a credit facility, and offering microfinance which would enable Thai women to have more opportunities to gain more income and diminish their risk of being trafficked to foreign countries. The economic cooperative strategy project has been promoted in neighbouring countries to mitigate the cases of trafficked women and children sent to Thailand. Moreover, the mobile unit "Poverty Eradication Caravan" has been set up by the Ministry of Labour to give advisory services to the poor in order to eradicate poverty and combat the worst forms of child labour. ***The Committee once again requests the Government to provide information on the impact of the microfinance credits, the economic cooperative strategy project, and the Poverty Eradication Caravan, on the effective reduction of poverty among children removed from trafficking and commercial sexual exploitation.***

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

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

Turkey

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

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

Article 1 of the Convention and Part V of the report form. National policy and application of the Convention in practice. In its previous comments, the Committee had noted the indication of the Confederation of Turkish Trade Unions (TÜRK-İS) that no national policy was being pursued in Turkey to ensure the effective abolition of child labour and that the number of child workers was increasing. TÜRK-İS had added that the effectiveness of a national policy to eliminate child labour depends entirely on the elimination of the causes of child labour, namely the employment and employment stability of adults, but that government policy was not designed along those lines.

The Committee had also previously noted that, in addition to the elimination of the worst forms of child labour within ten years, one of the objectives of the national ***Time-Bound Policy and Programme Framework (TBPPF)*** was also to establish a coherent policy for the elimination of child labour. In this respect, it had noted that the Child Labour Unit (CLU), established by the Ministry of Labour and Social Security with a mandate to gather and disseminate information on child labour, ensure

coordination among cooperating parties and develop policies related to child labour, had developed a Policy Framework for the Elimination of Child Labour in Turkey, which was presented for comment to the various parties concerned by child labour.

The Committee noted the information provided by the Government in its report, particularly with regard to the programmes of action implemented in collaboration with ILO-IPEC. Furthermore, the Committee notes with *interest* that, according to the Biannual Interim Report of 27 November 2006 to 31 May 2007 on the ILO-IPEC project "Eradicating the worst forms of child labour in Turkey", this project aimed to help make a significant reduction in child labour, in line with the Government's strategy of eliminating the worst forms of child labour by 2015. One of the main objectives of the project is to enhance the national and regional capacity of the CLU. To that end, many measures have been taken by the Government, including training programmes on child labour monitoring and child labour and education, awareness-raising events and guidance and referral services to working children, children at risk and their families.

The Committee also noted that a third Child Labour Survey was conducted by the Turkish Statistics Institution, with ILO-IPEC's support, in the period from October to December 2006. It noted with interest that according to the results of this survey, the proportion of working children (aged 6–17 years) has dropped from 10.3 per cent in 1999 to 5.9 per cent in 2006. Furthermore, according to the Biannual Interim Report, a comprehensive and integrated child labour monitoring system (CLM) was established which includes two components: (1) the monitoring itself, and (2) the provision of social support for rehabilitation and referral according to the needs of the children withdrawn from work. As a result of the monitoring system, 4,209 children in various sectors of work, worst forms and otherwise, have been identified during the October–December 2006 reporting period, of which 3,611 have been either withdrawn from work or prevented from starting to work. Nevertheless, the Committee noted that, according to the Child Labour Survey, 320,000 children in the 6–14 age group were working in 2006. *While noting the measures adopted by the Government to eliminate child labour, the Committee once again encourages the Government to redouble its efforts to progressively improve this situation. It once again requests the Government to provide detailed information on the results achieved by the implementation of the abovementioned ILO-IPEC programmes in eliminating child labour and its worst forms. Finally, it also requests the Government to provide information on the application of the Convention in practice, including statistical data on the employment of children and young persons, extracts of inspection reports, as well as the number and nature of contraventions reported and penalties imposed.*

Article 3, paragraph 3. Authorization to perform hazardous work from the age of 16 years. In its previous comments, the Committee had noted that the regulations on hazardous and arduous work of 1973 define the types of work considered to be hazardous and arduous and those to which young persons between the ages of 16 and 18 years may be admitted. It had also noted the adoption of Regulations No. 25494 on hazardous and arduous work of 16 June 2004 which include, in Appendix 1, a detailed list of hazardous types of work which may be performed by young workers between 16 and 18 years of age. It had also noted that, under the terms of section 4 of Regulations No. 25494, the conditions set out in *Article 3(3)* of the Convention are respected, namely that the health, safety and morals of the young persons concerned are fully protected and that they have received adequate specific instruction or vocational training in the relevant branch of activity.

The Committee notes with *satisfaction* the Government's information that the Regulations on hazardous and arduous work of 1973 have been repealed by a decision of the Council of Ministers of 7 April 2006 and by the publication of this decision in the *Official Gazette* No. 26152 of 28 April 2006. It also noted that various employers' and workers' organizations (the TISK, TÜRK-İS, HAK-İS and DISK confederations) were consulted at the time of the enactment of Regulations No. 25494 in 2004.

Article 4. Exclusion from the application of the Convention of limited categories of employment or work. In its previous comments, the Committee had noted that the categories of employment or work which have been excluded from the scope of application of the Convention, by virtue of the flexibility clause contained in *Article 4*, consist of limited categories of employment or work. It had further noted that under the terms of section 4(1) of the Labour Act, No. 4857 of 22 May 2003 (Labour Act), the following activities and categories of workers are not covered by the Act: (a) sea and air transport businesses; (b) enterprises carrying out agricultural and forestry works and employing fewer than 50 workers; (c) all building work related to agriculture within the limits of the family economy; and (d) domestic service. It had noted that the Act on Turkish civil aviation regulates the working conditions of personnel on aircrafts and that the minimum age for admission is 18 years, but that Maritime Labour Act No. 854 does not contain a provision establishing the minimum age for admission to employment or work. The Committee had reminded the Government that *Article 5(3)* of the Convention enumerates the sectors of economic activity to which it shall be applicable as a minimum, which include maritime transport.

The Committee noted the Government's information that the minimum age required for admission to employment as a seafarer is provided for in the Regulations for Seafarers, published in the *Official Gazette* No. 24832 of 31 July 2002. The Committee noted with *satisfaction* that, according to these Regulations, the minimum age required for work as a seafarer at the lowest levels, including as deck boys, wipers and cadets, is 16 years of age.

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

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

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

Article 3 of the Convention. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children for commercial sexual exploitation. In its previous comments, the Committee noted the indication of the International Trade Union Confederation (ITUC) that Turkey is a transit and destination country for trafficked children. These children originate from the following countries: Armenia, Azerbaijan, Georgia, Republic of Moldova, Romania, the Russian Federation, Ukraine and Uzbekistan. The ITUC added that Turkey is a transit country, mainly for children from Central Asia, Africa, the Middle East and the former Yugoslav Republic of Macedonia, who are then sent to European countries. The ITUC also indicated that trafficked children are forced into prostitution or debt bondage.

The Committee had noted that the new Penal Code (Act No. 5237 of 26 September 2004) contains new provisions on, among other matters, the trafficking and sexual exploitation of children, including the prostitution of children, as well as more severe penalties for these crimes. It had requested the Government to provide information on the application of the penalties in practice.

The Committee noted that the Child Protection Law, which entered into force on 3 July 2005, aims at integrating international standards into the procedures and principles regarding children in need of protection. It also noted that, according to the 2006 concluding observations of the Committee on the Rights of the Child in consideration of the report submitted by the Government under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC/C/OPSC/TUR/CO/1, paragraph 4), the National Task Force to Combat Trafficking in Human Beings was established, and a National Plan of Action was accordingly adopted in 2003. However, the Committee on the Rights of the Child expressed its concern that there is no specific plan of action on the sale of children in Turkey. Furthermore, according to the Committee on the Rights of the Child, there is a lack of information on the actual situation of the sale of children (CRC/C/OPSC/TUR/CO/1, paragraph 15). In this regard, the Committee recalled that, by virtue of *Article 3(a)* of the Convention, the sale and trafficking of children is considered as one of the worst forms of child labour, and that by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. **Consequently, the Committee once again requests the Government to provide information on the measures taken to ensure that the sale and trafficking of children under 18 years for commercial sexual exploitation is eliminated. The Committee also once again requests the Government to take the necessary measures to ensure that the offenders are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice. Finally, it requests the Government to take measures to withdraw child victims of trafficking from commercial sexual exploitation and to ensure their rehabilitation and social integration, as a matter of urgency.**

Article 7, paragraph 1. Penalties. Inciting or using a child for begging. The Committee had previously noted with satisfaction that section 229 of the new Penal Code prohibits the use of children for begging and establishes a penalty of one to three years' imprisonment. It noted the Government's information that 252 families, who insisted on inciting their children to beg despite being provided with various professional and social services, were penalized. The 305 children identified in such conditions were afterwards taken from their families and placed in a foster home or an institution suitable to their gender and age. The Committee also noted that the Government indicates that it has attached statistical data on the number of cases and convictions which were imposed in this regard. However, no such information was actually joined to the Government's report. **Consequently, the Committee once again requests the Government to provide this information with its next report, as well as to continue providing information on the application of the penalties in practice.**

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Necessary direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children working in the agricultural sector. The Committee had previously noted that the protection afforded by the Labour Code does not cover children who work in agricultural undertakings employing fewer than 50 workers. It had also noted that, of the 1,008,000 children between the ages of 6 and 14 years who worked in 2000, 77 per cent were in agriculture (report on the implementation of labour inspection policy in Turkey, June 2000, page 2). The Committee had also noted that, according to the Labour Inspection Board, 87 per cent of children who work are employed in small enterprises with between one and nine workers. In that regard, the Committee noted that, to ensure the protection of young persons under 18 years of age who work in the agricultural sector from the worst forms of child labour, a programme on the elimination of the worst forms of child labour in commercial seasonal agriculture through education was being implemented, the objective of which was to achieve the school attendance of children concerned.

The Committee noted that the more recent available information indicates that 41 per cent of the 958,000 children between the ages of 6 and 17 years who worked in 2006 were employed in agriculture (2006–07 ILO–IPEC Biannual Interim Report on the EWFCLT, page 2). It noted that, according to the summary outline for the Action Programme on Child Labour in Seasonal Commercial Agriculture of 2005, work in seasonal commercial agriculture, and especially in cotton harvesting, has been identified as a worst form of child labour. The Action Programme, which was extended until June 2007, therefore targeted 2,750 boys and girls, 1,000 of whom would be withdrawn and 1,750 prevented from entering this worst form of child labour. Furthermore, the Action Programme aimed to provide 2,000 of these boys and girls with educational and training services, while the remaining 750 would be provided other non-education related services. The Committee noted the Government's information that, within the scope of this programme and as of 8 March 2007, 2,458 children have been identified, 1,128 of them girls and 1,330 of them boys. These children have been settled in boarding primary regional schools and neighbouring schools. Moreover, a Project for Combating Child Labour through Education (2004–08) has been implemented by the firm IMPAQ, under the coordination of the CLU and the Ministry of National Education, to increase access to basic and vocational education for children employed in agriculture, particularly children engaged in, or at risk of engaging in, seasonal work as migrant labourers. According to the Government, this project targets 10,000 children and a significant number have already been reached. **The Committee once again encourages the Government to continue its efforts to ensure that children under 18 years are protected from working in seasonal commercial agriculture, identified as a worst form of child labour. It once again requests the Government to provide more information on results attained by the implementation of the Action Programme, more specifically on the final number of children who were prevented or withdrawn from being engaged in seasonal commercial agriculture and then rehabilitated by being provided with educational, vocational or other services. Finally, the Committee asks it to provide more detailed information on the impact of the Project for Combating Child Labour through Education in this regard.**

Clause (d). Children at special risk. Children living or working on the streets. In its previous comments, the Committee had noted the indication of the TISK that children who work on the streets are not registered and work under dangerous conditions without protection. The Committee had also noted the ITUC's report that nearly 10,000 children were working on the streets of Istanbul and nearly 3,000 in Gaziantep. The ITUC had added that street children can be classified into two groups: the first is composed of children who go out onto the streets during the day to sell all kinds of items and return home in the evening, the second consists of children who live and work on the streets. The latter are engaged in garbage collection and sorting, and are often involved in drug abuse, street gangs and violence. The Committee had also noted that, according to a rapid assessment conducted by ILO–IPEC on street children working in Adana, Istanbul and Diyarbakir, street children who work are between the ages of 7 and 17 years, with an average age of 12 years.

The Committee had noted the implementation, in the context of the *Time-Bound Policy and Programme Framework (TBPPF)*, of the December 2004 Programme for the Elimination of Child Labour in Street Trades in 11 provinces. The Committee had noted that the Programme directly targeted 6,700 boys and girls, 2,700 of whom were to be removed from the worst forms of child labour and 4,000 to be prevented from becoming engaged in work. It had also noted that an estimated 6,000 children would benefit indirectly from the Programme. The Committee had requested the Government to provide information on the impact of the Programme and the results achieved.

The Committee had noted that, according to the Biannual Interim Report of 27 November 2006 to 31 May 2007 on the ILO-IPEC project "Eradicating the worst forms of child labour in Turkey" (EWFCLT), a comprehensive child labour monitoring and reporting mechanism was established in 13 provinces which permitted the identification of 4,209 working children for the period covered. The Committee had noted with interest that, of these 4,209 children, 1,699 were found working on the streets and were consequently withdrawn and provided with services. *The Committee once again requests the Government to continue its efforts to ensure that young persons under 18 years of age who live and work on the streets are not engaged in work which, by its nature, is likely to harm their health, safety or morals, and to provide information on the results achieved. It also requests the Government to provide information on the impact of the ILO-IPEC Programme for the Elimination of Child Labour in Street Trades, especially in terms of the number of street children who were prevented or withdrawn from the worst forms of child labour and rehabilitated.*

Article 8. International cooperation and assistance. In its previous comments, the Committee had noted that the issue of the worst forms of child labour was included in the short-term priorities of the Accession Partnership (2003–04), in which it was stated that efforts to address the problem would be continued. The Committee had noted that the Accession Partnership has been revised in 2006, so as to allow it to evolve as Turkey progresses. It had noted the Government's statement that the European Union has been supporting the *TBPPF* in a way to enhance the institutional capacities to combat child labour, notably in the context of projects on children working on the streets, in dangerous work or in the agricultural sector. However, the Committee had observed that the Government does not provide information on the cooperation or assistance measures adopted or envisaged with the European Union or with other countries to eliminate, in particular, the trafficking of children for the exploitation of their labour or for sexual exploitation. *The Committee once again requests the Government to provide this information in its next report.*

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

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

Uganda

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

The Committee notes with *regret* that the Government's report has not been received. However, it takes note of the report of the Technical Advisory Mission (the Mission) on Child Labour Issues that was carried out in Uganda in July 2009.

Article 3. Worst forms of child labour. Clause (a). All forms of slavery or practices similar to slavery. Abductions and the exaction of forced labour. The Committee had previously noted that article 25:1 of the Constitution of Uganda stipulates that no person shall be held in slavery or servitude and that section 25:2 states that no person shall be required to perform forced labour. It had noted that the Penal Code punishes as offences abduction (section 126); detention with sexual intent (section 134); and abduction for the purpose of reducing to slavery (section 245). Moreover, section 5 of the Employment Act of 2006 states that anyone who uses or assists any other person in using forced or compulsory labour commits an offence. Finally, section 252 of the Penal Code provides that any person who unlawfully compels any other to labour against their will commits a misdemeanour.

However, in its previous comments under Convention No. 29, the Committee had noted that the armed group Lord's Resistance Army (LRA) abducted children of both sexes, forcing them to provide work and services as concubines, these alleged activities being associated with the killings, beatings and rape of these children. The Committee had noted that, according to the report of the United Nations Secretary-General on children and armed conflict in Uganda of 7 May 2007 (Secretary-General's report of 2007) (S/2007/260, paragraph 10), the figures from 2005 suggested that as many as 25,000 children may have been abducted since the onset of the conflict in northern Uganda in Kitgum and Gulu districts. However, the total number of abductions had significantly reduced since its peak in 2004. The total number of abductions in January 2005 was estimated to be approximately 1,500, significantly reducing to 222 over the first six months of 2006. Since September 2006, there had been no confirmed reports on the abduction of children in Uganda by the LRA. Moreover, the peace talks between the Government of Uganda and the LRA had officially opened on 14 July 2006 and the parties had signed a formal cessation of hostilities agreement in August 2006, which was extended until 30 June 2007. It was initially expected that the prospects of the signing of a peace agreement would mean a potentially significant increase in the number of children released by the LRA. However, despite repeated pleas by various stakeholders, the LRA had not released children from its ranks.

The Committee notes that, in its concluding observations for the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict of 17 October 2008, the Committee on the Rights of the Child expressed concern over continued abductions of children living in border regions by the LRA, to be used as child soldiers, sex slaves, spies and to carry goods and weapons (CRC/C/OPAC/UGA/CO/1, paragraph 24). The Committee on the Rights of the Child was further concerned over the inhuman and degrading treatment of the abducted children. Moreover, the Committee notes that, according to the report of the Secretary-General on children and armed conflict in Uganda of 15 September 2009 (Secretary-General's report of 2009), the LRA has not knowingly operated in Ugandan territory since the cessation of hostilities in August 2006. Over the past four years, however, the LRA, including a substantial but unknown number of Ugandan children associated with its forces, has increasingly moved into neighbouring countries to establish additional bases; and children and their communities in the Sudan, the Democratic Republic of the Congo and the Central African Republic have been the victims of attacks that have claimed hundreds of

lives and resulted in the disappearance of hundreds of children. In the Democratic Republic of the Congo, 233 abductions of children by the LRA were documented by child protection partners between 1 December 2008 and 30 June 2009. The Secretary-General further indicates that efforts to sign a Comprehensive Peace Agreement with the LRA failed and, as a result, the LRA has increasingly become a regional actor. Since December 2008, LRA elements, operating in small groups, reportedly conducted attacks against several localities in the Democratic Republic of the Congo, killing civilians, burning houses and abducting children and adults. In total, it is estimated that more than 1,000 civilians have been killed and several hundred abducted by the LRA since it increased its violent activities in 2008.

The Committee therefore once again expresses its *deep concern* at the situation of children abducted by the LRA and forced to provide work and services as informants, porters, hostages, as well as becoming victims of sexual exploitation and violence. It observes that, although national legislation appears to prohibit abductions and the exaction of forced labour, this remains a serious issue of concern in practice, in particular in the context of renewed violence and conflict. In this regard, the Committee once again recalls that, by virtue of *Article 3(a) of the Convention*, the exaction of forced labour from children is considered as one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee strongly urges the Government to take effective and time-bound measures to eradicate abductions and the exaction of forced labour from children under 18 years, as a matter of urgency. In this regard, it requests the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice. It also urges the Government to take measures to cooperate with the neighbouring countries and accordingly reinforce security measures, particularly on the common borders with the Democratic Republic of the Congo, the Central African Republic and Sudan, with a view to bringing an end to this worst form of child labour.***

Compulsory recruitment of children for use in armed conflict. The Committee had previously noted that, according to the Secretary-General's report of 2007 (paragraph 5), Uganda is among the countries where parties to armed conflicts – the Ugandan People Defence Force (UPDF), the local defence units and the LRA – recruited or used children and were responsible for other grave violations. According to this report, it was estimated that, notwithstanding various peace agreements, up to 2,000 women and children may still have been held by the LRA within its ranks and had not been released. Regarding children recruited by the national military forces, the Secretary-General's report of 2007 indicated that the UPDF recruited young boys to serve in its armed forces, especially within the local defence units, which are UPDF auxiliary forces. The report of 2007 also indicated that during recruitment, age verification was rarely carried out. After training, many of these children were said to be fighting alongside the UPDF. Although the Government of Uganda incorporated, in 2005, in the Uganda People's Defence Forces Act, a provision prohibiting the recruitment and use of child soldiers, the lack of effective monitoring at the local level led to children continuing to join some elements of the armed forces. However, according to the Secretary-General's report of 2007, the Government had committed itself to strengthening the implementation of the existing legal and policy frameworks on the recruitment and use of children in armed conflict. Moreover, in December 2006, the UPDF agreed to undertake inspection and monitoring, including to verify age during the recruitment process. Furthermore, the Uganda Task Force on Monitoring and Reporting (UTF) had committed itself to working with the UPDF and the local defence units to ensure immediate and appropriate follow-up to remove any person under 18 years of age found within the UPDF and local defence units, including through referral to appropriate child protection agencies.

The Committee notes that, according to the Secretary-General's report of 2009 (paragraphs 3–7), on 16 January 2009, the Government of Uganda and the UTF signed an action plan regarding children associated with armed forces in Uganda, which obligates the Government to prevent and end the association of children under the age of 18 with armed auxiliary forces; appoint focal points at the highest level of the Government on the implementation of the action plan; provide access on a regular and ad hoc basis to the UPDF and auxiliary facilities to the UTF to monitor and verify compliance; and promptly investigate allegations of recruitment and use of children and ensure the prosecution of perpetrators. Furthermore, the action plan identifies time-bound activities relating to children associated with the armed forces in Uganda. Among others, the measures include verification visits to all UPDF facilities and regular access to all relevant UPDF units by the UTF. In compliance with the action plan, the Government of Uganda and the UTF agreed upon a series of visits by the UTF to UPDF facilities in northern Uganda in early 2009, with a view to verifying that no persons under the age of 18 were present within, or recruited into, its ranks.

The Committee notes with *satisfaction* that no case of recruitment or use of children by the UPDF or its auxiliary forces has come to the attention of the UTF. Throughout its visits, the UPDF extended excellent cooperation to the verification team. Furthermore, the UTF observed the UPDF recruitment process in the northern districts of Uganda from 12 to 14 February 2009. It was noted that age requirements for recruitment into the UPDF, as set forth in existing laws and regulations, were strictly observed and followed by UPDF officers in compliance with the UPDF internal circular of February 2009 containing instructions on recruitment criteria. The Committee notes that, according to the Secretary-General's report of 2009, the UTF will nevertheless continue to monitor compliance of the UPDF within the action plan framework to ensure that continuous efforts are made to prevent the recruitment and use of children and that the implementation of the action plan continues.

However, the Committee notes that the LRA, whose leadership originates in Uganda and a significant number of whose forces are also from Uganda, remains listed on the Secretary-General's annexes to his reports on children and armed conflict because of the continued practice of recruitment of children within its ranks. Although LRA violations against children were originally reported solely under Uganda country situation reporting, the geostrategic situation of that group, which is expanding its armed activities to the wider region, has prompted the request of a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA. The UTF has therefore been engaged in consultations with the Resident Coordinator of the United Nations Country Team in Uganda, the United Nations Children's Fund headquarters and regional offices, the Department of Peacekeeping Operations missions in Sudan and the Democratic Republic of the Congo and the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, on appropriate steps to establish a subregional strategy to monitor and report on grave child rights violations committed by the LRA in the region.

The Committee welcomes the measures taken by the Government and the positive results it has registered with regard to the UPDF. However, it expresses its **concern** at the situation of children who continue to be recruited for armed conflict by the LRA. The Committee refers to the Secretary-General's call upon the Government of Uganda to prioritize the protection of children in its military actions against LRA elements, either on Ugandan territory or in joint operations in neighbouring countries (S/2009/462, 15 September 2009, paragraph 28). ***The Committee therefore urges the Government to intensify its efforts to improve the situation and to take, as a matter of urgency, immediate and effective measures to put a stop in practice to the forced recruitment of children under 18 years of age by the LRA. In this regard, it urges the Government to take the necessary measures to ensure that a strategy for increased regional joint capability to monitor and report on cross-border recruitment and use of children by the LRA is adopted as soon as possible. It also requests the Government to take the necessary measures to ensure that persons who forcibly recruit children under 18 years for use in armed conflict are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Providing the necessary and appropriate assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Children who have been affected by armed conflict. The Committee had previously noted that the orphans and vulnerable children policy includes interventions to mitigate the impact of the conflict on vulnerable children, especially by providing them with psychological support and with health-care services. It had also noted that a number of measures had been taken in order to rehabilitate children affected by conflict: (a) the psychological support programme for the care of children in conflict areas; (b) the creation of the National Core Group for Psychological Support, responsible for advocacy against abduction and conflict-related child abuse; and (c) the project implemented by Save the Children from Denmark and Sweden, in collaboration with the UPDF and Gulu Support Children Organization (GUSCO) with the aim of training officers in the UPDF's Child Protection Unit and promoting the observance of rights of children affected by armed conflict. Moreover, according to the Secretary-General's report of 2007 (paragraph 62), interim care centres, known as reception centres, were established in the north of Uganda in order to receive formerly abducted children, including those referred by the UPDF Child Protection Unit.

The Committee notes that, according to the mission report, the Ministry of Education and Sports (MoES) made interventions for child victims of armed conflict, as well as abducted children, and specialized schools have been built in the north of the country to give support and rehabilitate these children. Indeed, the Committee notes that, according to the report on Education Needs Assessment for Northern Uganda of February 2008 (ENA report) prepared by the Education Planning Department, the MoES has, among other things, provided psychosocial back-up support by training 50 trainers in psychosocial training, helped with the demobilization of 53 child soldiers, supported eight reception centres for former child abductees. The MoES has also constructed 27 learning centres with 114 classrooms in Kitgum, Pader and Lira for 6,000 displaced primary school children, as well as a primary boarding school at Laroo in Gulu with a capacity for 1,000 pupils. Furthermore, the ENA report indicates that many education provider organizations have contributed to the interventions of the MoES with a view to provide an interim response to the needs of northern Uganda in terms of education. The Committee also notes that, according to the Secretary-General's report of 2009, the action plan regarding children associated with armed forces in Uganda signed by the Government of Uganda and the UTF on 16 January 2009 covers different areas of activities, including preventing the recruitment of children under 18 years for use in armed conflict and releasing and reintegrating underage recruits. ***The Committee strongly encourages the Government to continue its efforts and take effective and time-bound measures to remove children from armed conflict and ensure their rehabilitation and social integration. In this regard, it requests the Government to provide information on the number of children under 18 years of age who have been rehabilitated and reintegrated into their communities through these measures, in particular through the action of the MoES and through the activities undertaken under the action programme regarding children associated with armed forces in Uganda.***

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

Ukraine

Minimum Age Convention, 1973 (No. 138) (ratification: 1979)

Article 2, paragraph 1, of the Convention. Scope of application. The Committee had previously noted the Government's information that the provisions of section 188 of the Labour Code, regulating the minimum age for admission to employment, as well as the provisions prohibiting the employment of children in hazardous work, apply to workers of all enterprises, institutions and organizations, irrespective of the forms of ownership, type of activity and sectoral affiliation. It had observed that since 2005 the Goznadzortrud (authority within the Ministry of Social Labour and Social Policy which monitors the compliance of labour legislation) had participated in the implementation of the ILO-IPEC project "Institutional development of labour inspection for participation in the System of Child Labour Monitoring (CLMS) in two pilot regions – Donetsk and Kherson regions". Under this project, workplaces in both the formal and informal economy have been monitored. Moreover, in 2006, six districts were identified in the Donetsk and Kherson regions where the identification of working children is under way, both in the formal and informal sectors.

The Committee had noted with interest the Government's information that the CLMS developed in the Donetsk and Kherson regions will be replicated at the country level under the "National Plan of Action to implement the United Nations Convention on the Rights of the Child for 2006–16", adopted in June 2007. The introduction of the system of permanent monitoring of child labour will make it possible to detect cases of the illegal use of child labour as well as to remove children from the worst forms of child labour. The Committee, however, noted the Government's statement that, the supervision of the use of child labour in the informal sector of the economy remained an outstanding issue. This concerns, above all, the right of access to workplaces in the informal sector. The lack of criteria of evaluation of the presence of employment relations when using child labour in private garden plots or in the street does not provide the inspectors with the grounds to apply administrative sanctions. The basic problem, therefore, consists in the development of a mechanism to collect evidence testifying to the fact that a child works for an employer in the absence of any written arrangements. The labour inspectors involved in the implementation of the ILO-IPEC programme in the Donetsk and Kherson regions were carrying out their activities to develop such a mechanism with the participation of the representatives of other supervisory bodies. *Noting the absence of information in the Government's report, the Committee once again expresses its hope that, in adopting the CLMS at the national level, the labour inspection component concerning children working in the informal sector will be strengthened. It requests the Government to redouble its efforts to adapt and strengthen the labour inspection services in the informal sector, in order to ensure that the protection established by the Convention is ensured for children working in this sector. It also requests the Government to provide information on any impact of the recent adoption of the CLMS at the national level on improving the capacity of labour inspectors to detect cases of child labour in the informal sector with a view to removing these children from child labour and its worst forms.*

Minimum age for admission to employment or work. The Committee had previously noted that under section 188(2) of the Labour Code, children of 15 years of age may exceptionally be authorized to work with the consent of their parents or parent substitutes. The Committee had observed that the above provision of the Code allows young people to carry out an economic activity at an age lower than the minimum age for admission to employment or work specified by Ukraine upon ratifying the Convention, namely 16 years. It had requested the Government to take the necessary steps to ensure that no one under the age of 16 may be admitted to employment or work in any occupation. The Committee notes the Government's information that, since the time of the submission of the previous report, no changes were introduced into the legislation relating to the increase of the minimum age for employment of minors. It notes that, according to the Government, in 2005, the State Employment Service assisted in employing 79 children who had reached the age of 15 years, and in 2006, it assisted 61 children who had reached the age of 15 years. Moreover, between August and December 2005, the labour inspectorate identified 459 children from 15 to 16 years of age who were working. The Committee notes the Government's information that within the framework of the ILO-IPEC project "Declaration of the basic rights and freedoms at work", a draft Labour Code of Ukraine was prepared the provisions of which comply with international labour standards. *In the framework of the adoption of the new Labour Code, the Committee requests the Government to take the necessary measures to ensure that no one under the age of 16 years may be admitted to employment or work in any occupation, in conformity with Article 2(1) of the Convention. It also requests the Government to provide a copy of the new Labour Code, as soon as it has been adopted.*

Article 3, paragraph 3, and Article 6. Authorization to perform hazardous work from the age of 16 and vocational training. The Committee had previously noted the Government's information that section 3 of Order No. 283/P-9 of 10 September 1980 allows work that includes harmful tasks to be carried out for training purposes by persons over the age of 15 years. Moreover, according to same section 3 of this Order, persons under the age of 18 for the purposes of vocational training may perform hazardous types of work for not more than four hours a day on condition that existing sanitary regulations are strictly observed. *The Committee requests the Government to take the necessary legislative measures to ensure that the performance of such work is only authorized for persons between 16 and 18 years of age in conformity with the conditions of Article 3(3) of the Convention.*

The Committee notes the Government's information that Order No. 283/P-9 of 10 September 1980 is not applicable in the territory of Ukraine, including its section 3. Instead, section 2(3) of the Order of the Ministry of Health of Ukraine

No. 46 of March 1994 is applicable. Section 2(3) of this Order states that persons under 18 years enrolled in vocational technical institutions are allowed to participate in the production process, occupations and works included in the list of hazardous work contained in Order No. 46 of 1994. They cannot work more than four hours a day under the condition of the strict observance of the existing sanitary and health norms on labour protection. The Committee further notes the Government's information that vocational training of children in the professions connected with types of hazardous work, is contained in the "Provisions concerning labour and vocational training of minors in the professions connected with hard or dangerous working conditions as well as types of work requiring higher security", approved by Order No. 244 of the State Labour Protection Inspectorate of 15 December 2003. According to these provisions, the admission of minors to employment in hazardous occupations is allowed only when minors reach the age of 18 years when they finished training in those occupations. The Committee observes the Government's information on the provisions regulating the instruction and monitoring of minor trainees before and during training. However, it notes the Government's information that there are no adopted norms stipulating minimum age for the admission of children and young persons to training. The Committee observes that, in connection with national legal provisions on light work dealt with under *Article 7* of the Convention, it seems that children between 14 and 16 years are allowed to perform hazardous work during vocational training. It reminds the Government that, according to *Article 3(3)* of the Convention, the competent authority may, after consultation with the organizations of employers and workers concerned, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity. ***In the framework of the adoption of the new Labour Code, the Committee requests the Government to take the necessary measures to ensure that children who follow vocational training programmes or apprenticeships are allowed to perform hazardous work only from the age of 16 years, in conformity with Article 3(3) of the Convention.***

Article 7, paragraph 3. Determination of light work. The Committee had previously noted that section 188(3) of the Labour Code provides that, in order to teach young people to work productively, students in general vocational and technical education or specialized secondary education having attained 14 years of age may perform light work during their leisure hours provided the consent of one of their parents or parent substitutes is obtained and on condition that it does not harm their health or interrupt their schooling. The Committee had requested the Government to provide information on the measures taken to determine light work activities, pursuant to *Article 7(3)* of the Convention. The Committee notes the Government's information that, according to section 51 of the Labour Code, the length of the working time of pupils who work during the academic year when they have no classes may not exceed 12 hours per week. The Committee further notes the Government's information that the draft Labour Code provides that the list enumerating the types of light work which may be performed by children shall be approved by a specially authorized authority dealing with labour issues. ***The Committee hopes that provisions determining light work activities which may be performed by children from the age of 14 years will soon be adopted pursuant to the provisions of the draft Labour Code. It requests the Government to provide information on any developments in this regard, and to provide a copy of the provisions determining the light work activities as soon as they have been adopted.***

Article 8. Artistic performances. Following its previous comments, the Committee notes the Government's information that an attempt is made in the draft Labour Code to regulate the labour relations of young persons admitted to employment in the cinema, theatre and concerts. Upon agreement of one of the parents or guardians, it will be permitted to employ children under 14 years for participation in artistic performances if this is not harmful to their health, morals and development. In such cases, the child will be admitted to work after receiving the permission of the services of juvenile affairs. A written labour contract will be concluded with the minor and signed by him/her and his/her parents or guardians. The Committee recalls that, under *Article 8(2)* of the Convention, permission granted in individual cases to children under 14 years for their participation in artistic performances must limit the number of hours during which, and prescribe the conditions in which, such employment or work is allowed. ***In the framework of the adoption of the new Labour Code, the Committee hopes that the Government will take account of the above comments.***

Part V of the report form. Practical application of the Convention. The Committee had previously expressed its concern at the large number of children under the age of 16 who increasingly worked in practice, especially in the informal sector. It had also noted the Government's statement that identifying children working in the illegal mines were difficult due to the lack of information about the location of such mines. However, within the framework of the ILO-IPEC programme, since 2006, a set of measures had been envisaged aimed at identifying children working in the illegal mines and engaged in the grading and loading of coal on the open surfaces. It was envisaged to identify such children with the participation of the members of the Trade Union of Free Miners of Ukraine. Moreover, the Committee had also noted the Government's information that, in the framework of the ILO-IPEC programme, the Centre of Social Expertise of the Institute of Sociology of the National Academy of Sciences had conducted a study on the use of child labour in six sectors of the informal economy (agriculture, street trade, work in mines, services sector, commercial sexual exploitation and illegal activities, including begging) in Ukraine, following the example of the Donetsk and Kherson regions. This study served as a basis for developing vocational training programmes for children at risk of being involved in child labour and its worst forms. However, the lack of updated statistical data at the national level on the use of child labour in the informal sector constituted a problem.

The Committee notes the Government's information that, as a result of the inspections carried out in August 2008 in 660 enterprises, including 160 agricultural undertakings, violations of child labour legislation were identified with respect to 2,237 minors. Out of this, 66 working children were under the age of 14 years, out of which 64 were engaged in agricultural undertakings. Other violations were with regard to the keeping of records of the young persons by the employer, children working under heavy and harmful working conditions, and long working hours. The Committee also notes the Government's information that 453 orders and directives were issued by the labour inspectors against the employers for the violations of the provisions of child labour, and 351 notices were issued to the court to bring the employers to administrative responsibility. *The Committee once again requests the Government to provide a copy of the study conducted by the Centre of Social Expertise of the Institute of Sociology of the National Academy of Sciences. It also requests the Government to indicate the outcome of the measures taken within the framework of the ILO-IPEC project to identify children working in the illegal mines and engaged in the grading and loading of coal on the open surfaces. It finally requests the Government to continue to provide extracts from the inspection services, especially regarding children working in the informal sector, as well as information on the number and nature of the contraventions reported and penalties applied.*

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2000)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee had previously noted that, according to the ILO-IPEC publication entitled "Child trafficking – the people involved: a synthesis of findings from Albania, Republic of Moldova, Romania and Ukraine", 2005 (pages 14–15), Ukraine is not only a source of trafficking victims but also an important transit route from other countries in the region. Children trafficked are generally between 13 and 18 years of age. Girls are most likely to end up in sexual exploitation, while boys are used as cheap labour or to peddle drugs. The Committee had also noted that the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.191 of 9 October 2002, paragraph 66) expressed concern at the large-scale trafficking of children, in particular girls, for the purpose of sexual and other forms of exploitation. The Committee had observed that section 149 of the Penal Code prohibits the sale and trafficking in persons for the purpose of sexual exploitation, use in the pornographic industry, engagement in criminal activities, peonage, adoption for commercial purposes, and use in armed conflict and labour exploitation. Subsection (2) provides for a higher penalty when this offence is committed against a minor.

The Committee had further noted with interest the various measures adopted by the Government to prevent and combat child trafficking at various levels, as well as the measures taken to ensure the effective enforcement of the legislation on human trafficking. However, the Committee had noted that according to the report of the Special Rapporteur on the sale of children, child prostitution, and child pornography of 24 January 2007 (A/HRC/4/31/Add.2, paragraphs 48–53, pages 15–17), trafficking in children through and from Ukraine is a big problem. In respect of cross-border trafficking, girls are sent to the Russian Federation, Turkey, Poland, the Czech Republic, Italy and the United Arab Emirates. Boys are sent to the Russian Federation, Poland, Republic of Moldova, Turkey and Romania. Children trafficked across borders are exploited in street-vending, domestic labour, agriculture, dancing, as waiters and for sexual services. Another characteristic of child trafficking in Ukraine is that in most cases children are trafficked within the country, mainly to provide sexual services or to beg, despite promises of work as cleaners, waiters or hawkers. The recruitment for trafficking often takes place when traffickers, to force their victims to work, trap children in debt bondage: to pay off the costs of their trip and related "services" such as food and accommodation, the children must stay and work. Trafficked children are obliged to work long hours (often eight hours a day) and frequently at night. As of 30 June 2006, 120 unaccompanied children were repatriated from nine countries, mostly from the Russian Federation, Turkey and Poland. Finally, according to the Special Rapporteur, notwithstanding the very useful efforts undertaken by the International Organization for Migration (IOM) in providing assistance to victims of trafficking, the figure of 2,345 persons assisted since 2000 is just the tip of the iceberg, and many victims remain unaccounted for and unassisted abroad or when they return to Ukraine.

The Committee notes the Government's statement that, in 2008, 322 crimes were registered under section 149 of the Criminal Code, including 31 crimes committed against children, and 21 crimes involving children were detected in 2009. The Committee also notes the Government's statement that the issue of involving children in a criminal activity and coercing children into begging remains a pressing problem in the country. It notes the Government's information that in 2008, 1,982 cases involving children in a criminal activity/begging (section 304 of the Criminal Code) were reported and 675 cases were reported in 2009. Furthermore, in 2008, 164 cases of coercion of children into begging by adults were detected; and 34 cases under section 150 of the Criminal Code (exploitation of children) were detected in 2009. The Committee notes with *interest* the Government's statement that the Ministry of Internal Affairs (MIA) introduced a new section (section 150-1) to the Criminal Code of Ukraine which provides penalties for the offences of using or coercing a child for begging. According to section 150-1, the use of a child for begging by the parents or his/her guardian or any other person with or without the use of force or threat, as well as committed repeatedly or by a person punished under sections 150 and 304 of the Criminal Code is punishable by imprisonment ranging from three to ten years. It further notes the Government's indication that in 2009, 17 criminal cases were initiated under section 150-1 of the Criminal Code. The Committee notes that according to the ILO/IPEC publication entitled "Activities for combating child labour and trafficking in Ukraine", 5,214 victims of trafficking were returned to Ukraine during the period from 2000–08 by the IOM

from various countries, out of which, 256 victims were minors. ***Considering the seriousness of the problem related to trafficking in children, within and outside Ukraine, the Committee requests the Government to redouble its efforts to combat and eliminate the trafficking of children under 18 years, for sexual and labour exploitation, including begging. It also requests the Government to provide information on the practical application of the penalties laid down in sections 149, 150, 304 and 150-1 of the Criminal Code.***

Clause (b). Use, procuring or offering of a child for prostitution, production of pornography or for pornographic performances. In its previous comments, the Committee had noted, the Federation of Trade Unions of Ukraine's (FTUU) allegations that in Ukraine, children as young as 10 years old were involved in prostitution, pornographic activities and the sex industry. It had observed that, although various provisions of the Penal Code prohibited the commercial sexual exploitation of children, it remained an issue of concern in practice.

The Committee had noted with interest that the Government had taken a number of measures to combat the use, procuring or offering of children under the age of 18 for prostitution and pornography, including the initiative by the police and the MIA units to dismantle the networks of individuals and organized criminal groups involved in prostitution and pornography (22 groups discovered in 2005 and 65 in 2006). In addition, in order to prevent the commercial sexual exploitation of children, from 2005 onwards, the police carried out around 2,500 raids and verified the legality of nearly 750 photographic studios, 307 modelling agencies, some 3,000 night clubs, 375 massage parlours and 525 hotels.

The Committee notes the Government's statement that in 2008, 851 crimes were registered under section 301 of the Criminal Code (importation, manufacturing, marketing and dissemination of pornographic articles), including 12 cases involving minors; and in 2009, three cases were registered. Similarly, in 2008, 317 cases were registered under section 303 of the Criminal Code (trading and involving persons in prostitution), including 17 cases involving minors, and in 2009, five cases were registered. The Committee also notes the Government's statement that the representatives of the MIA take part in the international, national and regional seminars, conferences and training events in the prevention and control of crimes against children. In March 2009, the MIA participated in a workshop on the fight against the spread of child pornography on the Internet. Furthermore, the promotional activities in this area and regular coverage of these subjects through the mass media, weblogs and on television has helped to make the public aware of the legal aspects with regard to the prevention and control of the crimes related to child pornography. The Committee further notes the Government's information that inspections and regular raids are being carried out in modelling agencies, hotels, employment agencies abroad, night clubs and other entertainment establishments to identify and detect persons who involve minors into prostitution, or for the production and dissemination of pornographic materials. ***The Committee requests the Government to continue to take the necessary measures to eliminate the use, procuring or offering of children under the age of 18 for prostitution, the production of pornography or for pornographic performances. It also requests the Government to continue to provide information on the measures taken to ensure that persons who use, procure or offer children for prostitution and pornography are prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

Article 6. Programmes of action to eliminate the worst forms of child labour. ILO-IPEC programme on child trafficking – PROTECT CEE. The Committee had previously noted the information regarding the implementation of the ILO-IPEC programme relating to child trafficking in the Balkans and Ukraine entitled "Prevention and reintegration programme to combat trafficking of children for labour and sexual exploitation in the Balkans and Ukraine" (PROTECT CEE 2002–07), and the results achieved. ***Noting that the PROTECT CEE programme ended on 31 January 2007, the Committee requests the Government to continue to take measures under other action programmes to remove children from trafficking and provide for their rehabilitation and social integration.***

Programme to combat the commercial sexual exploitation of children. The Committee had previously noted that, in July 2004, Ukraine signed an agreement of cooperation with ECPAT International "End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes" on questions relating to the protection of children from commercial sexual exploitation. The purpose of the cooperation was to implement a national programme which is aimed at combating the commercial sexual exploitation of children and strengthening government structures and NGOs in this area. It had noted the Government's information that ECPAT, and the NGO "La Strada-Ukraine" were implementing the project on the "Development of the national system of assistance for child victims of trafficking and sexual exploitation". The project is designed to elaborate the national and international framework of assistance for child victims of trafficking and commercial sexual exploitation. In 2005, ECPAT also started to introduce measures to prevent the use of children for the production of pornographic material. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to provide further information on the implementation of the ECPAT/La Strada-Ukraine project "Development of the national system of assistance for child victims of trafficking and sexual exploitation", as well as the results achieved.***

Article 8. International cooperation and assistance. Child trafficking. The Committee had previously noted that the MIA of Ukraine prepared multilateral and bilateral agreements to promote the cooperation of law enforcement bodies in countering human trafficking, especially child trafficking, with the Czech Republic, France, Hungary, Israel, Poland, Romania, Republic of Moldova, Sweden, Turkey, United Kingdom and the former Yugoslav Republic of Macedonia. It had also noted the Government's information that the MIA ensures a constant exchange of information with the police in these countries concerning criminal groups and individuals involved in trafficking Ukrainian citizens, including minors,

abroad for sexual or labour exploitation which had led to the dismantling of several trafficking network groups and detection of several cases of trafficking. The Committee had also noted the Government's information that, Ukraine had established cooperation with Interpol, Europol, the Regional Centre of the South-East Cooperation Initiative for Cooperation against Transnational Crime, as well as international organizations and law enforcement agencies of other countries. ***Noting the absence of information in the Government's report, the Committee once again requests the Government to continue to provide information on the impact of the international cooperation measures on the elimination of the trafficking of young persons under 18 for labour or sexual exploitation.***

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

United Arab Emirates

Minimum Age Convention, 1973 (No. 138) (ratification: 1998)

Article 3, paragraph 1, of the Convention. Minimum age for admission to hazardous work. The Committee previously noted that Ministerial Order No. 5/1 of 1981, which lists operations that are dangerous, arduous or detrimental to health, and prohibits the employment of young persons in those occupations, applies to young persons under the age of 17. It also noted that the draft amended text of section 20 of the Labour Code states that persons under the age of 18 years may neither be employed in exhausting tasks nor in tasks which, by their nature or the circumstances in which they are carried out, are likely to harm their health, safety or morals. Such types of employment shall be determined by virtue of a ministerial order, after consultation with the competent authorities. It further noted that the draft amended text of section 20 of the Labour Code would replace Ministerial Order No. 5/1 of 1981, and noted the Government's indication that the draft amendments to the Labour Code (containing the amended section 20) were going through the constitutional channels for its adoption. It requested the Government to provide information on any progress in this regard. The Committee notes that while the Labour Code was amended by Federal Law No. 8/2007, these amendments did not include the drafted amended text of section 20. ***Therefore, the Committee expresses the firm hope that the draft amended section 20 of the Labour Code, on the prohibition of hazardous work for persons under 18, will soon be adopted, and requests the Government to keep it informed of any progress in this regard. Following the adoption of this amendment, the Committee requests the Government to take the necessary measures to ensure, following consultation with the organizations of employers and workers concerned, the promulgation of a ministerial order to determine the types of hazardous work prohibited for persons under 18, pursuant to the draft amended text of section 20.***

Article 6. Minimum age for admission to apprenticeship. The Committee previously observed that, according to section 42 of the Labour Code, the minimum age to enter into an apprenticeship contract (defined as the contract whereby the employer undertakes to provide the employee full vocational training) was 12 years. It also noted the Government's statement that the draft amended text of section 42 of the Labour Code provided 15 years as the minimum age for being accepted in training or vocational education, and noted that this text was going through the constitutional channels in the State. ***Noting an absence of information in the Government's report on this point, the Committee requests the Government to take the necessary measures to ensure that draft amended section 42 of the Labour Code is adopted in the near future. Furthermore, it once again requests the Government to keep it informed of any progress in this regard, and to provide a text of the amended provision as soon as it has been adopted.***

Considering that the Government has been referring to the amendments to the Labour Code, concerning the prohibition of hazardous work for persons under 18 years of age and the minimum age for apprenticeships, for a number of years, the Committee again expresses the firm hope that the draft amendments to the Labour Code are adopted in the near future, in order to bring national legislation into line with the Convention. The Committee requests the Government to keep it informed of any progress made in this regard and invites it to consider technical assistance from the ILO.

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

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clauses (a) and (d). Slavery and practices similar to slavery. Sale and trafficking of children for their use in camel jockeying. In its previous comments, the Committee observed the International Trade Union Confederation's (ITUC) allegations that some 2,000 children from Bangladesh, India, Mauritania and Pakistan were taken to the United Arab Emirates (UAE) to work as camel jockeys, including children as young as 5 years of age. The Committee noted the adoption of Federal Law No. 15 of 2005, which prohibits the trafficking of children under 18 for camel racing. It also noted the Government's indication that the country took clear measures to address the offence of trafficking in persons by adopting Federal Act No. 51 of 2006, which relates to the trafficking of persons. It further noted the Government's indication that camel owners had a rising interest in the use of robot jockeys instead of child camel jockeys, though noted the ITUC's allegations that smaller camp-based venues still used children as jockeys. In addition, the Committee noted several measures taken by the Government to prevent and eliminate the trafficking and the use of children for camel jockeying, including a meeting with delegates from Bangladesh, Mauritania, Pakistan and Sudan to affirm a commitment to ending the use of children as camel jockeys and providing

services and compensation to children formerly used for this purpose in the UAE. Finally, the Committee requested the Government to provide a copy of Federal Act No. 51 of 2006.

The Committee notes with *satisfaction* that section 1 of Federal Act No. 51 of 2006 defines human trafficking as the “recruitment, transport, deportation or receipt of persons by threat or use of force or any other form of coercion, including kidnapping, deception, cheating, abuse of authority or abuse of state of weakness, or by giving or receiving financial sum or benefits in order to obtain the approval of a third person who might have influence on another for the purpose of exploitation”. This Act provides for a penalty of life imprisonment if the victim is a child, which is defined in section 1 as any person under the age of 18 years. The Committee also notes the information in the Government’s report that, pursuant to Ministerial Order No. 251 of 2005, an executive-level office with headquarters was established at the Ministry of the Interior, to eliminate the use of children under the age of 18 as camel jockeys. The Committee further notes that this executive-level office took the following measures to address this issue:

- (i) established the conditions for granting entrance permits to the category of riders, in conformity with the provisions in federal law;
- (ii) controlled and monitored, in coordination with the Federation of Camel Racing, all fields of camel races;
- (iii) coordinated with the Ministry of Health to verify the age of racers in comparison to the age inscribed in their passport; and
- (iv) implemented an awareness campaign for all camel owners with respect to the penalties under Federal Law No. 15 of 2005 related to human trafficking.

The Committee encourages the Government to pursue its efforts to ensure that children under 18 years of age are not trafficked nor used in the future for the purpose of camel jockeying.

Sale and trafficking of children for commercial sexual exploitation. In its previous comments, the Committee noted the ITUC’s allegations that, according to a report of the International Organization for Migration (IOM), girls from Azerbaijan, Georgia and the Russian Federation, as well as other countries, had been trafficked to the UAE for sexual exploitation. It also noted the Government’s indication that section 346 of the Penal Code prohibits the trafficking of children, and section 363 prohibits abetting, enticing or inducing a male or a female to commit prostitution, and that, by virtue of Federal Act No. 51 of 2006, anyone who traffics a boy or girl under 18 years of age is liable to life imprisonment. However, the Committee further noted that, according to the 2007 report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ukrainian girls were trafficked to the UAE, for the purposes, inter alia, of sexual services (A/HRC/4/31/Add.2, paragraphs 48–53). The Committee observed that, according to the information available at the Office, no progress was reported in the UAE in punishing trafficking crimes. The Committee urged the Government to take the necessary measures to ensure that persons who traffic in children for the purpose of commercial sexual exploitation are prosecuted in practice, and requested the Government to provide information in this regard.

The Committee notes that section 1 of Federal Act No. 51 of 2006 prohibits human trafficking for the purpose of exploitation, and defines exploitation to include all forms of sexual exploitation and prostitution. The Committee notes the 18 October 2009 statement by the UN Special Rapporteur on the sale of children, child prostitution and child pornography following her visit to the UAE (statement of the UN Special Rapporteur), that she received a low number of reported cases of sale of children for the purposes of sexual exploitation. However, the annual report (2008–09) of the National Committee to Combat Human Trafficking in the UAE (NCCHT report) indicates the continued existence of trafficking of children for this purpose. The Committee notes that the 43 victims of trafficking who received services from the Dubai Foundation for Women and Children (DFWAC), 95 per cent of whom had been subject to sexual abuse, included 11 children under the age of 18. ***The Committee therefore urges the Government to take the necessary measures to prevent and eliminate the trafficking of persons under the age of 18 for the purpose of sexual exploitation. Furthermore, noting an absence of information in the Government’s report concerning the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for this offence, the Committee again requests the Government to provide this information.***

Article 5. Monitoring mechanisms. National Committee to Combat Human Trafficking (NCCHT). In its previous comments, the Committee noted the indication in the Government’s report that, following the adoption of Federal Law No. 15 of 2005, the Minister of Interior established the NCCHT. It noted that the NCCHT was presided over by the Under-Secretary of the Ministry of Justice, and included representatives of the Ministries of Interior, Foreign Affairs, Labour, Social Affairs, and the General Director of the Dubai Police, Zayed Corporation for Charity, and the Red Crescent. The Committee requested the Government to provide information on the measures taken by the NCCHT with regard to the trafficking of children.

The Committee notes the information in the NCCHT report that the NCCHT meets frequently, and during 2008–09, took numerous measures to address the problem of trafficking. The NCCHT established a web site and launched an awareness-raising campaign on the issue of trafficking. It also conducted workshops and training sessions, throughout the year, in cooperation with various law enforcement departments and ministries. A brainstorming session to discuss the national strategy against human trafficking was held in 2008 and attended by 80 senior representatives from law enforcement and the judicial department, where these officials were instructed to focus on further prosecutions and to

work towards a centralized documentation system on trafficking to better understand the extent of the problem. The Committee also notes that, following directives of the NCCHT, all law enforcement departments in the country, including police, prosecutors and immigration officials, have been conducting specialized annual training programmes to strengthen the capacity of these bodies to combat this crime. The Committee further notes the information in the NCCHT report that a new visa system was instituted in July 2009, to better address the issue of trafficking. ***The Committee welcomes these measures and requests the Government to continue to provide information on the activities of the NCCHT, and the impact of these measures on the elimination of the trafficking of children under 18 years for the purpose of commercial sexual exploitation and labour exploitation.***

Article 7, paragraph 1, and Part III of the report form. Penalties and court decisions. Trafficking. The Committee previously noted the ITUC's allegation that prosecutions of persons exploiting trafficked children in camel races were rare. Young child camel jockeys were found in al-Baraimmi in Oman and in al-Ain in the UAE, where the employers of camel jockeys form part of the local elite and enjoy impunity. The Committee also noted that Federal Law No. 15 of 2005 provides for three years' imprisonment or a minimum fine of 50,000 dirhams or both for persons who traffic in, recruit, or use children under 18 years of age for camel racing. However, the Committee noted the ITUC allegation that, considering the fact that approximately 2,000 child camel jockeys were found in the UAE in May 2005, the figure for prosecutions under the new law was very disappointing and raised questions as to whether existing monitoring and enforcement mechanisms were adequate. It further noted two cases in which penalties were imposed on persons who, due to the negligence in adopting the necessary safety measures, were responsible for causing injuries to child camel jockeys. The Committee requested the Government to continue to take the necessary measures to ensure that persons who traffic in children for camel racing, as well as persons who use children as camel jockeys, in contravention of the provisions of Federal Law No. 15 of 2005, were prosecuted and received appropriate penalties.

The Committee notes, that pursuant to section 2(2) of Federal Act No. 51 of 2006, the penalty for trafficking a person under the age of 18 shall be life imprisonment. The Committee also notes the statement in the NCCHT report that the penalties imposed for this offence are, in practice, growing harsher, as those convicted in 2007–08 received jail terms ranging from three to ten years for committing, aiding or abetting human trafficking, while in 2008–09 at least two offenders received life sentences. The Committee further notes the information in the NCCHT report that ten cases of trafficking were registered in 2007 and 20 cases were registered in 2008. This report also indicates that in 2008, 43 persons were charged under Federal Act No. 51 of 2006.

The Committee notes the information in the Government's report that, in Case No. 1866/2008 of 22 May 2008, the two persons accused of selling four children as slaves in return for money were charged, by virtue of section 346 of the Penal Code and sections 1(2), 2(2), 4 and 6 of Federal Act No. 51 of 2006. However, the Committee notes that the two accused received convictions only under the Penal Code. The accused therefore received only three and six months' imprisonment, as the court decided to remove the charges under Federal Act No. 51 of 2006, in view of the lack of evidence necessary to prove criminal intent, as required in this Act. The Committee reminds the Government that, by virtue of *Article 7(1)*, of the Convention, the Government shall take the necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of sufficiently effective and dissuasive penalties. ***Therefore, the Committee urges the Government to take the necessary measures to ensure that those persons responsible for the trafficking and use of these children are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed.***

Article 7, paragraph 2. Effective and time-bound measures. Clause (b). Direct assistance for the removal of children from the worst forms of child labour, and for their rehabilitation and social integration. Children trafficked for use as camel jockeys. The Committee previously noted the Government's 2007 agreement with UNICEF to establish a second and expanded phase of their programme to rehabilitate and repatriate child camel jockeys to their country of origin (UAE–UNICEF programme). It also noted that the Government continued to cooperate with UNICEF and the Governments of Bangladesh, Mauritania, Pakistan and Sudan, in order to withdraw children trafficked to the UAE for use in camel jockeying, and to rehabilitate them, repatriate them to their countries and reintegrate them into their communities. Within the framework of the UAE–UNICEF programme, the UAE Ministry of Interior and government representatives from Bangladesh, Mauritania, Pakistan and Sudan, decided to establish an independent claims facility to compensate any anguish, pain, emotional distress or physical injuries that child camel jockeys from these countries who were formerly involved in camel racing in the UAE may have suffered.

The Committee notes with *interest* the information in the Government's report that, by 2008, 3,778 children had been withdrawn from work as camel jockeys (879 from Bangladesh, 465 from Mauritania, 1,303 from Pakistan, and 1,131 from Sudan). The Committee also notes the Government's indication that it has provided approximately US\$8,414,900 in monetary compensation to the child victims of this type of work. The Committee further notes the information in the Government's report that, in addition to the financial compensation given to victims, it took the following initiatives, in collaboration with UNICEF and various NGOs:

- (i) set up centres to provide medical aid and other services to children in Sudan;
- (ii) organized a follow-up system for the families of child victims, in conjunction with the judicial authorities in Mauritania;

- (iii) provided social services to children in Pakistan, and organized a campaign to promote their return to school;
- (iv) set up a social welfare committee in Bangladesh; and
- (v) provided a follow-up mechanism to enable NGOs and local institutions to monitor the payment of wages in arrears to children benefiting from rehabilitation and compensation programmes.

The Committee requests the Government to continue to provide information on the number of children who have been repatriated and rehabilitated within the framework of the UAE–UNICEF programme, in addition to the number of children receiving financial compensation. It also requests the Government to continue to provide information on other measures taken to remove, rehabilitate and reintegrate these children, in the UAE and in their country of origin.

Child victims of trafficking for sexual exploitation. The Committee previously noted the ITUC's allegation that the authorities of the UAE made no distinction between prostitutes and victims of trafficking for sexual exploitation, all of whom bear equal criminal responsibility for involvement in prostitution. The ITUC pointed out that trafficked persons were consequently not treated as victims and were not supported or protected. The Committee observed the Government's information that child prostitutes are sentenced to imprisonment and when they are foreigners (which is generally the case), they are repatriated to their country of origin. The Committee noted the Government's information that the DFWAC was set up in order to ensure the welfare of women and children and would provide social protection, accommodation, support, health services, psychological care and education to women and child victims of trafficking, in order to reintegrate them into society. The Committee requested the Government to indicate the number of child victims of trafficking for sexual exploitation who have been rehabilitated and socially integrated through the DFWAC or other centres.

The Committee notes the Government's statement in reply to the ITUC's allegations that it considers persons who are exposed to sexual exploitation as victims who need protection and support through guidance and rehabilitation programmes. It also notes the Government's statement that it has a record of providing protection and assistance to victims of sexual exploitation, and that it helps victims secure the necessary documents for their repatriation, under the umbrella of the "Programme to assist victims of crime", in collaboration with the governments of their countries of origin and NGOs.

The Committee notes the information in the Government's report concerning the active work of various organizations in the UAE to provide support for the victims of trafficking and sexual exploitation. The Committee notes that the DFWAC provided services to 43 women and children who were victims of trafficking. The Committee also notes the information in the NCCHT report that the police regularly refer victims of trafficking to appropriate services, and that 80 per cent of the victims of trafficking provided shelter by the DFWAC were referred by the police department. The Committee further notes the establishment of the Centre for the shelter of women and children who are victims of human trafficking in Abu Dhabi, in January 2008, with a budget of 8.8 million dirhams (approximately US\$2,395,894), which has helped 15 victims of trafficking. The Government also indicates that the Red Crescent Agency intends to establish centres to provide assistance to women and children who are victims of trafficking, including shelter, medical and psychological care, and social support. In addition, the Committee notes that the Public Department for the Protection of Human Rights in Dubai provided diverse assistance to 27 victims of trafficking, through the provision of temporary shelter, temporary visas and airplane tickets for their return to their country of origin.

Nonetheless, the Committee notes that, in her statement of 18 October 2009, the UN Special Rapporteur noted that the age of criminal responsibility of 7 years of age was too low, and encouraged the Government to ensure that all persons who are sexually exploited be treated as victims and not as delinquents. She stated that these children should not be put in jail, but given access to adequate care, protection, rehabilitation, reintegration and repatriation. ***Therefore, the Committee strongly encourages the Government to ensure that children trafficked to the UAE for commercial sexual exploitation are treated as victims rather than offenders. It requests the Government to continue to take measures to ensure the rehabilitation and social integration of child victims of trafficking for sexual exploitation, and to provide information on measures taken in this regard.***

Article 8. International cooperation. The Committee notes the information in the 2009 Global Report on trafficking in persons, issued by the UN Office on Drugs and Crime, that the Government provided financial support for the preparation and publication of the report. The Committee also notes the information in the NCCHT report that the Government signed bilateral agreements with several countries (Bangladesh, China, India, Nepal, Pakistan, Philippines, Sri Lanka and Thailand) to regulate the flow of labour which would contribute to the elimination of trafficking. The Committee further notes the Government's continued cooperation with the IOM, including participation in a regional conference on human trafficking and a two-day training programme for law enforcement officials.

Part V of the report form. Application of the Convention in practice. The Committee previously noted the Government's statement that amendments to the Labour Code would soon be adopted, which would help to establish a full system of information on the labour market, including young persons. The Committee notes that the statement of the UN Special Rapporteur indicates that there is a lack of an information system for gathering data on the sale and trafficking of children and the commercial sexual exploitation of children, in addition to a lack of analysis, recording, sharing of information, and reporting in this regard. The Special Rapporteur noted that the Government recognized the need for such a system and that it was in the process of establishing one. ***The Committee therefore urges the Government to pursue its***

efforts to establish a system to record and collect data on the number of children engaged in the worst forms of child labour.

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

United States

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 1999)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Slavery and practices similar to slavery. Sale and trafficking of children. The Committee had previously noted the Government's information that, on 19 December 2003, Congress enacted the Trafficking Victims Protection Reauthorization Act (TVPRA), which reauthorized the Trafficking Victims Protection Act of 2000 (TVPA) in 2003 and 2005, and added responsibilities to the United States Government's anti-trafficking portfolio. The TVPRA of 2003 mandated new information campaigns to combat sex tourism, enhanced anti-trafficking protection under federal criminal law and created a new civil action that allows trafficking victims to sue their traffickers in federal district courts. The TVPRA of 2005 extended and improved prosecutorial and diplomatic tools, provided for new grants to state and local law enforcement agencies, and expanded the services available to certain family members of victims of severe forms of trafficking.

The Committee notes the Government's statement that, on 23 December 2008, the TVPRA of 2008 was enacted which once more reauthorized the TVPA for four years and authorized new measures to combat human trafficking, including efforts to increase effectiveness of anti-trafficking in persons programmes, providing interim assistance for potential child victims of trafficking and enhancing the ability to criminally punish traffickers. For example, the Committee notes that, according to the detailed information provided in the Attorney-General's Annual Report to Congress and Assessment of United States Government Activities to Combat Trafficking in Persons of June 2009 (Attorney-General's Annual Report of 2009), the TVPRA of 2008 broadens the crime of sex trafficking by fraud, force or coercion by providing that the Government need merely prove that the defendant acted in reckless disregard of the fact that such means would be used. The TVPRA also broadens the reach of the crime of sex trafficking of minors by eliminating the requirement to show that the defendant knew that the person engaged in commercial sex was a minor in cases where the defendant had a reasonable opportunity to observe the minor. *The Committee once again strongly encourages the Government to pursue its efforts to eliminate the trafficking of children under 18 years of age for labour and sexual exploitation. It requests the Government to continue providing information on the measures taken in this regard and the results attained.*

Article 3(d) and Article 4, paragraph 1. Hazardous work. The Committee had previously noted that, as an exemption from section 213 of the Fair Labour Standards Act (FLSA), in agriculture, 16 is the minimum age under section 213(c)(1) and (2) of the FLSA for employment in occupations (outside family farms) that the Secretary of Labour finds and declares to be "particularly hazardous for the employment of children". It had observed that section 213 of the FLSA authorizes children aged 16 and above to undertake, in the agricultural sector, occupations declared to be hazardous or detrimental to their health or well-being by the Secretary of Labour.

The Committee had noted the allegation of the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) that between 300,000 and 800,000 children are employed in agriculture under dangerous conditions. Many work for 12 hours a day and are exposed to dangerous pesticides, suffer rashes, headaches, dizziness, nausea and vomiting, often risking exhaustion or dehydration due to lack of water, and are often injured. The Committee had further noted that, according to the AFL-CIO and the National Institute for Occupational Safety and Health (NIOSH), during the period from 1992 to 1997, a total of 403 children under 18 years were killed while working. One third of the occupational deaths were associated with tractors. The industry that had by far the highest number of fatalities – 162, or 40 per cent – was agriculture, forestry and fishing, even though only 13 per cent of children under 18 worked in this sector. This high rate of fatal injuries was confirmed by the fact that youths of 15–17 years of age working in agriculture appear to have over four times the risk of injury than youths working in other industries. However, eventual changes to Hazardous Orders (HOs) could not be expected to have an impact on the injuries of young workers of 16 and 17 years who fall outside the coverage of the FLSA. The Committee had also noted that, according to the Worker member of the United States at the Conference Committee on the Application of Standards at the 95th Session of the International Labour Conference in June 2006, among 15–17-year-olds, child workers in agriculture accounted for at least 25 per cent of all fatalities experienced by young workers. The Committee therefore shared the concern expressed by many speakers with regard to the hazardous and dangerous conditions that were and could be encountered by children under 18, and indeed in some cases under 16, in the agricultural sector.

The Committee had noted the Government's statement that the FLSA, which was developed through a process open to the participation of employers' and workers' representatives, does not authorize the Secretary of Labour to restrict young persons of 16 years and older from working in agriculture. Moreover, in determining types of hazardous work pursuant to *Article 3(d)* and *Article 4(1)*, of the Convention, Paragraph 4 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190), allows ratifying countries to permit 16- and 17-year-olds to engage in types of work referred to by *Article 3(d)* on condition that the health, safety and morals of the children are fully protected. Therefore, the Congress had determined that it is safe and appropriate for children at 16 to perform work in the agricultural sector, in

conformity with *Article 3(d)* and *Article 4(1)* of the Convention. However, the Committee, considering the significant number of injuries and fatalities suffered by children under 18 years working in the agricultural sector, observed that the conditions of protection and prior training appeared not to be fully met in all circumstances and requested the Government to take the necessary measures to ensure that this work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190.

The Committee notes the information in the Government's report that the Environmental Protection Agency (EPA) and the Department of Labour (DOL) have robust health and safety standards for the agricultural sector, including the EPA's worker protection regulation (40 C.F.R. 170) and certified pesticide applicator regulation (40 C.F.R. 171), both of which are scheduled to undergo modifications in 2010. The Government indicates that the proposed modifications, which were delayed under the previous administration, would help ensure the health and safety of young agricultural workers by setting specific age requirements for pesticide-related activities. Furthermore, the Government indicates that the EPA and DOL have training requirements to protect all agricultural workers' health and safety, including the standard on occupational hazard communication that requires training on the recognition of chemical hazards and appropriate protective measures. The DOL's Wage and Hour Division (WHD) and the United States Department of Agriculture have also worked together to reinvent and streamline a voluntary tractor certification programme for 14- and 15-year-olds, who are permitted by HOs to operate certain otherwise prohibited farm equipment after being properly trained and certified in the equipment's safe operation. Moreover, the DOL's Occupational Safety and Health Administration also engages in significant education and outreach designed to keep youth safe, including child farm workers.

The Committee notes, however, that the United States Government has no special training or instructional requirements at the federal level for 16- and 17-year-old agricultural workers engaged in hazardous labour and there are currently no separate health and safety standards under federal law for child farm workers aged 16 or 17 engaging in hazardous work. The Committee also notes the information in the Government's report that all children on family farms and 12- and 13-year-old farm workers working alongside their parents or with parental consent are excluded from the FLSA minimum-age requirements.

The Committee must express its **serious concern** over the fact that children under 18 years of age are allowed, in law and in practice, to perform these types of work which are *clearly hazardous*, as acknowledged by the Government itself in its report when it refers to agriculture as the industry with the highest youth fatality rate. It also expresses its **serious concern** that children aged 14 and 15 years are permitted by HOs to receive training in the operation of otherwise prohibited farm equipment, such as tractors, and that children of all ages working on family farms or 12- and 13-year-olds working alongside their parents or with parental consent are excluded from the application of the FLSA. The Committee must therefore once again emphasize that, by virtue of *Article 3(d)*, work which, by its nature and the circumstances in which it is carried out, is likely to harm the health, safety or morals of children *under 18*, constitutes one of the worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. It also recalls that Paragraph 4 of Recommendation No. 190 addresses the possibility of authorizing the employment or work of young persons as *from the age of 16* under strict conditions that their health and safety be protected and that they receive adequate specific instruction or vocational training in the relevant branch of activity. Considering the significant number of injuries and fatalities suffered by children, as reflected by the fact that agriculture is the industry with the highest fatality rate, it would appear that the conditions of protection and training as set out in Paragraph 4 of Recommendation No. 190 are not fully met in all circumstances. ***The Committee accordingly urges the Government to take immediate and effective measures to comply with Article 1 of the Convention, read with Article 3(d), to prohibit children under 18 years of age from engaging in hazardous and dangerous work in agriculture. However, where such work is performed in the agricultural sector by young persons between 16 and 18 years of age, the Committee urges the Government to take the necessary measures to ensure that this work is only carried out in accordance with the strict conditions set out in Paragraph 4 of Recommendation No. 190, namely that the health and safety of such young persons be protected and that they receive adequate specific instruction or vocational training. The Committee requests the Government to provide information on the progress made in this regard in its next report.***

Article 4, paragraph 3. Examination and periodical revision of the types of hazardous work. The Committee had previously noted that 28 HOs adopted by virtue of the FLSA determine the types of work or activities that children under 18 shall not perform. It had also noted that these Orders were established in 1939 and 1960 with regard to non-agricultural occupations and 1970 for agricultural occupations. It had noted the AFL-CIO's allegation of June 2005 that the NIOSH issued recommendations for changing the existing agricultural HOs. The Committee had noted that, in 2004, the DOL issued a final rule addressing six of the 35 NIOSH report recommendations relating to non-agricultural HOs. Furthermore, it had noted the Government's information that the DOL published a Notice of Proposed Rulemaking (NPRM) and Advance Notice of Proposed Rulemaking (ANPRM) on 17 April 2007, both of which address the remaining 29 non-agricultural HO recommendations. The Committee had further noted the Government's statement that the DOL intended to give the HOs for agricultural occupations the same attention it has given the other NIOSH recommendations relating to non-agricultural occupations.

The Committee notes the information in the Government's report that, due to the amount of work involved, the DOL has been following up on the NIOSH recommendations in stages. The Government indicates that the ANPRM requested

comments from the public on the student-learner and apprentice exceptions contained in certain of the HOs, as well as additional recommendations made by the NIOSH report for which there was not sufficient data to propose new rules. The DOL has reviewed the comments that were received from the public and is in the process of moving forward in its efforts. The Government also indicates that the DOL values the NIOSH report's recommendations on agricultural HOs for youth employment and is still evaluating the appropriate course of action. The DOL is also continuing its ongoing review of workplace conditions of youth in agriculture to assess the relevancy of existing regulations. ***Noting that the Government has been referring to the envisaged amendments to the HOs for a number of years, the Committee requests the Government to take immediate measures to ensure that the NIOSH's recommendations for changing the existing HOs are followed up on and that the amendments to the HOs are effectively adopted pursuant to these recommendations as a matter of urgency, in particular with regard to the agricultural HOs. It requests the Government to provide information on the progress made in this regard in its next report.***

Article 5. Monitoring mechanisms. Hazardous work and agriculture. The Committee had previously noted the AFL-CIO's indication that an estimated 100,000 children suffer agriculture-related injuries annually in the United States and that very few inspections take place in agriculture. Moreover, it had expressed its concern at the decreasing number of child labour investigations conducted in the agricultural sector. Finally, the Committee had noted that, according to the Government representative at the Conference Committee on the Application of Standards of the 95th Session of the International Labour Conference in June 2006, although child labour violations across industries continued to decrease, violations in agriculture had increased in the previous year.

The Committee notes the information contained in the Government's report that, in 2007, the WHD conducted 1,667 investigations of agricultural employers, in which 75 minors were found illegally employed in 35 cases. The number of cases with agricultural HO violations was six and the number of minors employed in the agricultural industry in violation of HOs was seven. In 2008, the WHD conducted 1,600 investigations of agricultural employers in which 52 minors were found illegally employed in 34 cases. The number of cases with agricultural HO violations was ten and the number of minors employed in violation of HOs was 11. Furthermore, from September 2007 to August 2009, the OSHA and its state partners conducted a total of 5,415 inspections of agricultural employers and in 3,399 cases found 10,694 violations.

The Committee also notes the Government's statement that the WHD will be hiring 250 additional wage and hour inspectors in 2010. The Government indicates that the WHD has used and continues to use every tool available – enforcement, compliance, assistance, public awareness, partnership, regulation and legislation – to promote compliance with child labour laws. In addition, the WHD has begun working with an independent evaluator to assess its strategies and their effectiveness in increasing compliance with the FLSA child labour provisions, and this study is ongoing. However, the Committee notes the Government's statement that these statistics do not include enforcement data relating to farming operations that do not maintain a temporary labour camp and employ ten or fewer employees. Indeed, as a result of a provision from Congress, the OSHA's inspection personnel only conduct inspections and levy fines on farms with over ten employees. The Committee recalls that *Article 5* of the Convention requires each Member, after consultation with the social partners, to establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention. ***The Committee therefore urges the Government to take immediate and effective measures to ensure that the necessary monitoring mechanisms are in place so that all farms are inspected and monitored, regardless of the number of persons they employ. It requests the Government to continue to provide information on the inspections carried out and on the number and nature of violations detected with regard to children under 18 employed in the worst forms of child labour and, particularly, in agricultural undertakings and in farms where ten or fewer employees are employed.***

Parts III, IV and V of the report form. Application of the Convention in practice. Referring to its previous comments, the Committee notes that, according to the Attorney-General's Annual Report of 2009, the Federal Bureau of Investigation (FBI) participates in a significant majority of the Bureau of Justice Assistance-funded human trafficking task forces as well as other human trafficking task forces and working groups. In fiscal year 2008, the FBI opened 132 human trafficking investigations, made 139 requests and filed 60 complaints. In the same fiscal year, 129 information/indictments were filed in FBI human trafficking cases and 94 convictions were obtained. Furthermore, in June 2008, the Innocence Lost Task Forces of the Innocence Lost Initiative, launched by the FBI and the Department of Justice's Child Exploitation and Obscenity Section in 2003, participated in the Operation Cross Country to combat domestic sex trafficking in children. This operation resulted in the arrest of 356 individuals and the recovery of 21 children. In October 2008, Operation Cross Country II took place. A total of 630 law enforcement personnel participated in the operation, which resulted in 642 arrests, the disruption of 12 large-scale prostitution operations and, most importantly, the rescue of 49 children aged 13–17 years from the sex trade. From the inception of the Innocence Lost Initiative in June 2003 to the execution of Operation Cross Country II in October 2008, over 575 children were rescued from such situations. The Committee further notes that the Human Trafficking Reporting System, which provides data on human trafficking incidents on a regular basis, conducted analyses on those incidents investigated between 1 January 2007 and 30 September 2008. During the 21-month analysis period, 1,229 suspected incidents of human trafficking were reported, nearly 83 per cent of which involved sex trafficking and 12 per cent involved trafficking for labour exploitation. Of the 1,018 alleged sex trafficking incidents, 391 (38 per cent) involved allegations of child sex trafficking. Finally, the Committee observes

that the Attorney-General's Annual Report of 2009 enumerates several examples of cases investigated or prosecuted by the Department of Justice in fiscal year 2008 which involved the trafficking of children for labour or sexual exploitation.

Uzbekistan

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2008)

The Committee notes the Government's first report. It also notes the communication of the International Organisation of Employers (IOE) dated 26 August 2009.

Articles 3 and 7, paragraph 1, of the Convention. Worst forms of child labour and sanctions. Clauses (a) and (d). Forced or compulsory labour in cotton production and hazardous work. In its comments under the Abolition of Forced Labour Convention (No. 105), the Committee had previously noted the observations made by the Council of the Trade Unions Confederation of Uzbekistan, communicated by the Government with its 2004 report, which contained allegations concerning practices of the mobilization and use of labour for purposes of economic development in agriculture (cotton production), in which public sector workers, school children and university students are involved. In this regard, the Committee notes that the IOE confirms that the legal framework against the use of forced labour exists in Uzbekistan but that, despite this fact, there are continued reports by non-governmental organizations and the media denouncing the systemic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan.

The Committee notes the allegation of the IOE that the mass mobilization of children was one of the characteristics of cotton production during the Soviet regime. Referring to several reports, the IOE indicates that, every year, hundreds of thousands of Uzbek school children are forced by the Government of Uzbekistan to work in the national harvest for up to three months. Estimates of the number of children forced to participate in the cotton harvest range from half a million to 1.5 million school children in grades 5 to 11. The IOE further reports that forced labour has a substantial negative impact upon the education of the country's rural school children. Rural children are said to lag behind their urban peers in schooling, due to participation in the cotton harvest.

In this regard, the Committee notes that, in its concluding observations of 24 January 2006 (E/C.12/UZB/CO/1, paragraph 20), the Committee on Economic, Social and Cultural Rights expressed its concern about the persistent reports on the situation of school-age children obliged to participate in the cotton harvest every year who, for that reason, do not attend school during this period. The Committee also notes the concern expressed by the Committee on the Rights of the Child, in its concluding observations of 2 June 2006 (CRC/C/UZB/CO/2, paragraphs 64–65), about the involvement of the very many school-age children in the harvesting of cotton, which results in serious health problems such as intestinal and respiratory infections, meningitis and hepatitis. The Committee on the Rights of the Child therefore urged the Government to take all the necessary measures to ensure that the involvement of school-aged children in cotton harvesting is in full compliance with the international child labour standards, inter alia, in terms of their age, their working hours, their working conditions, their education and their health.

The Committee notes the Government's information that article 37 of the Constitution of Uzbekistan directly prohibits any compulsory labour and that article 45 of the Constitution contains state guarantees of protection of the rights and interests of children. The Committee notes that section 7 of the Labour Code prohibits forced labour, i.e. the obligation to perform work under menace of applying any penalty (including as a means to maintain labour discipline). It further notes that section 138 of the Criminal Code provides that the forceful illegal deprivation of liberty shall be punished with a fine of up to 50 minimum monthly wages or correctional labour or imprisonment of up to three years. The same action committed with the placement of a victim in conditions endangering their life or health shall be punished with imprisonment from three to five years. Furthermore, the Committee notes that, pursuant to section 241 of the Labour Code prohibiting the employment of persons under 18 years of age in work in unfavourable conditions and work which may harm their health, safety or morality, the Ministry of Labour and Social Protection (MoLSP) and the Ministry of Health, in consultation with the social partners, adopted the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age" of 30 May 2001, which provides that children under 18 years of age are forbidden from watering and gathering cotton by hand. In this regard, the Committee notes that section 49 of the Administrative Responsibility Code provides that an infraction of labour and occupational safety legislation shall entail a fine of from two to five times the minimum wage.

The Committee expresses its **serious concern** at the situation of children who, every year, are taken from school for up to three months and made to work in the cotton fields in hazardous conditions. It observes that, although national legislation appears to prohibit forced labour and hazardous work in cotton production, this remains a serious issue of concern in practice. The Committee refers to the Universal Periodic Review of Uzbekistan of 9 March 2009 (A/HRC/10/83, paragraph 106(8) and (27)), in which, in response to the recommendations that Uzbekistan do its utmost to eliminate forced child labour, intensify its efforts to effectively implement the national legislation and stop the practice of sending school-age children to participate in the harvesting of cotton, the Government indicated that measures are already being implemented or have already been implemented and will further be considered. In this regard, the Committee recalls that, by virtue of *Article 3(a) and (d)* of the Convention, forced labour and hazardous work are considered as worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, as a matter of urgency.

Furthermore, the Committee recalls that, by virtue of *Article 7(1)*, of the Convention, ratifying countries are required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions.

The Committee therefore strongly urges the Government to take effective and time-bound measures to eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, as a matter of urgency. In this regard, it requests the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that effective and sufficiently dissuasive sanctions are imposed in practice. It requests the Government to provide information on the progress made in this regard in its next report.

Article 6. Action programmes. National Action Plan (NPA) for the application of ILO Conventions Nos 138 and 182. The Committee notes that, according to the IOE, in September 2008, the Uzbek Prime Minister signed a decree that bans child labour in cotton plantations in Uzbekistan and approves a NPA to eradicate child labour. In this regard, the Committee notes that the NPA for the application of ILO Conventions Nos 138 and 182 includes the following paragraphs on activities specifically regarding the forced labour of children, in particular in the agricultural sector:

- (a) Monitoring and control of the prohibition of the use of pupils of schools of general education, vocational colleges and academic lyceums, in forced labour (paragraph 12).
- (b) Public control of the prohibition of the use of forced child labour in territories of self-governing bodies of citizens (paragraph 14).
- (c) Establishing a working group to monitor locally the prohibition of the use of forced labour in cotton picking of pupils in schools of general education, including public schools, and submitting analytical information to the Cabinet on the results of this monitoring (paragraph 20).
- (d) Acceptance of a joint statement on the inadmissibility of the use of forced child labour in agricultural works by the Association of Farm Entities, the Council of Federation of trade unions in Uzbekistan and the MoLSP (paragraph 29).
- (e) Informing farmers on matters relating to the prohibition of violating legislation on the engagement of children in agricultural works (paragraph 33).

While noting the measures enumerated in the framework of the NPA for the application of ILO Conventions Nos 138 and 182, the Committee notes the allegation of the IOE according to which it remains uncertain if the implementation of these recently adopted measures will be sufficient to address the deeply rooted practice of forced child labour in the cotton fields. ***The Committee urges the Government to take immediate measures to ensure that the activities envisaged in the abovementioned NPA pertaining to the prohibition and elimination of the use of forced child labour in the agricultural sector are effectively implemented, as a matter of urgency, and to provide information on the results achieved.***

In this regard, the Committee invites the Government to avail itself of ILO technical assistance on the assessment to be made on the effective implementation of the NPA for the application of ILO Conventions Nos 138 and 182.

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

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

Zambia

Minimum Age Convention, 1973 (No. 138) (ratification: 1976)

Article 2, paragraph 3 of the Convention. Age of completion of compulsory schooling. In its previous comments, the Committee had observed the International Trade Union Confederation's (ITUC) allegation that 25 per cent of primary school age children did not receive any schooling and that in 1999 less than 29 per cent of children reached the secondary school level. It had noted the information provided by the Worker members at the Conference Committee on the Application of Standards in June 2008 that Zambia does not yet have a system of free, compulsory, formal public education and therefore it would not be able to succeed in eliminating child labour. It had also noted the Worker members' statement that although the abolition of school fees had resulted in an increase in the school enrolment rates and a decrease in the number of out-of-school children from 760,000 to 228,000 between 1995 and 2005, disadvantaged children were still two to three times less likely to be in school than other children.

The Committee had noted that according to the Child Labour Survey Report of 2005, about 1,185,033 children between the ages of 5 and 17 were in school, out of which 49 per cent were child labourers. It also noted the incidence of child labour which was estimated at 895,000 of which 46 per cent were children between the ages of 10 and 14. The survey had indicated that child labour is predominantly a rural phenomenon with 92 per cent of all working children residing and working in rural areas. The Committee had further noted the statistics provided by the Educational Statistical Bulletin of 2006, which revealed that there were 93,451 out-of-school children between the ages of 7 and 15. The Committee, while appreciating the efforts made by the Government to increase school enrolment rates and to provide free and compulsory education for all children, observed that poverty is one of the main causes of child labour and that the

HIV/AIDS pandemic had left a lot of children parentless. It had further expressed concern at the number of out-of-school children as well as the number of school-going children who were involved in child labour in the country.

The Committee notes the Government's information that Circular No. 3 of 2003 introduced free education from grades 1 to 7. It also notes the Government's statement that efforts are under way to make schooling compulsory up to basic education level at which stage children will have attained the minimum age of employment of 16 years. The Committee further notes the information provided by the Government in its report under Convention No. 182 on the measures adopted to resolve the challenges associated with HIV/AIDS at workplaces. ***The Committee expresses the firm hope that in the next report the Government will be in a position to provide information on the progress made with regard to its efforts to make schooling compulsory up to the minimum age for employment, which is 15 years for Zambia. The Committee also requests the Government to redouble its efforts to improve the functioning of the education system, in particular by increasing the school enrolment rates and reducing school drop-out rates, especially among child orphans of HIV/AIDS and children in the rural areas so as to prevent the engagement of these children in child labour.***

Article 3, paragraph 2. Determination of hazardous work. The Committee had previously noted the Government's indication that a "statutory instrument" was formulated to enforce the Employment of Young Person's and Children's (Amendment) Act of 2004, as well as to serve as Zambia's hazardous work list. It had also noted that this "statutory instrument on hazardous work" prohibits work in a covered site in any of the following types of occupations: excavation/drilling; stone crushing; block/brick-making; building; roofing; painting; tour guiding; selling/serving in bars; animal herding; fishing; working in tobacco and cotton fields; spraying of pesticides, herbicides and fertilizers; handling farm machinery and processing in industries. The Committee notes the Government's information that the Hazardous Labour Statutory Instrument developed in collaboration with the stakeholders raised some legal concerns which are currently being considered by legal experts. ***The Committee expresses the firm hope that the Hazardous Labour Statutory Instrument containing the list of types of hazardous work will be adopted soon and requests the Government to provide a copy of the same once it has been adopted.***

Article 7. Light work. In its previous comments, the Committee noted the Government's indication that the statutory instrument determining light work activities had been formulated and had requested the Government to provide a copy of the same once it had been adopted. The Committee notes the Government's statement that no statutory instrument for light work activities has been developed. However, it is envisaged that once the Hazardous Labour Statutory Instrument is adopted, it will define light work activities. ***The Committee trusts that the Hazardous Labour Statutory Instrument will define the light work activities as well as prescribe the number of hours during which and the conditions in which such work may be undertaken by children between 13 and 15 years of age.***

Part V of the report form. Application of the Convention in practice. The Committee had previously noted the ITUC's allegation that child labour in Zambia is almost non-existent in the formal economy. However, children are reported to work in the unregulated economy, often in dangerous or harmful work. According to the ITUC, children are mostly found in agriculture, domestic service, small-scale mining operations, stone-crushing and pottery. The Committee had taken note of the Government's information on the measures taken to reduce the incidence of child labour, for example, through ILO-IPEC projects, by establishing 11 district child labour committees to monitor the implementation of programmes to sensitize the public on child labour and its worst forms as well as programmes to withdraw, rehabilitate and reintegrate identified children. Noting that a National Child Labour Action Plan was under way, the Committee had requested the Government to indicate the measures adopted within the framework of this national plan for the elimination of child labour, especially in the informal sector. It had also requested the Government to redouble its efforts to adapt and strengthen the labour inspection services in the informal sector.

The Committee notes the Government's information that the draft National Action Plan on Child Labour includes measures for the elimination of child labour in the informal sector, such as: awareness-raising and sensitization activities; prevention, withdrawal and reintegration measures; and the creation of an enabling environment for the implementation of the various activities. The Government further states that, due to lack of transport and communication services, the District Child Labour Committees are not able to function effectively in the districts and hence information on the number of children withdrawn and rehabilitated is not available. The Committee notes, however, the Government's statement that, once the National Action Plan is finalized, the District Child Labour Committees would be given the necessary resources to meet their administrative costs. ***The Committee requests the Government to provide information on the implementation of the National Action Plan on Child Labour and its impact on reducing child labour, especially in the informal sector. It also requests the Government to redouble its efforts to adapt and strengthen the labour inspection services in the informal sector, in order to ensure that the protection established by the Convention is ensured for children working in this sector.***

Worst Forms of Child Labour Convention, 1999 (No. 182) (ratification: 2001)

Article 3 and Part V of the Convention. Worst forms of child labour and application in practice. Clause (a). All forms of slavery or practices similar to slavery. Sale and trafficking of children. In its previous comments, the Committee had noted the allegations of the International Trade Union Confederation (ITUC), that there were reports of trafficking of children to neighbouring countries for the purpose of forced prostitution and that combatants from

neighbouring Angola kidnapped Zambian children to perform forced labour in Angola. It had also noted that there are criminal provisions in place prohibiting the sale and trafficking of children under 18 years for any purpose. However, based on the results of a study conducted by the ILO-IPEC on the nature and extent of trafficking in Zambia, the Committee had expressed concern at the prevalence of internal trafficking of children for domestic labour, farm work and commercial sexual exploitation and requested the Government to redouble its efforts to eliminate the trafficking of children for labour and sexual exploitation, and on the penalties imposed on the perpetrators.

The Committee notes the Government's statement that three cases of child trafficking were reported under section 143 of the Penal Code (Amendment) Act of 2005, out of which two perpetrators were sentenced to twenty years of imprisonment while the third case is under investigation. In addition, two perpetrators of child trafficking were charged under the Immigration Act, for which prosecutions are under way. The Committee notes the Government's statement that the reported cases have led to the withdrawal of six children from trafficking. ***The Committee requests the Government to continue providing information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied, for violations of the legal prohibitions on the sale and trafficking of children. It also requests the Government to provide information on the measures taken for the rehabilitation and social integration of the children withdrawn from trafficking.***

Article 4, paragraph 1. Determination of hazardous work. The Committee had previously noted the Government's indication that it had formulated a "Statutory Instrument on hazardous work" which prohibits work in a covered worksite in any of the following types of occupations: excavation/drilling; stone crushing; block/brick-making; building; roofing; painting; tour guiding; selling/serving in bars; animal herding; fishing; working in tobacco and cotton fields; spraying of pesticides, herbicides and fertilizers; handling farm machinery and processing in industries. It had noted that section 3(a) of the Employment of Young Persons and Children (Amendment) Act of 2004 (EYPC), defines a child as a person under the age of 15 years and section 3(e) defines a young person as a person aged between 15 and 18 years. The Committee notes the information provided by the Government in its report under Convention No. 138 that the Hazardous Labour Statutory Instrument developed in collaboration with the social partners and stakeholders raised some legal concerns which are currently being considered by legal experts. ***The Committee expresses the firm hope that the Hazardous Labour Statutory Instrument, containing the list of types of hazardous work, will be adopted soon and requests the Government to provide a copy of it once it has been adopted.***

Article 5. Monitoring mechanisms. The Committee had previously noted the establishment of 11 District Child Labour Committees to monitor the implementation of programmes to sensitize the public to child labour and its worst forms, as well as programmes to withdraw, rehabilitate and reintegrate identified children. It had also noted that six labour inspectors were trained in the prosecution of child trafficking cases. The Committee further noted the information provided by the Government representative of Zambia to the Conference Committee on the Application of Standards in June 2008 concerning the application of the Minimum Age Convention, 1973 (No. 138) that an Inter-Ministerial Committee on Human Trafficking was established to provide specialized intervention on human trafficking.

The Committee notes the Government's statement that the role of the Inter-Ministerial Committee on Human Trafficking includes: to coordinate programmes on protection, prevention and prosecution on human trafficking issues; and to help in the development and revision of policies and legislation on human trafficking. The Committee also notes the Government's statement that the Inter-Ministerial Committee on Human Trafficking developed a draft communication strategy for the implementation of anti-trafficking measures; developed and adopted the Anti-Human Trafficking Act of 2008; and set up the National Human Trafficking Secretariat. The Committee further notes the Government's statement that the District Child Labour Committees have not so far dealt with any cases of child trafficking due to administrative and financial difficulties faced by these committees. ***The Committee requests the Government to take the necessary measures to make the District Child Labour Committees functional, and thereafter requests it to provide information on the number of children withdrawn and rehabilitated pursuant to the implementation of the programmes monitored by the District Child Labour Committees. It also requests the Government to provide further information on the implementation of the programmes on protection, prevention and prosecution on human trafficking coordinated by the Inter-Ministerial Committee on Human Trafficking, and the results achieved.***

Article 7, paragraph 2. Effective time-bound measures. Clause (d). Identifying and reaching out to children at special risk. Child victims/orphans of HIV/AIDS. In its previous comments, the Committee had noted the ITUC's indication that the number of street children in the capital Lusaka nearly tripled over the 1990s. It had also noted that since the number of Zambians dying of HIV/AIDS had increased, the number of orphans had also increased and that nearly all of these children were working, particularly in hazardous work. The Committee had also noted that the Government developed a national HIV/AIDS policy which addresses the issues of orphans, as well as HIV-positive children and launched a National Decent Work Country Programme in December 2007, which has outlined HIV/AIDS prevention and elimination of child labour among its priorities. It had further noted the Government's statement that, as of March 2008, there had been an increase in the number of children prevented and withdrawn from HIV/AIDS-induced child labour, through educational support, recreational and psychological support, and through income-generation activities for the families affected by HIV/AIDS. Many children who were integrated into formal and informal schools continued their education after receiving school requirements, and those who completed vocational skills training were provided with employment. The Committee had also noted that through the ILO-IPEC project entitled "Combating and preventing

HIV/AIDS-induced child labour in sub-Saharan Africa (September 2004–December 2007)”, in Zambia a total of 1,124 children were withdrawn from exploitative child labour and 1,149 children were prevented from being engaged in exploitative child labour, through educational and social protection services.

The Committee had noted, however, that according to the “Report on the global AIDS epidemic” published by the Joint United Nations Programme on HIV/AIDS (UNAIDS), in July 2008 over 60,000 children aged below 17 years were HIV/AIDS orphans in Zambia. The Committee had observed with concern that one of the serious consequences of this pandemic on orphans is their increased risk of being engaged in the worst forms of child labour. It had therefore requested the Government to pursue its efforts to combat HIV/AIDS-induced child labour and to provide information on the implementation of the national HIV/AIDS policy, the national Decent Work Country Programme and the results achieved in terms of the elimination of HIV/AIDS-induced child labour. The Committee notes that the Government’s report contains only information on the measures adopted to resolve the challenges associated with HIV/AIDS at work places. ***The Committee therefore once again requests the Government to provide information on the implementation of the national HIV/AIDS policy, the national Decent Work Country Programme and on the results achieved in terms of the elimination of HIV/AIDS-induced child labour. It encourages the Government to pursue its efforts to ensure that children orphaned by HIV/AIDS are prevented from being engaged in the worst forms of child labour.***

Article 8. International cooperation. The Committee had previously noted that the Zambia police service established a human trafficking desk as a way of cooperating with other countries to combat human trafficking. The Committee had requested the Government to provide information on the role of the human trafficking desk in combating cross-border trafficking in children. The Committee notes the Government’s indication that the human trafficking desk has not yet been established but the process has begun and has reached an advanced stage. According to the Government’s report, the human trafficking desk would enable the public to report cases of child trafficking to the police, thereby providing for a quick intervention on matters relating to child trafficking. ***The Committee requests the Government to provide further information on the progress made in the establishment of the human trafficking desk and on the number of cases of child trafficking reported. It also requests the Government to provide information on its impact in combating internal as well as cross-border trafficking in children.***

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

Zimbabwe

Minimum Age Convention, 1973 (No. 138) (ratification: 2000)

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

Article 2, paragraph 1, of the Convention. Scope of application. In its previous comments, the Committee had noted that the Labour Act of 2002 and the Labour Relation Regulations of 1997 do not apply to self-employed workers. It had noted, however, the Government’s information that in practice children not bound by a labour relationship, such as self-employed workers, benefit from the protection afforded by the Convention. It had also noted that consultations with the social partners would be undertaken with a view to amend the legislation in order to explicitly cover all types of employment or work. The Committee noted the Government’s information that the labour law reform was ongoing in Zimbabwe and that, in this framework, the Government would be consulting the social partners on this issue. ***In the framework of the labour law review, the Committee once again encourages the Government to take the necessary measures to ensure that self-employed children benefit from the protection afforded by the Convention. It once again requests the Government to provide information on any developments in this regard.***

Article 2, paragraph 3. Age of completion of compulsory schooling. In its previous comments, the Committee had noted that section 5 of the Education Act of 1996 states that it is the objective in Zimbabwe that primary education for every child of school-going age shall be compulsory and to this end it shall be the duty of parents of any such child to ensure that such child attends primary school. It had also noted, however, that in its Concluding Observations on the initial report of Zimbabwe (CRC/C/15/Add.55, paragraph 19), the Committee on the Rights of the Child expressed its concern noting that primary education is neither free nor compulsory and that the quality of education is low.

The Committee noted the ZCTU’s contention that children as young as 6 years work on farms in order to pay for their school fees. It also noted the ZCTU’s statement that the Government should reintroduce free education at the primary level in order to contribute to eradicating child labour, including its worst forms, on farms.

The Committee noted the Government’s information that consultations with the Ministry of Education, Sport and Culture would be made concerning the legislation fixing a specific age for the completion of compulsory schooling. Moreover, the Government indicated that it had launched various programmes, such as the Basic Education Assistance Module (BEAM) and the National Action Plan for Orphans and other Vulnerable Children (OVC NPA) which are aimed at ensuring that children of school age attend school.

The Committee noted that, according to the 2004 labour force survey contained in the Project for the Elimination of the Worst Forms of Child Labour report (WFCL Project’s report), supplied by the Government under Convention No. 182, out of the children aged 5–14 years involved in economic activities (42 per cent), 4 per cent never attended school and 14 per cent left school. Among children from 5 to 14 years performing non economic activities, such as household chores like fetching firewood and water, 6 per cent never attended school and 35 per cent left school. The Committee expressed the view that compulsory education is one of the most effective means of combating child labour. ***It once again requests the Government to provide information on the impact of the BEAM and the OVC NPA on increasing school attendance and reducing school drop-out rates, so as to prevent the engagement of children in child labour. It further requests the Government to provide information on any progress made towards the adoption of legislation fixing a specific age for the completion of compulsory schooling.***

Article 6. Apprenticeship. The Committee had previously noted that section 11(1)(a) and (3)(b) of the Labour Act of 2002, permits the employment of apprentices from the age of 13 years. However, Chapter 4, Part IV, subsection (1)(a), of the Manpower Planning and Development Act prescribes that the minimum age for apprenticeship is 16 years. It had therefore noted that section 11(1)(a) and (3)(b) of the Labour Act of 2002, permitting the employment of apprentices from the age of 13 years, was not in conformity with *Article 6* of the Convention. The Committee noted the Government's statement that it recognized the need for harmonized legislation in the area of apprenticeship. In this regard, the ongoing labour law reform in the country will include these issues, in consultation with the social partners. ***In the framework of the labour law reform, the Committee once again encourages the Government to take the necessary measures to harmonize the relevant legislation, in particular section 11(1)(a) and (3)(b) of the Labour Act, and Chapter 4, Part IV, subsection 1(a), of the Manpower Planning and Development Act, in order to ensure conformity with Article 6 of the Convention.***

Article 7, paragraphs 1 and 4. Minimum age for admission to, and determination of, light work. The Committee had previously noted that section 3(4) of the Labour Relations Regulations establishes that children over 13 years of age may perform light work where such work is an integral part of a course of education or training and does not prejudice their education, health and safety. It had also noted the Government's statement that it intended to consult with the social partners with a view to amending its legislation so as to detail the types of light work, which may be undertaken by children from the age of 13 years and the conditions in which such work may be undertaken. The Committee had finally observed that quite a number of children below 13 years of age were economically active in some way or another. Particularly, 406,958 children aged 5–14 were found working with a time limit of at least three hours. The Committee also noted the Government's information that it would address, jointly with the social partners, the requests under this Article in the framework of the WFCL Project. In fact, it is the Government's objective to ensure that this Project will deal with all forms of child labour. The Committee noted the Government's information under Convention No. 182 that the Government and the social partners, in collaboration with the ILO, and other UN specialized agencies, are at an advanced stage towards the implementation of the WFCL Project. ***In the framework of the implementation of the WFCL Project, the Committee once again encourages the Government to take the necessary measures to ensure that no child under 13 years is allowed to carry out light work and that, where work is authorized from the age of 13 years, the employment or working conditions are consistent with the provisions of Article 7 of the Convention. It also once again requests the Government to provide information on any progress made towards amending its legislation in order to detail the types of light work, which may be undertaken by children from the age of 13 years and the conditions in which such work may be undertaken.***

Part V of the report form. Application of the Convention in practice. The Committee had previously expressed its concern at the seriousness and magnitude of the situation of children under 14 years working in the agricultural sector and in domestic services.

The Committee noted the ZCTU's statement that the Government had failed to put in place measures that would help to eradicate child labour and its worst forms in the agricultural sector. In fact, whilst section 11 of the Labour Act prohibits child labour, in practice children as young as 6 years are working on farms. The Committee noted the Government's statement in reply to the ZCTU's allegations that it was not aware of situations in which 6-year-old children were working on farms.

The Committee, however, noted the child labour statistical data contained in the 2004 labour force survey (included in the WFCL's Project report). This survey divides child labour into two categories: (a) economic child labour, where a child between 5 and 14 years is engaged in economic activities for at least three hours a day; (b) non-economic child labour, where a child between 5 and 14 years is engaged in non-economic activities for at least five hours a day. According to the survey, 42 per cent of children between 5 and 14 years were involved in economic activities and 2 per cent in non-economic activities. Of the children between 5 and 14 years involved in economic activities, 96 per cent were found in rural areas, the agricultural sector, hunting and the fishing industry. The highest number of children engaged in both economic and non-economic activities came from households with an income below ZW\$50,000. As for occupational hazards, 3 per cent of children involved in economic child labour were injured at work, about 78 per cent of these occurring in agriculture. ***The Committee once again expresses its deep concern at the large number of children under the age of 14 who are found to be working, especially in the agricultural sector and in household activities. The Committee strongly encourages the Government to redouble its efforts to improve this situation and asks the Government to provide detailed information on measures taken in this regard, especially in respect of children working in the agricultural sector and domestic services. The Committee also once again asks the Government to provide statistical data on the employment of children and young persons, especially regarding the agricultural and domestic sectors, as well as extracts from the reports of inspection services, information on the number and nature of contraventions reported and penalties applied.***

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 59** (United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 77** (Kyrgyzstan); **Convention No. 78** (Kyrgyzstan); **Convention No. 79** (Kyrgyzstan); **Convention No. 90** (Guinea); **Convention No. 123** (Uganda); **Convention No. 124** (Bolivia, Kyrgyzstan, Uganda); **Convention No. 138** (Barbados, Botswana, Brazil, Burundi, Chad, Comoros, Congo, Côte d'Ivoire, Equatorial Guinea, Eritrea, Fiji, Gambia, Guinea, Guyana, Hungary, Iceland, Ireland, Republic of Korea, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Lithuania, Malawi, Mali, Mauritania, Mauritius, Republic of Moldova, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, Nigeria, Oman, Pakistan, Papua New Guinea, Peru, Portugal, Qatar, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Senegal, Serbia, Seychelles, Singapore, South Africa, Sri Lanka, Sudan, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, United Republic of Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Yemen); **Convention No. 182** (Australia, Bahamas, Barbados, Belize, Botswana, Brazil, Burundi, Cape Verde, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Czech Republic, Denmark, Dominica, Equatorial Guinea, Ethiopia, Fiji, Gambia, Guinea, Guyana, Hungary, Iceland, Islamic Republic of Iran, Ireland, Kenya, Republic of Korea, Kuwait, Lao

People's Democratic Republic, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Madagascar, Malawi, Mali, Malta, Mauritania, Republic of Moldova, Mongolia, Montenegro, Morocco, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Oman, Pakistan, Papua New Guinea, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United Kingdom: Guernsey, Uruguay, Uzbekistan, Viet Nam, Yemen, Zambia, Zimbabwe).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 59** (*United Kingdom: Anguilla*); **Convention No. 124** (*Tajikistan*); **Convention No. 138** (*Slovakia*); **Convention No. 182** (*Mauritius, Qatar*).

Equality of opportunity and treatment

Afghanistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

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

Legislative developments. The Committee notes that section 8 of the new Labour Code, submitted to the National Assembly for approval in April 2007, provides that workers have the right to work and to receive remuneration, and that workers are entitled to receive wages and salaries on the basis of the quality and quantity of the work and in accordance with their grade, rank and post. Section 93 envisages the establishment of job descriptions. Section 9(1) prohibits discrimination in respect of salaries and allowances. Discrimination in the payment of wages is prohibited under section 59(4). While the Committee notes that these provisions may provide some protection from discrimination based on sex with respect to remuneration, they do not fully apply the principle of the Convention. *Recalling the 2006 general observation stressing the importance of giving full legislative expression to the principle of the Convention, the Committee asks the Government to consider including a provision explicitly providing for the right of men and women to receive equal remuneration for work of equal value, and to indicate in its next report any progress made in this regard.*

The Committee recalls that *Article 1(a) of the Convention* defines the term "remuneration" in the broadest possible terms. Accordingly, the principle of equal remuneration for men and women for work of equal value has to be applied to all aspects of remuneration. *Noting that sections 8, 9 and 59(4) of the new Labour Code appear to prohibit discrimination in respect of salaries, wages, and allowances, the Committee asks the Government to indicate how the Convention's principle is applied with respect to other elements of remuneration, such as "salary supplements" mentioned in section 3, or any other emoluments, whether in cash or in kind.*

With regard to the determination of remuneration, the Committee notes section 62 of the Labour Code which provides that the amount and conditions of payment of wages for government employees and employees of certain mixed enterprises are determined by the Government, while they are to be determined through mutual agreement in the private sector. *The Committee asks the Government to provide information on the progress made in establishing the remuneration for public sector employees and to indicate the methods used to ensure that salary scales are established in accordance with the principle of equal remuneration for men and women for work of equal value.*

Cooperation with employers' and workers' organizations. The Committee recalls that employers' and workers' organizations play an important role with regard to the full application of the Convention. *The Committee asks the Government to indicate any initiatives or measures taken, in cooperation with employers' and workers' organizations, to ensure the application in practice of the principle of equal remuneration for men and women for work of equal value.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

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

Articles 1 and 2 of the Convention. Legislation. The Committee previously noted that section 9 of the Labour Code does not contain a definition of "discrimination". It notes the Government's indication that any infringement of rights guaranteed under the legislation was considered to constitute discrimination. *While noting this information, the Committee requests the Government to include in the legislation a definition of discrimination, with a view to facilitating the implementation of the Labour Code's non-discrimination provisions. Such a definition should cover direct and indirect discrimination and include the prohibited grounds listed in Article 1(1)(a) of the Convention, as well as any other ground the Government may determine in accordance with Article 1(1)(b) such as, for instance, age, disability or health status. Please indicate any further developments in this regard.*

The Committee notes that preparations are under way for the National Assembly to adopt new legislation on persons with disabilities, which, inter alia, will address vocational rehabilitation, training and employment of disabled persons. The Government may also wish to include in the new legislation provisions prohibiting discrimination in employment and occupation based on disability. *The Committee requests the Government to provide information on the progress made in adopting the legislation concerning persons with disabilities.*

Articles 2 and 3. Equality of opportunity and treatment of men and women. The Committee notes the Government's indication that women actively participate in the economic and social life of the country. *The Committee would appreciate further information on the progress made in enhancing women's access to education and employment. Recalling that the Convention specifically requires governments to ensure respect for the principle of equality of opportunity and treatment in employment under the direct control of the authorities, the Committee requests the Government to provide information on the measures taken or envisaged to promote and ensure women's access to employment in the civil service, including in management positions. The Committee would appreciate if the Government would continue to provide statistical information on the number of men and women that have benefited from vocational training.*

Awareness raising. Recalling its previous comments noting that further progress in realizing gender equality and non-discrimination is being held back, inter alia, by customary practices, the Committee notes from the Government's report that awareness-raising and training activities concerning the Labour Code and with regard to equal access to training, employment and occupation of women, disabled persons and disadvantaged ethnic minorities took place through seminars and workshops. *The Committee hopes that such awareness-raising and training activities will continue, with the support of the ILO and the United Nations system, and that workers' and employers' organizations will have an active role in this regard. Please continue to*

provide information on awareness-raising activities on gender equality and non-discrimination in employment and occupation.

Article 5. Special measures of protection. The Committee notes that the Government has not yet established a list of physically arduous or harmful work prohibited for women as envisaged under section 120 of the Labour Code. **The Committee requests the Government to ensure that any future list does not contain exclusions that go beyond what is strictly necessary to protect women's reproductive capacity, as special protective measures for women which are based on stereotyped perceptions regarding their capacity and role in society would be contrary to the principle of equality of opportunity and treatment. The Committee requests the Government to provide a copy of the list of work that is prohibited for women under section 120 of the Labour Code, as soon as it is adopted.**

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

Algeria

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

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

Legislative developments. The Committee notes that section 27 of the general conditions of service of the public service, enacted in 2006, prohibits any discrimination among public employees on the grounds of their opinions, sex, origin and any other personal or social condition. The Committee also notes that section 17 of Act No. 90-11 with respect to labour relations prohibits any provision in an agreement, collective agreement or employment contract which gives rise to discrimination in employment, remuneration or working conditions on grounds of age, sex, social or marital situation, family relations, political convictions and membership or not of a trade union. The Committee further notes that the Labour Code is currently under revision. **The Committee urges the Government to take advantage of the opportunity of the formulation of the new Labour Code to ensure that the new provisions of the Labour Code prohibit discrimination at all stages of employment and occupation on all the grounds set out in the Convention, including those not covered by the 1990 Labour Code, namely race, colour, religion and national extraction. The Committee requests the Government to provide information on the progress achieved in the revision of the Labour Code. The Committee invites the Government to provide a copy of the draft Labour Code to the International Labour Office before the adoption of the final text so that it can assist the Government in its efforts to guarantee the application of the principles of the Convention in the new legislation.**

Article 1 of the Convention. Sexual harassment. In its previous comments, the Committee noted that section 341bis of the Penal Code only appears to cover quid pro quo harassment. The Committee recalls that there are two types of sexual harassment that need to be addressed by legislation, quid pro quo harassment and sexual harassment due to a hostile working environment, which takes the form of an intimidating, hostile or humiliating work environment. For further guidance, the Committee draws the Government's attention to its 2002 general observation on this subject. The Committee reminds the Government that sexual harassment at work undermines the dignity and well-being of workers, as well as enterprise productivity and the basis of the working relationship. **In view of the serious consequences of these practices, the Committee hopes the new Labour Code will ensure complete protection against sexual harassment by prohibiting quid pro quo sexual harassment and harassment through a hostile work environment, and it requests the Government to keep it informed in this respect. The Committee requests the Government to provide information on the measures adopted with a view to preventing sexual harassment and protecting workers against it in employment and occupation, including information on education and awareness-raising campaigns and the organization of activities in collaboration with employers' and workers' organizations.**

Articles 2 and 3. Discrimination based on sex. National policy. In its previous comments, the Committee expressed concern at the low participation of women in employment and the persistence of strongly stereotyped attitudes with respect to the roles and responsibilities of women and men in society and in the family. The Committee also emphasized the negative impact of these attitudes on the access of women to employment and training. The Committee notes the Government's indication that the applicable training and qualification programmes are not restrictive or discriminatory on the ground of sex and that the choice of subjects for training is an individual matter. The Committee draws the Government's attention to the fact that in practice there are two forms of discrimination in access to training. Discrimination may be a result of laws or regulations which give rise to direct discrimination or, more frequently, practices based on stereotypes mainly related to the role of women in society. As a consequence, and in order to give full effect to the provisions of the Convention, it is necessary, firstly, to adopt legislation that is in conformity with the principle of equality and, secondly, to accompany this legislation with proactive measures through which de facto inequalities affecting women can be corrected. **The Committee once again requests the Government to take urgent and proactive measures to further its national policy to promote equality of opportunity and treatment for women in respect of employment and occupation, including efforts to address stereotyped attitudes, and to keep the Committee informed of any progress in this respect. The Committee once again requests the Government to provide information on the measures adopted or envisaged to facilitate and encourage the access of women and girls to more diversified vocational training opportunities, including those leading to traditionally male occupations, so as to afford them greater opportunities to enter the labour market.**

Article 5. Special protection measures. For a number of years, the Committee has been urging the Government to give its attention to the importance of reviewing the provisions prohibiting night work for women, as well as the assignment of women to work that is dangerous, insalubrious or harmful to their health. The Committee notes that, when reviewing these provisions, a distinction should be made between special measures to protect maternity and measures based on stereotyped perceptions of the capacity and role of women in society. The Committee draws the Government's attention to the fact that all other measures intended to protect women on the sole grounds of their sex may seriously undermine the principle of equality of treatment and opportunity. **The Committee requests the Government to provide information on the revision of the Labour Code with regard to night work by women and their assignment to hazardous, insalubrious or harmful types of work. The Committee requests the Government to ensure that, in the context of the new Labour Code, the restrictions relating to the access of women to certain types of work are limited to maternity protection and it requests the Government to keep it informed on this point.**

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

Angola

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1976)

The Committee notes with *regret* that for a number of years the Government's reports have failed to respond to the points raised in the Committee's comments. The Committee once again emphasizes that this prevents it from assessing the progress made with regard to the practical application of the Convention. *The Committee urges the Government to take all necessary steps to ensure that its next report contains information in reply to all the issues raised by the Committee.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1976)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

The Committee notes the Government's report and recalls the communication from the National Union of Angolan Workers (UNTA) dated 16 August 2007, which had been forwarded to the Government.

Discrimination in practice. The Committee notes that, although the Government has put in place legal provisions concerning discrimination in employment and occupation, including sections 3 and 268 of the General Labour Act No. 2/00, discrimination continues to occur in practice. In its report the Government states that violations of the non-discrimination provisions occur particularly in the private sector where imbalances in the participation in decision-making positions and a tendency to exclude women during and after maternity can be observed. The Government previously reported that gender-based discrimination also exists in the informal economy. As noted by the Committee previously, there is also a significant gender imbalance in the judiciary and as regards management positions in the civil service.

Further, the Committee notes that according to the UNTA a practice of fixing a maximum age of 35 years for recruitment has been observed. The Committee considers that such a practice is likely to be indirectly discriminatory against women as it may particularly affect women wishing to enter employment following an absence from the labour market for child rearing.

In its report, the Government states that it was difficult to measure the incidence of gender-based discrimination as women do not file petitions or complaints due to shortcomings in the "legal culture". The Government also states that it has made efforts to raise awareness of legal matters, particularly among women, by expanding information and education programmes on women's rights, using different national languages and various forms of communication. Efforts were also being made to address discriminatory cultural and traditional practices still prevailing in the country, which, for instance, lead to unequal access of girls to education. The Government, in a very general manner, also refers to the National Strategy and Strategic Framework to Promote Gender Equality and the Rural Growth and Development Programme which includes a programme for the economic empowerment of women. The report refers to the preparation and use of gender-disaggregated data, although such data has not been provided.

- (i) *The Committee requests the Government to respond to the comments made by the UNTA. Concerned over the discriminatory effects of using age as a recruitment criteria, particularly on women, the Committee encourages the Government, in collaboration with workers' and employers' organizations, to take measures to ensure that women are not indirectly discriminated against in access to employment on the basis of age. Please provide information on the measures taken in this regard.*
- (ii) *The Committee encourages the Government to continue and intensify its efforts to raise awareness and understanding of the principle of non-discrimination and the related legislation among men and women, and requests the Government to indicate the specific activities carried out to this end. Given the reports of discrimination based on sex and pregnancy in the private sector, the Committee requests the Government to indicate the measures taken or envisaged to enhance the capacity of the labour inspectorate and other competent authorities to identify and address discrimination in employment and occupation. Please also provide information regarding whether the competent authorities have addressed any such cases, and if so, the results thereof.*
- (iii) *The Committee considers that the Government should take specific and proactive measures to promote and ensure equality of opportunity and treatment of women in the civil service, including the judiciary, and it asks the Government to indicate any measures taken or envisaged in this regard, including measures to ensure that women have access to management positions on an equal footing with men.*
- (iv) *Noting that the Government has yet to provide statistical information on the situation of men and women in the labour market, the Committee hopes that the Government will take the necessary measures to collect and provide such data with its next report. This information should, as far as possible, include data on the representation of men and women in the different industries and occupations, as well as indications as to the representation of women in decision-making positions. Please also indicate the share of men and women considered to work in the informal economy and the measures taken to ensure their access to training and employment opportunities, irrespective of sex, race, religion or other grounds.*

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

Austria

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1953)

The Committee notes the Government's report as well as the observations made with regard to the application of the Convention by the Federal Chamber of Labour, which were received with the Government's report.

Assessment of the gender remuneration gap. The Committee notes that the gross annual income of women employed full time for 2007 was some 22 per cent lower than men's. In the same year women's gross hourly wage was 25.5 per cent lower than men's, the second largest pay gap in the European Union. The gender remuneration gap in respect of gross annual income of employed workers (including part-time workers) was 40.1 per cent, practically unchanged since 1997. Similarly, wide gender remuneration gaps exist in respect of average hourly wages received by full-time and part-time workers. The Committee expresses *concern* that this very wide gender remuneration gap persists, despite the measures that have been taken so far to address it.

The Committee notes that according to the Government, the gender remuneration gap is primarily due to unequal remuneration offered to women upon entry into employment, unequal opportunities for promotion, and childcare responsibilities which have a limiting effect on women's access to better paid positions. In addition, the Government regards the lack of information and of transparency in relation to remuneration levels as contributing to the persisting gender remuneration gap. In the Government's view, the publication of workplace wage differentials would assist in closing this gap. According to the Federal Chamber of Labour, the income differentials between men and women cannot be explained by differences in working hours, levels of education, sectors or occupations, but rather by the existence of structural discrimination against women who receive lower pay for work of equal value. The Chamber also points to the need to improve wage transparency within and between companies.

The Committee notes that tripartite consultations are currently taking place on amendments to the Equal Treatment Act regarding wage transparency. Central aspects of the discussions are the possibility of requiring regular anonymous wage reports by enterprises of a certain size and the inclusion of pay information in vacancy announcements. ***The Committee firmly hopes that the ongoing consultations will be successfully concluded in the near future, and it asks the Government to provide information on the measures taken to strengthen the existing legislation to provide a basis for reinforced action to eliminate the gender remuneration gap, including through the publication of enterprise-based wage information.***

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

Bahrain

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2000)

The Committee notes the communication of the Bahrain Chamber of Commerce and Industry (BCCI) received on 15 September 2009. ***The Committee asks the Government to respond to the issues raised in the communication.***

Legislative developments. The Committee notes from the Government's report that the draft Labour Code is still under discussion in the National Assembly. In its previous comments, the Committee had expressed the hope that a specific provision would be included in the new Labour Code defining and prohibiting discrimination. The Government had stated in a previous report that the comments made by the Committee had been taken into consideration in the revision process. In the Government's most recent report, it states that as current customs which have the force of law do not distinguish between men and women in the workplace, an explicit text on the issue is not seen to be necessary. The Committee draws the Government's attention to the fact that the absence of discriminatory provisions in the legislation is not sufficient to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof, as set out in *Article 2 of the Convention*. The Committee considers that, given persisting patterns of discrimination in drafting a new Labour Code, it would be regrettable if the opportunity were not taken to clearly define and prohibit direct and indirect discrimination in all aspects of employment and occupation to ensure more effective application of the Convention. ***The Committee, therefore, strongly urges the Government to take steps to ensure that the new Labour Code includes provisions explicitly defining and prohibiting direct and indirect discrimination, on all the grounds enumerated in Article 1(1)(a) of the Convention, with respect to all aspects of employment and occupation, and covering all workers, including domestic workers, casual workers and agricultural workers. Please provide information on any developments in this regard.***

Sex discrimination. Legislation. The Committee previously raised concerns regarding section 63 of the Labour Code, which according to the English translation published by the Ministry of Labour and Social Affairs, provides that "the Minister for Labour and Social Affairs shall make an Order prescribing the occupations and jobs in respect of which an employer may offer alternative employment to a female worker because of her marriage". The Government merely replies that the Bahraini legislation does not impose any restrictions on women in employment, and that the new Labour Code will grant protective privileges for women. ***The Committee urges the Government to ensure that the new Labour Code does not discriminate against women by authorizing occupations and jobs to be prescribed in respect of which an***

employer may offer alternative employment to women because of their marriage. The Committee also hopes that the new Labour Code will strictly limit protective measures for women to maternity protection.

Sex discrimination. Sexual harassment. The Committee notes that the Government had previously indicated that it would take the necessary steps to enact appropriate regulation on sexual harassment. However, in its most recent report, the Government indicates that it considers the existing provisions of the Penal Code punishing rape and sexual assault to provide sufficient protection against sexual harassment. The Committee recalls that sexual harassment is a serious form of sex discrimination, and it is important to take effective measures to tackle not only the most serious forms of sexual harassment that would constitute sexual assault, but the range of conduct in the context of work that should be addressed as sexual harassment. Referring to its 2002 general observation, the Committee draws the Government's attention to the definition of sexual harassment set out therein. ***The Committee urges the Government to ensure that the new Labour Code defines and prohibits sexual harassment at work, encompassing both quid pro quo and hostile environment harassment. The Committee also requests the Government to provide information on specific measures taken to prevent and address sexual harassment at the workplace.***

Migrant workers. In its previous comments, the Committee raised concerns regarding the vulnerability of migrant workers to abuse and discrimination, particularly women migrant domestic workers. The Committee also drew attention to the fact that this situation is exacerbated by the sponsorship system, making migrant workers dependent on their employers and reluctant to make formal complaints. The Committee notes the Government's indication that the draft Labour Code will address issues such as hours at work, holidays and bonuses for domestic workers. The Committee also notes that 915 complaints were filed by migrant workers in 2008, compared to 1,070 in 2007. The Government attributes the decrease in the number of complaints to increasing awareness and care by employers, and better monitoring and application of the legislation, and indicates that the majority of complaints involved non-payment of entitlements upon cessation of activity, linked to the financial crisis. The Committee also notes the adoption of Order No. 79 of 16 April 2009, which relates to the procedures governing the transfer of a foreign worker from one employer to another. Section 2 of the Order states that the foreign worker shall have the right to transfer to work with another employer without violating the rights of an employer by virtue of the provisions of the law or the text of the labour contract concluded between the parties. The Committee also notes that the Ministry of Labour and Social Affairs, in collaboration with the International Labour Office, has carried out a study on the alternatives to the sponsorship system, and is in the process of considering this study.

The Committee would like to underline the importance of ensuring effective legislative protection, and the promotion and enforcement of such legislation, to ensure that migrant workers are not subject to discrimination and abuse. The Committee also considers that providing for appropriate flexibility for migrant workers to change their workplace assists in avoiding situations in which they become particularly vulnerable to discrimination and abuse. The Committee recalls the particular vulnerability of migrant domestic workers to multiple forms of discrimination based on race, colour, religion or sex due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and undervaluing of this type of employment. ***Recalling the large number of migrant workers in the country, the Committee urges the Government to take steps to ensure that migrant workers have effective legal protection against discrimination in employment and occupation, in particular based on race, colour, religion or sex. The Committee also hopes that the provisions on domestic workers in the new Labour Code will provide effective rights and protection, including addressing the under-valuation and disadvantaged position of these workers. The Committee also requests information on the status of the follow-up to the study on the alternatives to the sponsorship system as well as information on any other studies dealing with the situation of migrant workers. The Committee also requests the Government to provide information on the following:***

- (i) *the number and nature of complaints filed by migrant workers or detected by labour inspectors, in particular relating to domestic workers, the sanctions imposed and the remedies provided;*
- (ii) *the number of migrant workers that have successfully applied to transfer to another employer pursuant to Order No. 79, indicating the reasons for granting such a change; and*
- (iii) *whether and to what extent the labour contract between the migrant worker and the employer can limit the right of the worker to transfer to another employer pursuant to Order No. 79.*

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

Bolivia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1973)

Principle of equal remuneration for men and women for work of equal value. Constitution. Noting that the principle of equal remuneration for men and women for work of equal value is not expressly incorporated in the labour legislation, and recalling that in its general observation of 2006 the Committee urged governments to take the necessary steps to amend their legislation so as to give legal expression to the principle of the Convention, the Committee notes with **satisfaction** that under article 48(V) of the new Constitution promulgated on 7 February 2009, "the State shall promote the integration of women into work and shall ensure that women receive the same remuneration as men for work of equal

value, in both the public and private spheres”. *The Committee asks the Government to provide information on steps taken under this constitutional provision, including with respect to the incorporation of the principle of equal remuneration for men and women for work of equal value in the labour legislation.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
(ratification: 1977)

National plan on equality between men and women. In its previous comments, the Committee asked for information on the measures taken under the 2004–07 National Public Policy Plan for the full exercise of women’s rights. It notes that the Plan was implemented in part, including through activities to deal with the problems of violence and citizens’ participation, such as the holding of workshops in mining centres or with organizations of rural women. The Government indicates that access to credit has been democratized with 50 per cent of all loans by the Production Development Bank going to women entrepreneurs. A gender-sensitive budget programme is being developed with participation of the organizations of women grouped together in the National Bureau for Work on Gender-Sensitive Budgets and this is reflected, inter alia, in plans and programmes for rural development and in municipal programmes. Some of the objectives of these programmes are: (i) gender equality in access to, and use and control of, the resources of production; (ii) access to and equality in participation in decision-making; and (iii) enhancing opportunities for paid employment and income generation. The Government also states that in the new Constitution, promulgated on 7 February 2009, focus on gender is more systematic and practical than it was in the old Constitution. *The Committee asks the Government to provide information on the legislative and policy changes with respect to equality between women and men in employment and occupation as a result of the new Constitution. Noting that, under Supreme Decree No. 29894 of 7 February 2009, the Ministry of Justice and the Vice-Ministry of Equality of Opportunity are given specific competences with respect to the formulation and implementation of plans, programmes and policies directed at promoting equality of opportunity between men and women, the Committee asks the Government to provide detailed information on any programmes and policies specifically concerning equality of opportunity and treatment in employment and occupation that have been adopted by these bodies and their implementation.*

Indigenous women. The Committee notes that, in the framework of the sectoral programme support to the rights of indigenous peoples and of the programme to regularize and title indigenous lands (*Componente Saneamiento y Titulación de Tierras Comunitarias de Origen Fase II 2005–09*), funded by Denmark, a strategy is to be formulated for cross-cutting gender activities in the regularization of lands, with a view to including systematic participation by women in all processes of regularization of agricultural land. The Committee notes that, in the period 1997–2005, women accounted for 46 per cent of a total of 42,178 titles and certificates issued. It also notes with *interest* that the Distribution of Lands and Human Settlements Programme of the Lands Vice-Ministry includes a gender perspective in many activities, for instance a gender dimension has been incorporated in the Five-Year Plan to regularize and issue titles in respect of community ancestral lands. *The Committee requests the Government to continue to provide information on this matter.*

Racial discrimination. The Committee notes the Government’s statement that public policy measures are being taken with respect to racial discrimination and that the political will exists to tackle racism and discrimination. It notes the measures indicated by the Government on literacy programmes, redistribution policy, and universal access to health services, which focus on disadvantaged sectors that suffer from structural racial discrimination. The Government indicates that there is a new approach to the framing of public policies which is based on the redistribution criteria set forth in the “Vivir Bien” National Development Plan, in sectoral plans and inter-institutional initiatives that are implemented in combination with legislation that targets the fundamental causes of racial discrimination. The Government indicates that the lands and territory issue is of great importance to the elimination of the servitude, exploitation and slavery suffered by the peoples that are subject to such racism. The report refers to the “Plan Guaraní”, which seeks to restore the fundamental rights of the Guaraní people, including the restitution in part of their lands of origin. The Ministry of Labour is at present giving impetus to the promulgation of legal standards on workers’ rights in the sugar cane and chest nut sectors. Furthermore, the Ministry of the Presidency’s group on the Coordination and Promotion of Indigenous Policy and Rights has given priority to tackling racial discrimination in its plan of operations for 2008. The Government also refers to the application of the requirement to consult indigenous peoples on their participation in the profits of extraction operations, their participation in environmental control, and other forms of wealth redistribution to combat structural exclusion and discrimination. *The Committee requests the Government to continue to provide information in this regard.*

Access to education and vocational training. The Committee notes with *interest* the measures taken to give priority to education for rural and indigenous peoples and women. It notes the creation of three inter-cultural community indigenous universities (Unibol), one for the Aymará people, another for the Quechua and the other for the Guaraní. The Committee addresses this point in greater detail in its comments under Convention No. 169. The Government further indicates that education being the basis for equitable access to jobs, the intake in secondary schools for both sexes was higher in 2006 than in 2005. However, while male enrolment was 57.42 per cent, female enrolment was 42.58 per cent. Since the lowest school attendance rates are registered in rural areas, particularly among women, the national education policy makes such areas a priority and has established two implementation plans, one on rural boarding accommodation and the other on rural transport, to facilitate access to school for girls and young persons and to keep them in education.

The “Vivir Bien” National Development Plan includes education as a priority, taking into account that the first problem to be tackled is lack of equality in education, in terms of access, quality and avoidance of drop-out. In this framework, the Ministry of Education formulated its Multiannual Operation Plan 2004–08 (POMA) as part of the Strategic Plan for the education sector. With regard to technical training geared to the production sector, coverage is to be 171,074 men and 156,873 women. The Government refers to other measures, and by way of conclusion states that “the aim is to lay new foundations for education in Bolivia in the interests of education that is decolonized, equitable, inter-cultural and bilingual. *The Committee encourages the Government to pursue this path and requests it to continue to provide information on these matters.*

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

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1998)

While noting the Government’s report, the Committee notes with *regret* that the report does not contain any information in reply to the comments which the Committee has been making to the Government since 2000.

The Committee recalls that the Convention aims to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities, and also between the aforementioned workers and all other workers. In this regard, *Article 3 of the Convention* states that each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The Committee also recalls that the Convention contemplates the adoption of measures, compatible with national conditions and possibilities, with a view to creating effective equality of opportunity and treatment for men and women workers with family responsibilities.

The Committee requests the Government to supply detailed information in its next report on the application of the Convention.

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

[The Government is asked to report in detail in 2010.]

Bosnia and Herzegovina

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee notes the communication of the International Trade Union Confederation (ITUC) and the Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSS BiH) dated 20 August 2009. The communication refers to the conclusions of the Governing Body, from November 1999, regarding workers who had been dismissed from two undertakings on the grounds of national extraction or religious belief (the representation made pursuant to article 24 of the ILO Constitution by the Union of Autonomous Trade Unions of Bosnia and Herzegovina (USIBH) and the Union of Metalworkers (SM)), stating that the situation has not been resolved. The communication also refers to discriminatory job advertisements. *The Committee asks the Government to reply to the issues set out in the communication of the ITUC and the SSS BiH regarding the progress of implementation of the recommendations of the Governing Body and with respect to the existence of discriminatory job advertisements, and to indicate the steps being taken to address these matters.*

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

Botswana

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)

Article 1 of the Convention. Legal protection from discrimination. Recalling its previous comments regarding the legal protection from discrimination available under the Constitution, the Committee notes with *satisfaction* that its section 15 was amended in 2004 to include the prohibited ground of sex. *The Committee requests the Government to take steps so that protection from discrimination based on social origin is also ensured, and to provide information on any cases regarding discrimination in employment and occupation decided by the courts. Recalling its previous comments regarding section 15(4)(e) of the Constitution which allows differential treatment by law where this is “reasonably justifiable in a democratic society”, please indicate how this provision has been and is being applied in practice.*

The Employment Act. The Committee notes the Government’s indication that the Employment Act is being amended. *Recalling its previous comments noting that the Employment Act currently only prohibits discrimination in respect of termination of employment contracts, the Committee hopes that the Government will take this opportunity to include more comprehensive provisions to prohibit direct and indirect discrimination in employment and occupation,*

including with regard to recruitment and selection, all terms and conditions of employment, and training. Please indicate any further developments in this regard.

Sexual harassment. The Committee notes with *interest* that the Public Service Act was amended in 2000 to include new provisions on sexual harassment. Section 32(1) declares sexual harassment to constitute misconduct. A definition of sexual harassment is set out in section 32(2). ***The Committee requests the Government to provide information on the number of cases that have been brought under these provisions. Noting the Government's indication that most institutions in the private sector have not yet put in place policies on sexual harassment, the Committee recommends that the Government includes similar provisions in the Employment Act.***

Article 2. Equality of opportunity and treatment of men and women. The Committee notes from the Government's report that it has adopted a gender mainstreaming strategy to ensure that a gender perspective is included in all policies and programmes; gender audits have been carried in a number of ministries, including the Ministry of Labour and Home Affairs. The Department of Women's Affairs has continued its awareness-raising activities on gender equality issues. A review of all laws that discriminate against women is still ongoing. While there is no explicit policy on affirmative action, the Government has nominated women to decision-making positions and allocated special funds to promote women's participation in economic and income generating activities. ***The Committee requests the Government to continue to provide more detailed information on the specific measures taken or envisaged to promote and ensure equality of opportunity of men and women in employment and occupation, including access to vocational training and access to credit. Please also provide statistical information available on women's participation in the labour market (public and private sectors), including self-employment, as well as their share in the informal economy. Finally, the Committee requests the Government to provide information on the measures it takes to eliminate customary practices that are detrimental to women's equality of opportunity and treatment in employment and occupation, such as the practice of legal guardianship by men over unmarried women.***

The situation of indigenous peoples. The Committee recalls that discrimination as set out in *Article 1* of the Convention covers discrimination against indigenous peoples and that the national policy to promote equality of opportunity and treatment to be adopted and implemented in accordance with *Article 2* should include measures to eliminate discrimination against these peoples. ***The Committee requests the Government to provide information on the measures taken in this regard, including measures to promote and facilitate the ability of indigenous peoples to pursue their traditional occupations.***

Brazil

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1965)***

Article 1 of the Convention. Discrimination on the basis of political opinion. The Committee recalls that in its previous observation it referred to a communication from the Union of Teachers of Itajaí and Region concerning the dismissal of three university teachers which was based, according to the communication, on their political opinions. The Committee noted that, according to the Government's report, the investigation into the case was closed on 27 March 2007 because the allegations could not be proved; it was subsequently forwarded to the Higher Council of the Labour Prosecution Office so that it could be recorded as having been set aside. The Committee also noted that no specific action had been taken to combat discrimination in employment and occupation on the basis of political opinion. The Committee notes that the Government repeats this information while indicating at the same time that discrimination on the basis of political opinion would be covered by the general initiatives taken with a view to eradicating all forms of discrimination. The Government adds that complaints have not been recorded by the respective administrative and judicial bodies of cases of discrimination on the basis of political opinion. ***The Committee invites the Government to continue providing information on any case of discrimination in employment or occupation on the basis of political opinion which is brought before the judicial or administrative authorities and the outcome thereof. The Committee also requests the Government to provide information on the specific measures adopted or envisaged to ensure that workers do not suffer discrimination on the basis of political opinion.***

Discrimination on the basis of gender, race or colour. The Committee notes the Government's indication that the population of African descent continues to be at a disadvantage in education and the labour market. It further notes that, according to the Government's report, stereotypes relating to gender and race continue to give rise to the segregation of workers of African descent, indigenous workers and women workers into lower quality jobs. With regard to women, the Committee notes in particular that they are over-represented in domestic work, production for family consumption and unpaid work. The Government's report also indicates that the unemployment rates of women, workers of African descent and indigenous workers are higher than average, and that the situation of women of African descent and indigenous women is even more precarious.

The Committee notes the many initiatives undertaken by the Government with a view to eradicating discrimination and promoting equal opportunities for the most underprivileged sectors of society. It notes in particular the educational measures and awareness-raising activities envisaged under the II National Plan for Policies for Women with a view to overcoming gender and race prejudice, as well as the awareness-raising activities carried out by the regional commissions

for equality of opportunities on the basis of gender, race and ethnic origin, and for persons with disabilities, and to combat discrimination in enterprises, workers' and employers' organizations, universities and governmental and non-governmental organizations. It further notes the training programme for men and women domestic workers (National Domestic Work Programme/PLANSEQ) and the plans to review the national legislation with a view to extending all labour rights to this category of workers. ***The Committee requests the Government to continue making efforts to ensure full equality of opportunity and treatment for women, persons of African descent and indigenous persons, in accordance with the provisions of the Convention. It requests the Government to continue providing information on the measures adopted in this respect and their impact, and it refers to the more detailed comments contained in its direct request. The Committee also asks the Government to provide statistical data in its next report on the distribution of men and women in the various occupations, jobs and economic sectors, disaggregated in so far as possible by race and colour.***

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

Bulgaria

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

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

Articles 2 and 3 of the Convention. Implementation of the anti-discrimination legislation. The Committee notes with interest that the Commission on the Protection against Discrimination has been able to increase its level of activities, both in the area of prevention of discrimination as well as in the adjudication of cases. In 2006, some 389 complaints were filed with the Commission compared to 89 in 2005. In respect of 220 complaints of discrimination, proceedings were initiated and in 71 cases the Commission found violations of the equal treatment principle. The Committee notes that a number of cases related to employment matters, although the report gives no precise case information either as to the subject matter or the ground of discrimination in respect of each case. The Committee welcomes the efforts of the Commission to extend its activities to the different regions of the country which has led to increased awareness of the legislation and, as a result, an increase in the number of complaints received. The Committee also notes that the Commission has collaborated with the national workers' and employers' organizations and has signed framework agreements on cooperation on the prevention of discrimination in the field of labour with the Confederation of Independent Trade Unions in Bulgaria (CITUB) and the Agency for Persons with Disabilities. ***The Committee requests the Government to:***

- (i) ***continue to provide information on the activities of the Commission on the Protection against Discrimination as regards discrimination in employment and occupation, including detailed information on the number, nature and outcome of cases dealt with by the Commission and an indication of the level of compliance with its decisions;***
- (ii) ***provide information on the Commission's efforts in the area of awareness raising and prevention of discrimination, including its collaboration with workers' and employers' organizations and other public authorities, such as the Agency for Persons with Disabilities or the labour inspectorate; and***
- (iii) ***provide detailed information on the number, nature and outcome of court cases involving questions of discrimination in employment and occupation.***

Equality of opportunity and treatment irrespective of national extraction or religion. Access to education, training and employment. In its previous observation, the Committee urged the Government to indicate any measures taken to assess the impact of the special measures taken to promote equality of opportunity and treatment in employment and occupation of ethnic minority groups which are in a vulnerable social-economic situation. The Committee also asked the Government to provide information on the actual employment situation of persons of Roma and Turkish origin and the extent to which they were actually able to obtain jobs in the public and private sectors after having benefited from skills training or other assistance. The Committee further wished to receive information on the progress made in increasing the number of integrated schools, including the number of Roma children attending such schools.

With respect to these matters, the Committee notes the Government's statement that in 2006 the Employment Agency had not gathered any statistics regarding the ethnicity of persons seeking employment. Accordingly, no information on the employment situation of ethnic minority groups could be given. However, the Employment Office Directorate sent a letter to the Employment Agency on 16 May 2007 providing a form by which employment seekers could identify themselves as members of ethnic groups. The Committee also notes that the Government's report contains certain data on the level of participation of Roma in a number of programmes and projects implemented by the Employment Agency in 2006 in relation to the National Action Plan under the Decade of Roma Inclusion 2005–15. The Government indicates that this data has been established through an expert assessment made by officials of the Employment Office Directorate. For instance, an estimated half of the 82,550 persons having participated in the "From Social Assistance to Employment" Scheme were Roma, while 9,729 unemployed Roma were included in vocational orientation courses. In addition, some 2,675 Roma acquired specific vocational qualifications through training. The report also states that the job fairs were held in areas with concentrated Roma population which offered a total of 4,560 jobs and led to some 3,000 persons obtaining employment. With regard to the access of boys and girls from Roma communities to quality education, the Committee particularly notes the information provided on the ongoing desegregation projects. ***While duly noting the information provided, the Committee requests the Government to:***

- (i) ***continue to provide information, including statistical data, on the participation of the Roma or persons of Turkish origin in active labour market measures, and information on the extent to which persons from these groups have actually found employment after having benefited from such measures;***
- (ii) ***continue and intensify its efforts to assess and to monitor the employment situation of members of ethnic minority groups, particularly the Roma and persons of Turkish origin, and to provide statistical information on the overall employment situation of these groups as soon as it is available; and***

- (iii) *continue to provide information on the progress made in ensuring equal access of women and men from ethnic minority communities, in particular the Roma, to quality education at all levels.*

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

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

Burundi

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

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

Article 1 of the Convention. Equal remuneration for work of equal value. The Committee recalls that both article 57 of the Constitution and section 73 of the Labour Code provide for equal remuneration for equal work, which falls short of fully reflecting the principle of equal remuneration for work of equal value as set out in *Article 1* of the Convention. In its report, the Government states that there is no obstacle to reflecting the principle of the Convention in the national legislation. *Noting the Government's willingness to bring article 57 of the Constitution and section 73 of the Labour Code into conformity with the Convention, the Committee hopes that the Government will take the necessary measures as soon as possible and to indicate in its next report the progress made in this regard.*

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

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

The Committee notes the comments on the application of the Convention made by the Trade Union Confederation of Burundi (COSYBU) dated 30 August 2008, to which the Government has not as yet replied. *It requests the Government to provide its comments regarding the issues raised by COSYBU.*

Discrimination based on race, colour or national extraction. In its previous comments the Committee requested the Government to provide information on the measures taken to address discrimination in employment between different ethnic groups. In reply, the Government once again refers to the 2005 Constitution, and to the Arusha Agreement. As previously noted by the Committee, article 122 of the Constitution prohibits discrimination based, inter alia, on an individual's origin, race, ethnicity, sex, colour and language. The Committee also notes that, pursuant to article 129(1) of the Constitution, 60 per cent and 40 per cent of the seats in Parliament are reserved for Hutus and Tutsis, respectively. Similar provisions also exist for government positions. In its report, the Government also asserts that ethnic discrimination in employment and occupation no longer exists. As the elimination of discrimination and the promotion of equality is a continual process, and cannot be achieved solely through legislation, the Committee finds it difficult to accept statements to the effect that discrimination is inexistent in a given country. It stresses the need for the Government to take continuing action with a view to promoting and ensuring non-discrimination and equality in employment and occupation. *The Committee therefore reiterates its request for information on any specific measures taken to promote and ensure equality of opportunity and treatment, irrespective of ethnic origin, in respect of employment in the private and public sectors, including awareness-raising activities and measures to promote respect and tolerance between the different groups. It also reiterates its request for information on the activities of the newly established public service recruitment commission with a view to promoting equal access to public service employment of different ethnic groups.*

The Committee notes that, despite the provisions of article 7 of Protocol I to the Arusha Agreement which provides for the promotion of disadvantaged groups, notably the Batwa, the Working Group of Expats on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (Report of the Research and Information Visit to the Republic of Burundi, March–April 2005, page 31) reports that this particular group continues to suffer from strong negative stereotypes and racial harassment by other segments of the population. While taking note of the Government's very general statement that measures have been taken in the field of education, the Committee observes that, according to the African Commission's Working Group, the Batwa's access to education is well below the national average. The illiteracy rate among the Batwa is estimated to be over 78 per cent. *The Committee urges the Government to take all measures necessary to ensure equal access of the Batwa to education, vocational training and employment, including through reviewing and strengthening relevant national laws and policies and ensuring their full implementation. The Committee also requests the Government to take measures to combat stereotypes and prejudice against this group. The Government is requested to provide detailed information with regard to these matters in its next report.*

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

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

Cameroon

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1970)

Article 2, paragraph 2(a), of the Convention. Work of equal value. Legislation. In its previous comments, the Committee noted that section 61(2) of the Labour Code did not give full effect to the principle of equal remuneration as

laid down in the Convention in that equal remuneration is restricted to “equal conditions of work and equal professional ability”. It asked the Government to take the necessary steps to include in the legislation the principle of equal remuneration for work of equal value. It notes that in its report, the Government affirms that “in accordance with the provisions of section 61(2) of the Labour Code, the principle of equal remuneration for work of equal value is established”. The Committee refers to its general observation of 2006 and wishes to draw the Government’s attention, once again, to the notion of “work of equal value” which goes further than the notions of “equal conditions of work” and “equal professional ability”. When men and women perform different jobs and when women are confined to certain occupations, in particular because of historical perceptions towards the role of women in society along with stereotypical assumptions regarding their professional abilities, it is essential to compare the value of the work done. This is because although the work may involve different types of qualifications, skills, responsibilities or working conditions it is nevertheless work of equal value overall. In order to determine whether different jobs are of equal value, it is necessary to examine the tasks involved on the basis of criteria that are fully objective and non-discriminatory, taking particular care to ensure that “skills traditionally considered to be female” (such as those required in the caring professions) are not undervalued in comparison with “skills traditionally regarded as male” (such as those relating to physical strength). ***Accordingly, in order to prevent and address effectively discrimination in remuneration, the Committee once again asks the Government to take the necessary steps to amend section 61(2) of the Labour Code so as to fully reflect the principle of equal remuneration between men and women for work of equal value set out in the Convention, and to provide information on any measures taken to this end.***

Article 2. Scope of the principle laid down in the Convention. In its previous comments, the Committee asked the Government to take the necessary steps, in cooperation with the social partners, to ensure that the provisions of article 70 of the CAMRAIL collective agreement, concerning the grant of benefits in the form of transport facilities only to the wife and children of an employee, conform with the principle of equality laid down in the Convention. In a communication of 5 December 2007, the Government states, referring to the application of the CAMRAIL agreement, that the General Union of Workers of Cameroon (UGTC) asserts that equal treatment exists in practice. Consequently, the Government says, that is enough. The Committee also notes that the Government indicates in its 2009 report that the CAMRAIL collective agreement has not been renegotiated, nor is it in the process of renegotiation. While noting the statement that equality is observed in practice, the Committee is of the view that maintaining discriminatory provisions in the text of the CAMRAIL collective agreement may have the effect of preventing men and women workers from knowing their rights and seeking to assert them. ***The Committee accordingly asks the Government to take the necessary steps, in cooperation with the social partners, to ensure that the provisions of the CAMRAIL agreement observe the principle of equal remuneration between men and women for work of equal value, and to encourage the social partners to revise any discriminatory provisions on remuneration, including allowances and benefits, in collective agreements when they are renegotiated.***

Articles 2 (paragraph 2(c)), and 4. Work of equal value. Collective agreements. Cooperation with employers’ and workers’ organizations. In its report, the Government indicates that some collective agreements have been negotiated or revised recently, and affirms that they provide for measures to give effect to *Article 2* of the Convention. The Government also states that measures under way to convince the social partners of the need to bring the provisions of collective agreements into line with those of the Convention, are to be pursued. ***The Committee hopes that the recently concluded collective agreements incorporate the principle of equal remuneration between men and women for work of equal value and that those in the process of negotiation will likewise reflect the principle, and asks the Government to provide a copy of the clauses of these agreements that pertain to wages, allowances and bonuses.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1988)

Article 1, paragraph 1(a), of the Convention. Grounds of discrimination covered by the legislation. Recalling its comments over many years regarding the need to bring the legislation into conformity with the Convention by including all grounds of discrimination listed in *Article 1(1)(a)*, the Committee notes that the Government reiterates that it will consider this issue in the context of a future revision of the Labour Code, though no specific information in this regard is provided. ***Recalling that despite its repeated requests, the Government has not yet taken any measures to initiate such a revision process, the Committee urges the Government to take the necessary measures to revise the legislation to include provisions defining and prohibiting direct and indirect discrimination based on all the grounds listed in the Convention (race, colour, sex, religion, political opinion, national extraction and social origin) in respect of all stages of the employment process, including recruitment, in accordance with the obligations it has undertaken by ratifying the Convention. The Government is requested to provide detailed information on the progress made in this regard.***

Discrimination based on sex. Legislation. The Committee notes that the Government’s report does not contain information in reply to its previous comments which stressed the importance of repealing any provisions of the legislation that discriminate against women, in order to ensure that full effect is given to the principle of equality of opportunity and treatment of men and women in employment and occupation. It recalls in particular that in accordance with section 223 of the Civil Code, husbands can prevent their wives from engaging in certain occupations. The Committee also notes that in its 2009 concluding observations, the Committee on the Elimination of Discrimination against Women noted an absence

of progress regarding the abrogation of discriminatory provisions, particularly in the Penal Code, the Civil Status Registration Ordinance and the Civil Code. (CEDAW/C/CMR/CO/3, 10 February 2009, paragraph 14). ***The Committee accordingly urges the Government to take, without further delay, concrete measures to initiate a process of legislative reform to repeal all provisions which have the effect of nullifying or impairing women's equality of opportunity and treatment in employment and occupation, and requests the Government to provide information on the measures taken to this end.***

Article 2. National policy on equality of opportunity and treatment. The Committee notes that the Government affirms that the national policy on employment and vocational training currently under preparation is dedicated to the principle of equal treatment and access to employment and non-discrimination. The Committee recalls nevertheless that in its previous comments it underlined that the recognition of the principle of equality alone is not sufficient to constitute a national policy within the meaning of *Article 2* of the Convention, and that it is necessary to adopt and implement concrete and proactive measures such as training programmes and public awareness raising, to promote equality of opportunity and treatment effectively. In this regard, the Committee notes that the Committee on the Elimination of Discrimination against Women, in its 2009 concluding observations expressed concern over the persisting patriarchal attitudes and deep-rooted stereotypes concerning the roles and responsibilities of women, which are a source of discrimination against them (CEDAW/C/CMR/CO/3, 10 February 2009, paragraph 24). ***The Committee requests the Government to take the necessary measures to elaborate and implement a national policy which includes action programmes and concrete measures to promote equality of opportunity and treatment and to address discriminatory practices in employment and occupation effectively. The Government is requested to provide information on the progress made with regard to the elaboration and implementation of such national policy and the results achieved.***

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

Central African Republic

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1964)

Articles 1 and 2 of the Convention. Application in law of the principle of equal remuneration between men and women for work of equal value. In its previous comments, the Committee drew the Government's attention to the fact that section 9 of the draft Labour Code which concerns equal remuneration was not conform with the Convention because it required equal wages for equal working conditions. Noting the enactment on 29 January 2009 of Act No. 09.004 issuing the Labour Code, the Committee observes that section 10, relating to equal remuneration reproduces the terms of the abovementioned draft and provides for "equal wages for equal working conditions". The Committee further observes that according to section 222 of the Labour Code, "for equal conditions of work, skills and output, wages shall be the same for all workers, regardless of their origin, sex and age ...". The Committee points out that by limiting equal wages to jobs involving equal working conditions, skills and output, rather than to "work of equal value", sections 10 and 222 of the new Labour Code lay down a narrower principle than the one enshrined in the Convention. It reminds the Government that work done by a man and by a woman may involve different working conditions or require entirely different skills and yet still be of equal value, and that accordingly the Convention requires that it must be remunerated at the same level. The Committee would also draw the Government's attention to the fact that experience shows that "insistence on equal conditions as regards work, skill and output can be taken as a pretext for paying women lower wages than men" (General Survey on equal remuneration, 1986, paragraph 54). Consequently, the focus should be on the nature of the work performed so that the tasks involved can be compared and evaluated on the basis of objective criteria, an objective evaluation being essential to effective elimination of the undervaluation of jobs traditionally done by women. The Committee notes with *regret* that the Government failed to take the opportunity afforded by the adoption of a new Labour Code to give full effect in law to the principles set forth in the Convention. ***The Committee trusts that the Government will take the necessary steps to amend sections 10 and 222 of Act No. 09.004 issuing the Labour Code in the near future so as to provide expressly for equal remuneration between men and women for work of equal value. The Government is asked to provide information on measures taken to this end.***

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

Chad

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

Article 1, paragraph 1(a), of the Convention. Grounds of discrimination. In its previous comments the Committee asked the Government to amend the national legislation in order to ensure that it at least covers discrimination on the basis of all the grounds listed in the Convention, including a prohibition on any discrimination based on race or colour. While noting the Government's statement that it faces difficulties which prevent it from revising the Constitution accordingly, the Committee wishes to draw the Government's attention to the fact that these grounds could be included in the provisions of the Labour Code concerning discrimination (sections 6 and 7), which in their current wording cover sex, age, nationality, membership or non-membership of a trade union, trade union activity, and the origin and opinions

(particularly religious and political) of the worker, or that regulations implementing the Labour Code could be adopted to also cover race and colour before any revision of the Constitution is undertaken. *The Committee therefore requests the Government to take the necessary steps to adopt legislation, or revise existing legislation or expand the provisions of the Labour Code so that at least all the grounds on which discrimination is based, which are prohibited under the terms of Article 1(1)(a) of the Convention, are expressly covered by the national legislation, and to supply information on the measures adopted in this respect.*

Discrimination on the basis of sex. For a number of years the Committee has been drawing the Government's attention to the incompatibility of section 9 of Ordinance No. 006/PR/84 of April 1984 issuing regulations on trading with the provisions of the Convention and has asked the Government to take the necessary steps to repeal this provision. *In view of the lack of any reply from the Government on this point, the Committee requests the Government to state whether the 1984 Ordinance is still in force and, consequently, to clarify whether a husband still has the right to object to the commercial activities of his spouse. If so, it urges the Government once again to repeal section of the Ordinance because of their discriminatory nature with regard to women.*

Sexual harassment. *In view of the lack of information in the Government's report on the measures taken or contemplated to combat sexual harassment in the workplace, the Committee is bound to repeat its request in this respect, referring once again to its general observation of 2002, in which it emphasizes that sexual harassment undermines equality at work by jeopardizing the integrity, dignity and well-being of workers and is harmful to enterprises by weakening the foundations of the employment relationship and reducing productivity.*

Article 1, paragraph 1(b). Additional grounds of discrimination. The Committee notes with *interest* the adoption of Act No. 019/PR/2007 of 15 November 2007, protecting the rights of persons living with HIV/AIDS. This Act contains provisions which define the denial of access to employment for HIV-positive persons as a discriminatory act (section 22), prohibit screening for HIV in relation to obtaining employment, promotion, training or benefits (section 36), guarantee employment to any employee who is living with HIV as long as he or she is capable of working, and guarantees the offer of acceptable replacement work (section 36), and prohibit any penalty or dismissal on the basis of the worker's HIV status (section 38). *The Committee requests the Government to indicate whether the implementing decrees provided for in section 64 of the Act No. 019/PR/2007 have been adopted, particularly as regards the abovementioned provisions relating to the right to work (sections 32–41) and, if so, to provide a copy of the decrees. The Government is also requested to provide information on any measure taken or contemplated to ensure the effective implementation of these legislative provisions against discrimination towards, and stigmatization of, persons living with HIV/AIDS, for example awareness-raising campaigns on equality at work intended for workers' and employers' organizations, labour inspectors, magistrates and the general public.*

Also noting, according to the information contained in the report drawn up by the Ministry of Education in October 2008 on the development of education, that an Act on the protection of disabled persons has been adopted, the Committee requests the Government to send a copy of it to the Office and indicate the steps taken to ensure in practice the equality of opportunity and treatment in respect of employment and occupation for disabled persons.

Article 2. National policy to promote equality. Access to education and vocational training. As regards education and training, on which actual possibilities of access to employment and occupation in both the public and private sectors depend, the Committee notes with *interest* the adoption of Act No. 016/PR/06 of 13 March 2006 issuing guidelines for the Chadian education system, which focuses on combating the exclusion from education of groups considered the most vulnerable, namely girls living in rural areas, nomadic and lake-dwelling groups, street children, physically disabled persons, refugees and displaced persons, child domestic workers, child herders and child soldiers. The objectives of this Act include ensuring equitable access to high-quality education for all Chadian children and promoting schooling for girls by removing stereotypes and other socio-economic and cultural obstacles to the full development of girls and women in terms of the education process.

The Committee also notes, according to the abovementioned report on education, that incentives aimed at making school attendance more attractive to girls are provided for in the "National plan of action for education for all" and that experimental action has been taken in four pilot areas to promote schooling for girls, such as awareness raising on a large scale with regard to gender issues, grants to communities to undertake income-generating activities, waiving school fees and no age limits on school enrolment for girls, etc.

Welcoming the efforts made and the desire shown by the Government to achieve greater equality in the area of education and training, the Committee hopes that the planned measures to promote equal access to education will be implemented in the near future and that the abovementioned experimental measures can be extended throughout the country in order to rectify the inequalities which exist in practice. It requests the Government to supply information on the results achieved, in the context of the various mechanisms established, with respect to schooling and access to vocational training for girls and women, particularly those living in rural areas. Please also provide information on any measure taken or contemplated to combat discrimination on grounds other than sex in education and vocational training, including the results achieved.

Article 3(d). Employment in the public sector. *The Committee requests the Government to provide as detailed information as possible on the measures taken or contemplated to promote and guarantee equality of opportunity and*

treatment in the public sector, including the results achieved by these measures in terms of employment, promotion and training of women within the public service. The Government is also requested to supply all available statistical information on the numbers of men and women employed at different levels in public service and, more generally, in the public sector.

Part V of the report form. Practical application and statistics. The Committee notes that in reply to its request for statistics the Government indicates that it will soon give labour inspectors the means to gather information relating to the situation of workers on the ground. *The Committee requests the Government to indicate the steps taken to equip labour inspectors with the appropriate resources and to supply the statistical information thus obtained on employment in the private and public sectors, disaggregated by sex, and also any statistical information available on employment in the informal economy, in order to enable an evaluation of the effect given to the Convention in practice.*

Colombia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Article 1 of the Convention. Remuneration. The Committee notes that the Government's report does not supply any information on the Committee's comments regarding the communication of 15 August 2007 from the Single Confederation of Workers of Colombia (CUT) concerning the narrow definition of remuneration in the legislation. *The Committee asks the Government once again to take the necessary steps to ensure that account is taken not only of the ordinary, basic or minimum wage or salary but also of "any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment" to ensure equal remuneration for men and women for work of equal value. The Committee asks the Government to include information in this respect in its next report.*

Work of equal value. For a number of years the Committee has been pointing out that certain legislative provisions should be amended, specifically section 5 of Act No. 823 of 10 July 2003 concerning equal opportunities for women, and also section 143 of the Substantive Labour Code, which establish a narrower principle than the one set forth in the Convention since they refer to equal wages for "equal work" and not for "work of equal value". *The Committee urges the Government to amend the abovementioned provisions to bring them into line with the principle of equal remuneration for men and women for work of equal value, and to provide information on steps taken in this regard.*

Article 2. The Committee notes the adoption of Act No. 1257 of 4 December 2008 establishing standards regarding awareness raising, prevention and penalties relating to violence and discrimination against women. The Committee also notes the reform of the Penal Code and the Code of Criminal Procedure, the adoption of Act No. 294 of 1996 and of other provisions. In particular, section 12 establishes that the Ministry of Social Protection will promote the social and economic recognition of the work of women and will implement mechanisms for enforcing the right to equal remuneration. The Committee hopes that the planned mechanisms will include effective measures to ensure equal remuneration for work of equal value and not only for equal work, in order to effectively address pay discrimination against women. *The Committee asks the Government to supply information on these mechanisms and their implementation.*

Articles 3 and 4. *The Committee again asks the Government to supply information in its next report on the way in which it collaborates with the employers' and workers' organizations concerned in order to apply the provisions of the Convention, and in particular on any training activities relating to the principle of the Convention and the adoption of measures for promoting objective job evaluation on the basis of the tasks involved.*

Research and statistical information. The Committee notes the information supplied in the Government's report on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning the research undertaken to compare the income of men and women in the private sector with a view to making progress in identifying possible reasons for the persistent wage gaps in the country. *The Committee would welcome further information on the results of, and follow-up to, research on the gender wage gap. The Committee asks the Government once again to supply statistical information to the extent possible, in accordance with its 1998 general observation, namely with regard to:*

- (i) the distribution of men and women in the public sector, the federal and/or state civil service, and in the private sector by earnings levels and hours of work (defined as hours actually worked or hours paid for), classified by: (1) branch of economic activity; (2) occupation or occupational group or level of education/qualification; (3) seniority; (4) age group; (5) number of hours actually worked or paid for; and, where relevant, by (6) size of enterprise and (7) geographical area; and*
- (ii) statistical data on the composition of earnings (indicating the nature of earnings, such as basic, ordinary or minimum wage or salary, premium pay for overtime and shift differentials, allowances, bonuses and gratuities, and remuneration for time not worked) and hours of work (defined as hours actually worked or paid for), classified according to the same variables as the distribution of employees (subparagraphs (1) to (7) of paragraph (i) above).*

Monitoring of application. The Committee asks the Government once again to supply information on the inspection unit's activities in relation to the principle of equal remuneration for men and women for work of equal value.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1969)

The Committee notes the information supplied by the Government in its report, including extracts from the case law of the Constitutional Court which refer to the labour rights of women.

Discrimination on grounds of race, colour and social origin. The Committee notes that there is no reference in the Government's report to the Committee's requests concerning a communication from the Single Confederation of Workers of Colombia (CUT) relating to discrimination in access to employment with regard to members of indigenous and Afro-Colombian peoples. The Committee also notes the concern expressed by the Committee on the Elimination of Racial Discrimination (CERD/C/COL/CO/14, 28 August 2009) at the fact that, despite national policies establishing special measures, in practice Afro-Colombian and indigenous peoples continue to have great difficulty in securing respect for their rights and continue to be the victims of de facto racial discrimination and marginalization. The Committee further notes that the National Development Plan 2006–10 proposes the formulation of a comprehensive policy for indigenous peoples, including components relating to territoriality, identity, autonomy, governance and development plans. ***The Committee therefore requests the Government once again to take effective measures towards the elimination of discrimination in access to employment or occupation on the basis of social origin, race, colour or physical characteristics. It also requests the Government to take steps to ensure that no investigations into the social background of workers are carried out which result in discrimination on the basis of social origin, that actions are taken to prohibit in law and in practice discriminatory vacancy announcements and to promote the employment of Afro-Colombian and indigenous peoples, and to supply information on the measures taken. The Committee also requests the Government to provide detailed information on the training and employment situation of indigenous and Afro-Colombian men and women, including those living in the Pacific region.***

Gender-based discrimination. The Committee notes that the National Development Plans lay down general guidelines for the definition of a policy for Colombian women focusing on job creation, access to and quality of education, prevention and elimination of gender-based violence and improvement of conditions for rural women. The Committee notes the programmes promoted by the Ministry of Social Protection, the Ministry of Agriculture and Rural Development, the National Training Service (SENA), the Ministry of Trade, Industry and Tourism, and especially those of the Presidential Office for Equal Rights for Women, by means of which the Government seeks to combat discrimination in employment and empower women. It also notes the Strategic Plan for the defence of women's rights under the law in Colombia, specifically the plan for the protection of women against employment discrimination. ***The Committee requests the Government to supply information on the practical application and results of such policies, plans and programmes, and specifically on how they are helping to eliminate discrimination against women in employment and occupation. The Committee also requests the Government to provide information on the measures taken to give effect to the Equal Opportunities Act (No. 823 of 2003), specifically those aimed at establishing programmes of employment training and skills development for women which are free from stereotypes regarding "female" jobs, and on measures to ensure that rural women have access to land ownership or possession, agrarian credit, technical assistance, and agricultural training and technology. The Committee also requests the Government to provide statistical information on the situation of women and men in the labour market and on their distribution in the various economic occupations, posts and sectors.***

Indigenous women. ***Noting that the Presidential Office for Equal Rights for Women is designing actions in favour of indigenous women with a view to tackling the various forms of discrimination which affect them and promoting equal opportunities, the Committee requests the Government to provide further information on these actions and the results achieved with regard to education, vocational training, employment and occupation, including information on the pilot project referred to in the report.***

Sexual harassment. The Committee notes the adoption of Act No. 1257 of 4 December 2008 enacting legal provisions on awareness raising, prevention and penalties with respect to certain forms of violence and discrimination against women. The Committee also notes that Act No. 1257 amends the Penal Code, the Code of Penal Procedure, and Act No. 294 of 1996, and enacts other provisions. The Committee notes that sexual harassment has been defined as a criminal offence, with section 210A of the Penal Code laying down a penalty of imprisonment ranging from one to three years for anyone found guilty of committing sexual harassment. ***The Committee requests the Government to consider adopting specific legislation regulating sexual harassment at work, including both quid pro quo and hostile environment harassment in the definition, and which also regulates the scope of responsibility as regards employers, supervisors, work colleagues and, where possible, clients or other persons connected with the performance of work. The Committee also requests the Government to provide information on any campaigns conducted to prevent acts of discrimination and violence against women in the work environment and on the procedures being adopted for handling complaints of sexual harassment.***

Comoros

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)

Article 2, paragraph 2(a), of the Convention. Principle of equal remuneration for work of equal value. Legislation. The Committee notes that according to the Government's report, in the context of the draft revision of the Labour Code, particularly section 97, the draft section on equal remuneration states that all employers must ensure equal remuneration for the same work or for work of equal value. The Committee also notes the communication from the Comoros Employers' Organization (OPACO) dated 1 September 2009, which states that the revision of section 97 of the Labour Code has not yet been carried out. It notes the Government's reply referring the OPACO to its report. ***The Committee asks the Government to indicate the progress of the legislative work relating to the revision of the Labour Code and hopes that the new Labour Code, giving full expression to the principle of equal remuneration for men and women for work of equal value, will be adopted in the near future. The Committee asks the Government to supply information on the role of the social partners in the process of the revision of the Labour Code and to send a copy of the new Code once it has been adopted.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2004)

Article 2 of the Convention. National policy. Equality of opportunity and treatment of men and women. The Committee notes the adoption of the National Policy on Gender Equity and Equality (PNEEG) in June 2008. According to the Government's report, the PNEEG promotes equality in employment and occupation, taking into account the provisions of the Convention. The Committee also notes that the Organization of Employers of Comoros (OPACO), in a communication received on 1 September 2009, indicates that it had not been informed of the elaboration of such a policy, and also regretted that no measures have been taken to prevent the exclusion of women from certain jobs and occupations. ***The Committee requests the Government to provide information in reply to OPACO's comments and strongly encourages the Government to cooperate with the workers' and employers' organizations in the implementation of the PNEEG. In this regard, the Government is requested to provide detailed information on the measures taken or envisaged to ensure the PNEEG's effective implementation, as far as they relate to equality of opportunity and treatment in respect of access to education, vocational training, wage and non-wage employment and working conditions (including remuneration, promotion, and security of tenure). Please provide a copy of the PNEEG.***

Equality of opportunity and treatment irrespective of race, colour, religion, political opinion, national extraction and social origin. In the absence of any information from the Government regarding this matter, the Committee recalls once again that in accordance with *Article 2* of the Convention the Government is required to declare and pursue a national policy with a view to eliminating discrimination based on all the grounds listed in *Article 1* of the Convention, and not only discrimination based on sex. ***The Committee therefore requests the Government once again to indicate the measures taken or envisaged to declare and pursue a national policy to promote equality of opportunity and treatment in employment and occupation, irrespective of race, colour, religion, political opinion, national extraction and social origin.***

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

Costa Rica

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1962)

Sexual harassment. The Committee refers to its previous observation and notes the Government's indication that in 2007 draft Act No. 16566 amending the Act against Sexual Harassment in Employment and Teaching received the unanimous support of the Special Permanent Commission of Women and is now pending before the Congress. The Committee also notes that since the entry into force of the Act, the Office of the Defender of Women has made efforts to follow up on and assist in the elaboration of internal labour regulations concerning sexual harassment. The Committee notes that in its report of 2008–09, the Office of the Defender of Women formulates recommendations to eradicate bad legal practices, and suggests strategies for prevention of sexual harassment and related capacity building. The Committee also notes that, according to this report, 40 per cent of the sexual harassment complaints received were dismissed. It notes that, of this 40 per cent, 25 per cent of cases failed because women complainants did not want to pursue the complaints.

Furthermore, the Committee notes that the Gender Equality Unit of the Ministry of Labour and Security considers that most of the women who were victims of sexual harassment desisted from filing complaints before the Office of Labour Inspection owing to the perception that the system is slow and ineffective, to the fear of being victimized, to the fear of counter complaints on the part of the authors of sexual harassment in case they could not gather sufficient evidence supporting their claim, and owing to the fact that the law currently in force has a gap as regards clear sanctions against the authors of sexual harassment.

The Committee asks the Government to continue to provide information on the developments concerning the adoption of the draft Act mentioned above and to supply information on the following:

- (i) *the measures adopted as a follow-up to the recommendations of the Office of the Defender of Women;*
- (ii) *the complaints brought before the Office of the Defender of Women and their results;*
- (iii) *the measures adopted to provide support and to effectively protect the victims of sexual harassment, including from the risk of reprisals and victimization;*
- (iv) *the educational and sensitization measures adopted or envisaged to prevent sexual harassment in the workplace;*
- (v) *any initiatives of employers' and workers' organizations to combat sexual harassment at work.*

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

Côte d'Ivoire

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

The Committee notes with *regret* that the Government's report does not contain a reply to its previous comments. It is therefore bound to reiterate its previous observation, which read as follows:

The Committee notes that for some years section 14(2) of Act No. 92-570 of 1992 issuing general regulations for the public service has allowed access to certain positions to be reserved for persons of one or the other sex on the basis of physical aptitude. The Committee observes that the Government has previously expressed its intention to repeal this provision, and notes with regret that, according to its report, section 14 was not revised when the general public service regulations were reviewed. It notes, however, that the Government has renewed its resolve to take into account the concern that section 14 has caused as regards observance of equality between the sexes in treatment and access to the public service. *The Committee requests the Government to amend section 14 so as to ensure its conformity with the Convention. It requests the Government to provide information on the measures taken or envisaged in the context of the Social Forum to revise this provision, and to send additional information on progress made in this respect.*

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

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

Croatia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1991)

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

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes from the Government's report that work is under way to draft a comprehensive anti-discrimination law, with a view to harmonizing the legislation with the relevant European directives. In this regard, the Committee recalls that, at present, section 2 of the Labour Code and section 6 of the Act on Civil Servants prohibit discrimination on the basis of a wide range of grounds, including the grounds specifically listed in Article 1(1)(a) of the Convention. These provisions also provide protection from discrimination based on family status, situation or responsibilities, in line with the Workers with Family Responsibilities Convention, 1981 (No. 156), ratified by Croatia. *The Committee urges the Government to ensure that the new legislation does not restrict the currently available level of protection from discrimination in employment and occupation, in line with Conventions Nos 111 and 156. The Government is requested to provide information on the progress made in the adoption of new anti-discrimination legislation and the steps taken to ensure that it is in line with relevant ILO Conventions, as well as on the consultations held with workers' and employers' organizations in this regard.*

Articles 2 and 3. Gender equality in employment and occupation. The Committee notes that the Gender Equality Ombudsperson received 174 complaints in 2007, almost twice as many as in 2004, while in 2006 the number of complaints received was 193. More than one third of the complaints related to employment discrimination against women, including sexual harassment, in both the private and public sectors. The Committee is concerned that, as observed by the Ombudsperson, a wide range of discriminatory practices exist that exclude pregnant women or women having small children from employment. *The Committee requests the Government to continue to provide detailed information on the work of the Gender Equality Ombudsperson, including information on the complaints received and the follow-up action taken in response to recommendations issued.*

The Committee notes that the National Policy for the Promotion of Gender Equality 2006–10 is aimed at eliminating discrimination against women and establishing genuine gender equality, including in the labour market. The Policy outlines a number of measures to reduce the female unemployment rate, ensure women's economic empowerment and eliminate all forms of discrimination. Measures to enhance collection, processing and publication of gender-specific statistical data are envisaged as well. *The Committee requests the Government to provide detailed information on the following:*

- (i) *the measures taken under the National Policy for the Promotion of Gender Equality to promote equality of opportunity and treatment in employment and occupation of women, as well as the results achieved by such action, including detailed statistical information concerning women's participation in the private and public sectors, disaggregated by industry and occupational category;*
- (ii) *the progress made in increasing women's participation in decision-making and management positions; and*

- (iii) *the measures taken to promote a better sharing of family responsibilities between men and women and to ensure that men and women can make use, in practice, of family-related rights and benefits, without being subjected to discrimination based on family responsibilities.*

Equality of opportunity and treatment in employment and occupation of the Roma. In its previous comments, the Committee requested the Government to provide information on the specific measures implemented under the National Programme for the Roma and the Ten-Year Plan of Action for the Inclusion of the Roma 2005–15 to promote and ensure equality of opportunity and treatment of the Roma in employment and occupation, as well as the results achieved by such action. The Committee regrets that the information provided in this regard is so general in nature that it does not allow the Committee to conclude whether adequate effect is being given to the Convention's provisions. ***The Committee urges the Government to provide specific and detailed information on the concrete measures taken to promote and ensure equal access of Roma men and women to employment and occupation, without discrimination based on sex, race, colour and national extraction.***

The Committee recalls the importance of monitoring, on a continuing basis, the impact of the measures taken to promote equality of opportunity and treatment in employment and occupation of the Roma. In this regard, the Committee notes from the Government's report that the Croatian Employment Service does not maintain information on the ethnic origin of the unemployed. However, estimates concerning unemployment among the Roma are established on the basis of the place of residence of jobseekers and knowledge of the Roma language. The Committee also notes that Roma representatives participate in the Commission for the Monitoring of the Implementation of the National Programme for Roma. ***The Committee requests the Government to provide information on the following:***

- (i) *the actual situation of men and women from the Roma community in the labour market, including the estimated levels of employment, unemployment and self-employment;*
- (ii) *the level of participation of Roma men and women in employment promotion measures, such as vocational training or public works programmes; and*
- (iii) *the work of the Commission for the Monitoring of the Implementation of the National Programme for Roma concerning the implementation of measures to promote equal access to employment and occupation.*

Article 3(d). Access of minorities to employment under the control of a national authority. The Committee notes with interest that a number of positive steps have been taken with regard to the implementation of section 22 of the Constitutional Act on the Rights of National Minorities of 2002, which guarantees proportional employment of national minorities in the state administration. The Civil Service Employment Plan 2007, for the first time includes targets for the recruitment of national minorities to the civil service, and a proposal is being discussed to introduce similar targets with respect to the judiciary. A series of round-table discussions to promote the access of national minorities to public employment have been held, in cooperation with the Organization for Security and Cooperation in Europe. ***The Committee requests the Government to continue to provide information on its efforts to promote and ensure access of members of national minorities to public employment, including information on the progress made in achieving recruitment targets concerning minorities. The Committee reiterates its request to the Government to provide information on the current ethnic and gender composition of the civil service.***

Enforcement of anti-discrimination legislation. The Committee notes from the National Policy for the Promotion of Gender Equality that, the enforcement of the anti-discrimination legislation continues to be subject to many challenges, including lack of awareness of the legislation among workers, employers and the judiciary. The Committee notes, however, that the National Policy's Action Plan, envisages a number of measures to strengthen the enforcement of the anti-discrimination legislation, including systematic collection of statistical data on cases of gender discrimination in employment and work, as well as awareness-raising and training activities for relevant target groups. ***The Committee welcomes these envisaged measures and requests the Government to ensure that information is collected also in relation to cases concerning discrimination on the basis of grounds other than sex. It requests the Government to provide information on the following:***

- (i) *progress made in collecting and analysing information on court cases on discrimination in employment and occupation on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin; and*
- (ii) *measures taken to raise the awareness of the judiciary and other competent bodies to better equip them to deal with cases of discrimination.*

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

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

Czech Republic

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

The Committee recalls its previous observation issued in 2007 which addressed the following issues: (1) the developments concerning the adoption of new non-discrimination legislation; (2) the situation of the Roma in employment and occupation; and (3) the outstanding issues with regard to the follow-up to the representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (Screening Act). In its observation, the Committee asked the Government to supply full particulars to the International Labour Conference at its 97th Session and to report in detail in 2008.

Subsequently, the Conference Committee on the Application of Standards discussed the application of the Convention by the Czech Republic at its 97th Session (June 2008). In its conclusions, the Conference Committee expressed concern that the Labour Code of 2006 had withdrawn the previously available protection from discrimination based on a number of additional grounds, including family responsibilities, marital or family status or membership of or activity in political parties, trade unions or employers' organizations. It urged the Government to hold consultations with the representative employers' and workers' organizations and other appropriate bodies concerning these additional

grounds, as required under *Article 1(1)(b) of the Convention*, with a view to maintaining the previous level of protection. It also called on the Government to adopt the new non-discrimination legislation without further delay and to ensure that it was in full conformity with the Convention.

With regard to the situation of the Roma, the Conference Committee stressed that it was essential that the measures taken would lead to objectively verifiable improvements as regards the situation of the Roma in practice. In this regard, the Conference Committee urged the Government to take measures to develop improved means to assess and monitor the situation of the Roma in employment and occupation and unemployment, including through the collection and analysis of appropriate data. It also requested the Government to take further measures to promote and ensure equal access of the Roma to education, training, employment and occupation.

With regard to the Screening Act, the Conference Committee regretted that previously announced plans to repeal the Act had not been followed through and that the Government asserted before the Committee that the Act is not in contravention with the Convention. The Conference Committee strongly urged the Government to bring its legislation into line with the Convention without further delay, in accordance with its obligations, taking into account the relevant conclusions and recommendations of the Governing Body and the Committee of Experts' comments. The Conference Committee requested the Government to provide information on all these issues in its report under article 22 due in 2008.

The Committee recalls that a report had not been received in 2008 and the Committee repeated its previous comments. However, the Committee noted comments received from the Czech Moravian Confederation of Trade Unions (CM KOKS) dated 25 November 2008. In its comments, the CM KOKS states that, following the 97th Session of the Conference, it made an official request to the Prime Minister to place the application of the Convention on the agenda of the national tripartite body. In October 2008, a meeting of the national tripartite body took place. According to the union, the Government failed on this occasion to submit to the social partners the conclusions adopted by the Conference. The CM KOKS also reiterates its concerns regarding the withdrawal of specific legal protection from discrimination based on marital status, family responsibilities, political or other conviction, membership of, or activity in political parties and movements, trade unions or employers' organizations. The CM KOKS further maintains that there is a need to improve the role of the State in monitoring compliance of anti-discrimination legislation. Further, it calls for the repeal of the Screening Act.

The Committee notes with regret that since the Conference discussion in 2008 no report has been received from the Government, despite the specific request made by the Conference Committee. The Committee is concerned that its previous comments and the Conference conclusions may not yet have been discussed in an appropriate manner at the national level. The Committee urges the Government to take the measures necessary to ensure follow-up to all the points raised by the Committee in its 2007 observation and direct request, and by the Conference Committee in 2008, and to provide all the information requested without delay.

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

Democratic Republic of the Congo

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1969)

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

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. The Committee recalls its previous comments concerning section 86 of the Labour Code which provides that with equal conditions of work, vocational qualifications and output, the salary is equal for all workers, irrespective of origin, sex or age. The Committee noted that this provision is not in conformity with the Convention which requires measures to promote and ensure equal remuneration for men and women for work of equal value. In accordance with the Convention, women and men should have the right to equal remuneration not only where they have the same working conditions, vocational qualifications and output, but also where they have different vocational qualifications and when they work in different working conditions, so long as the work performed is of equal value. The Committee draws the Government's attention to its 2006 general observation which further elaborates on this matter and calls on States which have not yet done so to ensure that their legislation fully reflects the principle of the Convention.

Application of the principle to all aspects of remuneration. Further to the above, the Committee notes that section 86 provides for equality with respect to the "salary", which is one of the elements of "remuneration" as defined in section 7(h) of the Labour Code. In addition, the term "remuneration" as defined in section 7(h) includes additional payments, such as commissions, payments in kind, bonuses etc., whereas it is provided that transport allowances, family allowances, accommodation and accommodation allowances and health care are not considered part of the remuneration. Section 138 of the Labour Code specifies that the right to accommodation and accommodation allowance also applies to women workers, and according to the Government this applies irrespective of marital status. Recalling that under the Convention it must be ensured that the principle of equal remuneration for men and women for work of equal value is applied to all aspects of remuneration, as broadly defined in *Article 1(a)*, the Committee is concerned that the Labour Code currently provides for equality only in respect of the salary (section 86) and accommodation and accommodation allowances (section 138).

Based on the above, the Committee asks the Government to take the necessary steps to bring the legislation into line with the Convention with a view to ensuring that the principle of equal remuneration for men and women is fully reflected in the legislation and that it applies to all the elements of remuneration, as defined in Article 1(a) of the Convention. The Committee asks the Government to provide information on the steps taken in this regard.

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

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

Articles 1 and 2 of the Convention. Prohibition of discrimination in employment and occupation. The Committee previously noted that the Labour Code contains no provisions prohibiting and defining discrimination in employment and occupation, although section 1 provides that the Labour Code applies to all employers and all workers, with the exception of state public services, regardless of race, sex, civil status, religion, political opinion, national extraction and social origin. Act No. 81/003 of 17 July 1981, which promulgates the conditions of service of career members of the state public service, also lacks anti-discrimination provisions. Recalling its previous comments concerning the need to include in legislation provisions prohibiting and defining indirect and direct discrimination in employment and occupation, including in respect of recruitment, the Committee welcomes the Government's statement that it will examine the matter and take the Committee's comments into account. ***The Government is requested to indicate the steps taken with a view to including such provisions in the Labour Code and Act No. 81/003 and any progress made in this regard.***

Discrimination based on sex. The Committee previously noted that a reading of sections 448 and 497 of Act No. 87/010 of 1 August 1987, issuing the Family Code, appears to indicate that, in certain cases, a woman has to obtain the authorization of her husband to take up salaried employment, whereas no such obligation is imposed upon the husband. Furthermore, in relation to jobs in the public service, the Committee notes that section 8 of Act No. 81/003 of 17 July 1981, issuing the conditions of service of career members of the state public services, and section 1(7) of Legislative Ordinance No. 88-056 of 29 September 1988, respecting the activities of magistrates, provide that a married woman must have obtained the permission of her spouse to be recruited as a career member of the public service or appointed as a magistrate. The Committee considers that the above provisions constitute discrimination on grounds of sex which are contrary to the principle of equality of opportunity and treatment for men and women workers in employment and occupation, as set out in the Convention. In this regard, the Committee welcomes the Government's statement that these provisions, being contrary to the Constitution, are null and void and that the modification of these texts was under way. ***The Committee requests the Government to provide information on the steps taken to bring the abovementioned provisions into conformity with the Convention and to provide the amended texts, as soon as possible.***

Discrimination based on race or ethnic origin. In response to the Committee's comments regarding the socio-economic situation of the Batwa, a minority indigenous group, and discrimination faced by the Batwa in employment and occupation, the Government refers to article 51 of the Constitution under which the State has the obligation to ensure and promote the peaceful and harmonious coexistence of all ethnic groups of the country. In addition, article 51 requires the State to ensure the protection and promotion of vulnerable groups and minorities. The Committee also notes that the United Nations Committee on the Elimination of Racial Discrimination, in its concluding observations of 17 August 2007, expressed concern that pygmies (Bambuti, Batwa and Bacwa) are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market, and also that the rights of pygmies to own, exploit, control and use their lands, their resources and communal territories – which are the basis for the exercise of their traditional occupations and livelihood activities – are not guaranteed (CERD/C/COD/CO/15, 17 August 2007, paragraphs 18 and 19). ***The Committee urges the Government to take measures with a view to ensuring equality of opportunity and treatment of the Bambuti, Batwa and Bacwa in employment and occupation, and to indicate the steps taken in this regard. In this context, the Government is also requested to indicate the measures taken to ensure that these indigenous groups enjoy their right to engage in their traditional occupations and livelihoods without discrimination.***

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

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

Djibouti

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1978)

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

Articles 1 and 2 of the Convention. Legislative developments. ... ***The Committee asks the Government to provide information on the implementation and enforcement of section 137 of the new Labour Code, including information on the measures taken or envisaged to raise awareness of these provisions among workers and employers and their representatives and public officials responsible for the enforcement of the labour legislation. In this regard, the Committee also asks the Government to provide information on whether any cases concerning section 137 have been dealt with by the responsible authorities and the manner in which they have been resolved, including any remedies provided or sanctions imposed.***

Article 2(c). Collective bargaining. The Committee notes from the Government's report that salaries in the private sector are determined by way of collective agreements. Section 258 of the new Labour Code provides that collective agreements may determine the salary applicable to each occupational category. Section 259(4) provides that collective agreements cannot change the modalities of the application of the principle of "equal salary for equal work", irrespective of the origin, sex or age of the worker. The Committee notes that section 259 is not in conformity with the Convention as it refers to equal salary for equal work rather than to equal salary for *work of equal value*, and is also at variance with section 137 of the Labour Code. ***The Committee asks the Government to take the steps necessary to amend section 259(4) to bring it into alignment with the provisions of section 137 and to bring it into conformity with the Convention. The Committee also asks the Government to***

provide examples of collective agreements, as well as indications as to how the agreements implement the principle of equal remuneration for men and women for work of equal value.

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

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

Ecuador

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1962)***

The Committee notes the adoption of the new Constitution in September 2008 following its approval by referendum. The Committee notes with *interest* that article 11(2) of the Constitution includes new grounds on which discrimination is prohibited, including migration and being HIV positive. It also notes that article 43 provides that the State shall guarantee that pregnant women are not discriminated against on grounds of pregnancy in the educational, social and labour fields. The Committee further notes that article 47(5) of the Constitution recognizes the right of persons with disabilities to work under conditions of equality of opportunity with a view to developing their capacities and potential, through policies for their integration into public and private entities. ***The Committee asks the Government to provide information on the measures adopted or envisaged to give effect to these provisions.***

Article 2 of the Convention. National equality policy. The Committee notes that Executive Decree No. 1733 (Official Bulletin No. 601 of 29 May 2009) abolished the National Women's Council (CONAMU) and established the Transition Commission to determine the public institutions that will guarantee equality between women and men, and which is entrusted with responsibility to prepare draft legislative reforms for the establishment of the National Gender Equality Council. The Committee notes that, in addition to the CONAMU, changes have also been made to the Council for the Development of the Peoples and Nationalities of Ecuador (CODENPE), the Afro-Ecuadorian Development Corporation (CODAE), the Council for the Development of the Coastal Montubio People (CODEPMOC), the Council for Children and Young Persons (CNA) and the National Disability Council (CONADIS). ***The Committee requests the Government to provide information on the outcome of this process of transition and on the institutions established in accordance with articles 156 and 157 of the new Constitution which are entrusted with responsibilities related to guaranteeing equality of opportunity and treatment in employment and occupation.***

National policy on gender equality. The Committee notes the concern expressed by the Committee on the Elimination of Discrimination Against Women in its concluding observations of November 2008 about the high rates of women's underemployment and unemployment, especially in rural areas, and cases of gender discrimination in the workplace, including dismissals relating to maternity, and discriminatory labour practices against women, especially indigenous and migrant women and those of African descent (CEDAW/D/ECU/CO/7, 7 November 2008, paragraphs 34–36). ***The Committee once again requests information on the results achieved in the prevention and eradication of work by women under conditions of exploitation which, as noted by the Committee in its previous comments, was one of the objectives of the Equal Opportunities Plan 2005–09 (PIO). The Committee also requests the Government to provide detailed information on the policies and programmes intended to ensure equality of opportunity and treatment in employment and occupation for women, especially indigenous women, migrant women and women of African descent, and their impact.***

Promoting the access of women to public sector employment. With reference to its previous observation, in which it noted with interest the conclusion of a Framework Inter-institutional Cooperation Agreement with a view to ensuring that effect is given to the principles of equality and equity between men and women in the processes of institutional modernization and the re-evaluation of work in public institutions in Ecuador, the Committee notes that, according to the Government's report, in the context of the above Agreement, gender was included in the Integrated Human Resources Information System (SIIRH) developed by the National Technical Secretariat for the Development of Human Resources and Remuneration in the Public Sector (SENRES) and the study "Public employment in Ecuador: A gender view" was published. It notes that the Transition Committee has also worked to introduce gender as a cross-cutting issue in the law and standards issued by the SENRES with the objective of promoting the access of women to public employment. ***The Committee requests the Government to provide further information on the introduction of gender as a cross-cutting issue in the standards issued by the SENRES with the objective of women gaining access to public employment and the impact of this measure. Noting that the Framework Inter-institutional Cooperation Agreement expires in December 2009, the Committee requests the Government to provide information on the measures envisaged to continue ensuring the application of the principle of the Convention in the public sector. The Committee also refers to its comments on the application of the Equal Remuneration Convention, 1951 (No. 100).***

Legislation. The Committee notes that, according to the information provided by the Government, the draft amendment of the Cooperatives Act is before the National Assembly. ***With reference to its previous comments, the Committee urges the Government to take this opportunity to repeal section 17(b) of the Regulations of the Cooperatives Act, under which married women require the authorization of their husbands to be members of agricultural housing***

and family garden cooperatives. The Committee hopes that the Government will be in a position to provide information on the progress achieved in this respect in its next report.

Sexual harassment. The Committee notes that the Gender and Youth Unit of the Ministry of Labour is preparing a compendium on sexual harassment in the fields of education, labour, politics and domestic work which includes basic definitions, practical cases, national and international legislation and the contact details of support bodies and organizations. The Committee also notes the draft constitutional proposal of February 2008 to discourage situations of harassment, which involves the termination of officials who commit repeated offences of sexual and psychological harassment and abuse of authority. ***The Committee requests the Government to provide information on the impact that this compendium has had in terms of preventing sexual harassment in the working environment and to provide information on other measures that are being adopted to raise awareness of the harmful effects of harassment at the workplace. The Committee invites the Government once again to take appropriate legislative measures to prohibit sexual harassment in employment and occupation which include both quid pro quo and hostile work environment harassment.***

Afro-Ecuadorian peoples. The Committee notes that the National Development Plan 2007–10 contains a component with the objective of combating historical disparities which hinder the human development of Afro-Ecuadorian persons. It notes that according to the statistics contained in the Plan, the racial prejudice index against Afro-Ecuadorian persons is 75.9 per cent. It also notes that, according to the living conditions survey of 2006, while a white person can obtain average monthly income from employment of US\$316.60, an Afro-Ecuadorian person only obtains US\$210.80. With regard to the urban unemployment rate, the Committee notes that it is 11 per cent for Afro-Ecuadorian persons, compared with a national average of 7.9 per cent, and 17.5 per cent for Afro-Ecuadorian women. It further notes that 92.8 per cent of Afro-Ecuadorian persons do not reach university level. ***The Committee requests the Government to provide detailed information on the results and impact of the various types of action envisaged in the plan referred to above, including the application of affirmative action measures, the development of the “Work without discrimination” programme and the action taken to promote and increase the access of young Afro-Ecuadorian persons to university. The Committee also requests information on the measures promoted, as envisaged in the Plan, to monitor and punish any act of racial discrimination against Afro-Ecuadorian persons on the labour market.***

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

Ethiopia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

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

The Committee regrets that for the second consecutive time the Government’s report does not adequately respond to the issues raised in the Committee’s comments. The Committee therefore urges the Government to provide full information on all matters raised in the comments below.

Legislation. The Committee recalls that section 14(1)(f) of Labour Proclamation No. 377/2003 provides that it shall be unlawful for an employer to discriminate between workers on the basis of nationality, sex, religion, political outlook or any other conditions. The Committee requested the Government to clarify whether section 14(1)(f) protects workers from discrimination in the selection and recruitment process and whether the employment service is bound by the principle of non-discrimination. In its report, the Government states that article 41 of the Constitution provides that every Ethiopian has the right to engage freely in economic activities and to pursue a livelihood of his or her choice. According to the Government this provision requires all public bodies, including the employment service, as well as employers to abstain from discrimination. ***The Committee nevertheless considers it important that the non-discrimination provisions contained in the Labour Proclamation are amended with a view to explicitly providing that workers and candidates for employment, including non-citizens, are protected from discrimination and to include all the prohibited grounds listed in Article 1, paragraph 1(a), of the Convention, including social origin and national extraction. In the meantime, the Committee urges the Government to provide information on any cases concerning discrimination in employment and occupation identified and addressed by the competent authorities, including the labour inspectors and the courts.***

Recalling that the non-discrimination clause of the Federal Civil Service Proclamation No. 262/2002 does not include the grounds of social origin and national extraction (section 13(1)), the Government previously indicated that the question of amending section 13(1) to include these grounds had been placed on the agenda of the task force responsible for amending the Proclamation. ***The Committee requests the Government to provide information on the progress made in this regard.***

Equality of opportunity and treatment in the public sector, irrespective of sex and ethnicity. The Committee recalls that section 13(3) of the Federal Civil Service Proclamation No. 262/2002 authorizes preferential recruitment of women and members of ethnic groups underrepresented in the civil service. However, the Committee regrets that no information has been provided in response to the Committee’s comments regarding the promotion of gender equality and ethnic diversity in the public sector. ***Consequently, the Committee urges the Government to:***

- (i) provide information on the measures taken to promote equality of opportunity and treatment of men and women in the civil service, including in respect to recruitment, training and promotion;***
- (ii) provide information on any measures taken to promote access to the civil service of all ethnic groups;***

- (iii) *provide statistical information on civil service employment by type of service and grade, disaggregated by sex, and to provide information on the ethnic composition of the civil service; and*
- (iv) *provide an indication as to how the Convention is applied with respect to state-owned enterprises.*

Education and training. The Committee notes from the Government's report that in 2006–07 the gross enrolment rate of girls increased to 85 per cent in secondary education, 51 per cent in technical and vocational education and training and to 25 per cent in higher education. **The Committee requests the Government to continue to provide information on the progress made in ensuring equal access of men and women to education and training at all levels. The Committee also asks the Government to provide information on the measures taken or envisaged to ensure equal access of women to employment and income-generating activities.**

Indigenous communities. The Committee notes from the 2003 report of the African Commission's Working Group of Experts on Indigenous Populations/Communities that a number of pastoralist communities live in Ethiopia who depended on their ancestral lands to engage in their traditional occupations and livelihood activities. The report indicates that the adoption of a new strategy on pastoral development by the federal Government constituted a positive step in addressing the problems faced by pastoralist communities, particularly evictions from their land. **The Committee requests the Government to provide a copy of the strategy on pastoral development and information on its implementation.**

Follow-up to the representation made under article 24 of the ILO Constitution by the National Confederation of Eritrean Workers concerning Conventions Nos 111 and 158 (GB.282/14/5, November 2001). The Committee notes that the Government's report contains no new information concerning this matter. **The Committee requests the Government to provide information in its next report on any further decisions reached by the Ethiopia–Eritrea Claims Commission and on measures taken, in line with such decisions, to indemnify as fully as possible the workers displaced following the outbreak of the 1998 border conflict, and to grant appropriate relief in accordance with Conventions Nos 111 and 158.**

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

Georgia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

Articles 1 and 2 of the Convention. Legislation. The Committee recalls that the Labour Code of 2006 contains no provision regarding equal remuneration for men and women for work of equal value and that the Committee therefore pointed to the need to introduce legislation giving effect to this principle, as set out in the Convention. In its reply to the Committee's comments, the Government states that the legislation guarantees gender equality and that it protects women from any kind of discrimination. The Government refers to article 14 of the Constitution and to section 2(3) of the Labour Code, which provide that "Any type of discrimination due to race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations".

The Committee notes that while section 2(3) of the Labour Code is important in the context of the Convention, it falls short of giving legislative expression to the principle of equal remuneration for men and women for work of equal value. The Committee recalls that the concept of "work of equal value" is the cornerstone of the Convention and lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality. The importance of the concept of work of equal value lies in its requirements that the content of the work performed is the focus when comparing remuneration received by men and women, and that the scope of comparison is not restricted to situations where men and women perform the same, identical or similar jobs, but extends to jobs that are of an entirely different nature, which are nevertheless of equal value. Furthermore, the application of the Convention's principle is not limited to comparisons between men and women in the same establishment or enterprise, but the reach of comparison should be as wide as allowed by the level at which wage policies, systems and structures are coordinated. The Committee considers that legislation that is more restrictive in its scope than is required to give effect to the principle of equal remuneration for men and women for work of equal value is not in conformity with the Convention. Finally, the Committee notes that the absence of court cases regarding equal remuneration, as reported by the Government, may well indicate the lack of an appropriate legal basis for bringing such cases. **Noting that the Action Plan on Gender Equality for 2007–09 provides for the creation of a legal framework for gender equality, the Committee urges the Government to strengthen the legislation by giving full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring full and effective implementation of the Convention. Please provide information on the measures taken or envisaged in this regard.**

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

Articles 1, 2 and 3 of the Convention. Prohibition of discrimination. In its previous observation the Committee asked the Government whether the Labour Code's prohibition of discrimination "in employment relations" (section 2(3)) covers discrimination at the stage of recruitment and selection and whether it covers direct and indirect discrimination. The Committee notes the Government's statement that the Georgian legislation protects the population from any kind of discrimination, including "discrimination in employment and occupation processes", referring to article 14 of the Constitution, section 2(3) of the Labour Code, and non-discrimination clauses contained in a number of other laws. The

Government further states that indirect discrimination is prohibited by the Georgian legislation, inter alia, referring to section 142 of the Penal Code and section 2(4) of the Labour Code which addresses the issue of harassment. The Government has not explicitly confirmed whether section 2(3) of the Labour Code is interpreted as prohibiting indirect discrimination, although it generally states that in the absence of a legal definition of indirect discrimination, it is for the courts to deal with this matter on a case-by-case basis. However, the Government has no information on any discrimination cases lodged before the court under the Labour Code. ***Taking into account the Government's statements that the legislation is meant to cover all forms of discrimination in employment and occupation, including discrimination in respect of recruitment and selection, as well as indirect discrimination, the Committee strongly recommends that the existing non-discrimination provisions of the Labour Code be amended: (i) to provide for a clear definition of direct and indirect discrimination; and (ii) to clarify that the prohibition of discrimination also applies to recruitment and selection, in accordance with the Convention. The Committee also asks the Government to provide information on the measures taken or envisaged to sensitize the judiciary, labour inspectors and the public regarding the prohibition of direct and indirect discrimination in employment and occupation. Please also provide copies of relevant court decisions.***

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

Ghana

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1968)

Equal remuneration for work of equal value. Legislation. In its previous comments, the Committee had asked the Government to provide information on the progress made with a view to amending section 68 of the Labour Act 2003, which provides only for equal pay for equal work, so as to ensure full conformity with the principle of equal remuneration for work of equal value set out in the Convention. Section 10(b) of the Labour Act is expressed in the same terms. The Committee notes from the Government's report that due to a change of government, the Committee's comments in this respect are still being examined by the new Minister responsible for Labour. ***With reference to its previous comments and recalling its 2006 general observation on the principle of equal remuneration for work of equal value, the Committee trusts that the Government will take the necessary measures in the near future with a view to amending sections 10(b) and 68 of the Labour Act 2003 in order to give full legislative expression to the principle of the Convention.***

Remuneration in the public sector. The Committee notes that the job evaluation exercise undertaken to determine the value of all public sector jobs, one of the objectives of which is to ensure that jobs within the same job value range are paid within the same pay range, was completed in April 2009. As a result, a single spine pay structure was adopted. The Committee also notes that the ultimate goal for the National Job Analysis and Evaluation Exercise, as set out in the briefing notes on the public sector pay policy attached to the Government's report, "was to enable government to reward its employees in accordance with the principle of "equal pay for equal worth" consistent with article 24(1) of the 1992 Constitution of Ghana and section 10(b) of the Labour Act". Both the Constitution and the Labour Act refer however to "equal pay for equal work". The evaluation has been made on the basis of four main job factors (knowledge and skill, responsibility, working conditions and effort) which were subdivided into 13 sub-factors and it has used the point factor method. The Committee notes that during the consultative workshop held in May 2009 on the single spine pay policy, the Ministry of Employment and Social Affairs and the Ghana Trade Union Congress agreed that the policy should be implemented, as of 1 January 2010, while efforts are being made to address concerns and challenges that may arise from its implementation. It also notes that the unions and associations were to submit outstanding issues or concerns to the Fair Wages and Salaries Commission. ***The Committee asks the Government to ensure that the principle of equal remuneration for men and women for work of equal value will be duly taken into account and recognized as an explicit objective in the implementation of the public sector pay policy. It also asks the Government to provide information on the implementation process of this policy, including on the issues dealt with by the Fair Wages and Salaries Commission and the steps taken by this Commission to ensure full application of the principle of the Convention in the public service. The Government is requested to provide a copy of the single spine pay policy and of the single spine pay structure adopted.***

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

Grenada

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)

Discriminatory Minimum Wage Order. The Committee previously raised concerns regarding the discriminatory nature of the Minimum Wage Order SRO 11 (2002), which provides different wages for female and male agricultural workers. The Committee noted previously that the Grenada Employers' Federation and the Grenada Trade Union Council had agreed with the Committee's comments and that the Department of Labour had proposed an amendment to provide for the same wage rate for male and female agricultural workers. ***The Committee regrets that the Government has not replied to the Committee's previous observation on this matter and, therefore, it must urge the Government to take steps, without further delay, to ensure that the Minimum Wage Order no longer provides different wages for male and***

female workers. The Committee also asks the Government to provide a copy of the revisions once they are adopted. Please also provide copies of any other minimum wage orders currently in force for the various trades, industries and occupations, as well as information on the criteria used for fixing the applicable minimum wages.

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

Guatemala

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1961)

Wage gap. The Committee notes that, according to the statistics for 2007 supplied by the Government, the average monthly wage for women is approximately 94 per cent of the average wage for men (wage gap: 6 per cent). However, the wage gap varies according to the age group and economic activity concerned. The Committee notes in particular that the average monthly wage for women represents 88.76 per cent of the average wage for men in the mining and quarrying sector, 83.64 per cent in the manufacturing industry, 84.60 per cent in commerce and 87.72 per cent in services, indicating that in some cases the gender-based wage gap may exceed 15 per cent. ***The Committee asks the Government to supply detailed information on the measures taken or contemplated to reduce the gender wage gap. It also asks the Government to supply up to date statistics on the rates of remuneration for men and women in the various sectors of activity, disaggregated by occupational category and job, to enable the Committee to evaluate progress achieved.***

Article 1 of the Convention. Equal remuneration for work of equal value. Legislation. In its previous observation the Committee noted that no progress had been made on the adoption of measures to give legislative expression to the principle of equal remuneration for men and women for work of equal value, and urged the Government to intensify its efforts and keep the Office informed in this respect.

The Committee notes with **concern** that the Government's report does not supply any information in this respect. The Committee once again underlines the importance of explicitly establishing the principle of the Convention in the national legislation in order to promote the elimination of pay discrimination against women. Referring to its 2006 general observation on the Convention, the Committee points out that the principle of equal remuneration for "work of equal value" goes beyond equal remuneration for "equal", the "same" or "similar" work, since it also encompasses work that is of an entirely different nature but which is nevertheless of equal value. The Committee also wishes to emphasize that the concept of "work of equal value" is fundamental to tackling occupational sex segregation in the labour market resulting from historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities with regard to certain jobs, the result of which has been that certain jobs are held predominantly or exclusively by women and others by men and "female jobs" are undervalued in comparison with work of equal value performed by men, when determining wage rates.

The Committee therefore urges the Government to take all necessary steps to give legislative expression to the principle of equal remuneration for men and women for work of equal value, and encourages the Government to seek technical assistance from the Office in this respect, if necessary.

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

The Committee notes the communication of the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG), dated 28 August 2009, sent to the Government on 19 October 2009. The MSICG comprises the following organizations: the General Confederation of Workers of Guatemala (CGTG); the Trade Union Confederation of Guatemala (CUSG); the National Trade Union and Peoples' Coordinating Body (CNSP); the Altiplano Rural Workers Committee (CCDA); the National Indigenous Rural Workers and People's Council (CNAICP), the National Front for the Defence of Public Services and Natural Resources (FNL); and the Trade Union Confederation of Guatemala (UNSITRAGUA). The Committee will address this communication, along with any comments of the Government, at a future session.

Discrimination on the basis of pregnancy: pregnancy testing and dismissals. The Committee recalls that in its previous comments it considered the problem of the practice of pregnancy tests and dismissals on the ground of pregnancy, especially in export processing enterprises (*maquiladoras*), on the basis of communications received from UNSITRAGUA and the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC). Furthermore, it recalls that in its previous observation, it noted the communication of the Trade Union of Civil Aviation Workers (USTAC), which alleged that the hiring of workers under heading 29 has made it possible to dismiss pregnant women and make illegal arrangements whereby they are requested to leave their employment at the enterprise for the purpose of giving birth, to be hired again subsequently. The USTAC also indicated that this situation occurs throughout the public service.

The Committee considered that the problem of dismissals based on pregnancy was part of a wider problem which called for vigorous structural measures to tackle it and requested the Government to take such measures. It also requested the Government to step up its efforts to tackle discrimination on the ground of pregnancy with regard to obtaining or keeping a job and to strengthen the protection afforded to pregnant workers.

The Committee notes that the Government once again indicates in its report that the General Labour Inspectorate has not received any complaints relating to the imposition of pregnancy tests by enterprises. With regard to the cases of dismissal, it indicates that efforts have been made to encourage the employers concerned to reinstate the workers affected without it being necessary to refer the cases to the courts. It also indicates that the General Labour Inspectorate and the Department for the Promotion of Working Women have managed to raise the awareness of several agencies which have hired women under heading 29 – which nonetheless meet the requirements laid down by the Labour Code for the establishment of an employment relationship – and these women have been granted the benefits relating to pregnancy, maternity and nursing periods.

The Committee wishes to stress that discrimination on the basis of pregnancy constitutes a serious form of discrimination on the basis of sex. The Committee once again draws the Government's attention to the fact that the lack of complaints of discrimination on the ground of pregnancy with regard to obtaining or keeping a job does not mean that this type of discrimination does not exist in practice. Not only is there often a lack of awareness among workers of their rights and the extent of those rights, victims of discrimination are also afraid of possible reprisals from their employers.

Consequently, the Committee urges the Government to take all the necessary measures without delay and in consultation with the social partners, to ensure effective protection of women against discrimination on the basis of pregnancy with regard to obtaining and keeping a job and against reprisals for bringing cases of discrimination, including measures aimed at sensitizing judges, lawyers, labour inspectors and bodies responsible for enforcing compliance with the relevant regulations. Please also provide information on the measures taken in this regard by the Department for the Promotion of Working Women and the number of cases of reinstatement of women workers and recognition of maternity benefits which are the result of action taken by the General Labour Inspectorate and the Department for the Promotion of Working Women.

Discrimination on the basis of race and colour. Indigenous peoples. The Committee notes the conclusions of the "Analysis of Racism in Guatemala, 2009" concerning the cost of discrimination on the basis of ethnic group or race against indigenous peoples. It notes, in particular, that according to this study the wage gap between indigenous workers and non-indigenous workers is around 8,500 quetzales per year. It notes that this gap is the result of discrimination and of the different working conditions and levels of education between indigenous persons and non-indigenous persons. With regard to access to education, it also notes that the gap between indigenous persons and non-indigenous persons has been narrowing at the pre-primary and primary levels, but has been widening even further at the middle and university levels. ***The Committee requests the Government to provide information on the measures taken or envisaged to eliminate the gaps between indigenous persons and non-indigenous persons, as identified in the "Analysis of Racism" study, with regard to access to education, employment and occupation and with regard to working conditions, including information on the measures taken in the context of the public policy on coexistence and the elimination of racism, and on the results achieved.***

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

Guinea

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1960)

Article 1 of the Convention. Prohibition of discrimination. The Committee notes with ***regret*** that the Government's report has not been received. It recalls its previous comments regarding section 20 of the Order of 5 March 1987 on the general principles of the public service, which prohibits discrimination only on the basis of philosophical or religious views and sex. ***Recalling that where provisions are adopted to give effect to the principle of non-discrimination contained in the Convention, they should include all of the grounds set forth in Article 1(1)(a) of the Convention, the Committee asks the Government to amend section 20 and to indicate the steps taken in this regard.***

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

Guyana

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

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

Legislation. The Committee recalls that section 9 of the Prevention of Discrimination Act No. 26 of 1997 imposes the obligation on every employer to pay equal remuneration to men and women performing work of equal value, while section 2(3) of Equal Rights Act No. 19 of 1990 provides for "equal remuneration for the same work or work of the same nature", which is a narrower concept than that required by the Convention. Further, the Committee recalls that section 28 of the 1997 Act stipulates that the Act shall not derogate from the provisions of the Equal Rights Act of 1990 but that the Government previously stated that the 1997 Act takes precedence over the 1990 Act. In light of the fact that section 2(3) of the 1990 Act falls short of the requirements of the Convention, the Committee remains concerned about the inconsistency between the above provisions concerning equal remuneration. ***Noting that no progress has been made concerning this matter for a number of years, the Committee asks the Government once again to amend the legislation in question with a view to ensuring that it is in***

accordance with the Convention and to avoid any uncertainties as to the interpretation of the provisions concerned, for instance, through expressly providing that the 1997 Act, in case of conflict, takes precedence over the 1990 Act. The Committee asks the Government to indicate any measures taken or envisaged in this respect.

Application in practice. The Committee recalls its previous comments asking the Government to provide information on the measures taken or envisaged to promote and supervise the application of the equal remuneration provisions of the Prevention of Discrimination Act. The Committee also recalls the communication received from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 which was forwarded to the Government on 13 January 2004 and again on 1 June 2006, and to which the Government has not yet replied. The ICFTU raises concerns regarding the promotion and effective enforcement of equal pay legislation. In this context, the Committee notes the Government's statement that there were no cases of male and female workers receiving different pay for the same work and that it was a long established fact that men and women received equal remuneration both in the public and private sectors. The Committee draws to the Government's attention the fact that the principle of equal remuneration for men and women for work of equal value does not merely require equal pay for the same or equal work but also equal pay for different work that is nevertheless of equal value, as established on the basis of an objective evaluation of the content of the work performed. The absence of differential wage rates for men and women, while necessary in order to apply the Convention, is not sufficient to ensure its full application. *Concerned that the Government's report indicates misunderstandings as to the scope and meaning of the Convention's principle, the Committee considers that training concerning the principle of equal remuneration for labour inspectors and judges, as well as workers' and employers' representatives is essential to effectively ensure the application of the Convention. It asks the Government to indicate in its next report any measures envisaged or taken to ensure the application of the equal pay legislation and the Convention through training and awareness raising and to indicate any steps taken to seek the cooperation of workers' and employers' organizations in this regard. Further, the Committee reiterates its request to the Government to provide information on any judicial or administrative decisions relating to the equal pay provisions of the Equal Rights Act No. 19 of 1990 and the Prevention of Discrimination Act of 1997.*

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

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1975)

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

The Committee recalls its previous observation in which it noted the communication from the International Confederation of Free Trade Unions (ICFTU, now International Trade Union Confederation (ITUC)), of 30 October 2003 pointing to the low representation of women in traditionally male-dominated areas of work, the weak labour force participation of Amerindian women, and the lack of effective procedures dealing with complaints of discrimination. The Committee notes the Government's reply that more and more women are undergoing training and are entering areas of work that had previously been dominated by men. Women are now engaged in technical fields including working as electricians, mechanics and masons, and they make up a large percentage of employees of security firms. Women also represent the largest portion of graduates of the University of Guyana. The Government refers in this regard to statistics showing the number of women in areas of study that were traditionally male. However, these statistics were not attached to the Government's report. The Government concludes that persons are free to choose whatever field of occupation they desire and that the various branches of education are accessible to all.

The Committee notes the developments on women's employment and training mentioned by the Government but wishes to point out that without reliable statistics disaggregated by sex or any other information on the participation of women, as compared to men, in a wide range of occupations and vocational training courses, it is difficult for the Committee to assess whether progress has been made in achieving the objectives of the Convention. The Committee recalls that while some women may in theory be free to choose the occupations or training courses they desire, discrimination often flows from social stereotypes that deem certain types of work as suitable for men or for women. As a result, persons may apply for jobs based on work deemed to be suitable for them, rather than on actual ability and interest. Such stereotypes channel women and men into different education and training and subsequently into different jobs and career tracks which may not be in keeping with their ability or interest. Lastly, the Committee recalls the importance of effective complaints procedures to enforce legislation on non-discrimination and equality in employment and occupation. *The Committee, therefore, requests the Government to provide in its next report information on the following points:*

- (a) statistical data disaggregated by sex on the participation of men and women, including Amerindian women, in the various occupations and sectors of the economy as well as their participation in vocational training courses;*
- (b) the measures taken or envisaged to ensure that policies and plans under its control are not reinforcing stereotypes on the roles of men and women in employment and occupation;*
- (c) the measures taken or envisaged, including in the area of vocational training and education, to encourage women to consider a wider choice of trades and occupations;*
- (d) the measures taken to ensure that the existing complaints procedures allow for effective implementation of the legislation prohibiting discrimination in employment, including on the measures taken or envisaged to prevent delays in litigating complaints. Please also indicate whether any cases alleging discrimination on the grounds set out in the Convention have been brought to the courts, and the outcome thereof.*

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

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

Honduras

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

The Committee recalls that on 22 May 2008 it received a communication from the Honduran National Business Council (COHEP) providing information on the questions raised by the Committee and on the action carried out by the COHEP to contribute to the application of the Convention.

Article 1 of the Convention. Work of equal value. With reference to its previous comments, the Committee notes with **regret** that the Government has not provided information on the amendment of section 44 of the Equal Opportunities for Women Act (LIOM), which the Committee considers to be inadequate to give effect to the principle of the Convention as it establishes the requirement of equal wages for equal work. The Committee further notes that on 25 November 2008 Regulations were adopted under the LIOM, but that section 20(8) of the Regulations does not give expression in law to the concept of “work of equal value”. However, the Committee notes that the second Gender Equality and Equity Plan 2008–15 recognizes as one of the challenges the “full achievement of equal remuneration for women and men for equal work or work of equal value”. ***The Committee once again asks the Government to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and asks the Government to provide specific information on the progress achieved in amending section 44 of the LIOM and section 20(8) of its Regulations.***

Articles 2 and 3. Objective job evaluation. The Committee notes that in relation to the objective evaluation of jobs, the Government refers only to evaluations relating to those seeking jobs, and not evaluations of jobs in themselves. The Committee further notes the indication by COHEP in its communication that it is not aware of public or private initiatives undertaken for the purpose of the objective evaluation of jobs. The Committee also notes COHEP’s concern regarding the absence of a job classification system for the civil service, in accordance with sections 12 to 15 of the Civil Service Act, and their indication that there are significant wage disparities in the public sector. According to COHEP, the absence of a harmonized national classification of occupations with tripartite approval makes it difficult to undertake comparisons between jobs and it is not feasible to establish a comparison of the value of the various tasks. The Committee notes that, according to COHEP, at the end of 2006, an inter-institutional working group was established, composed of representatives of the Secretariat of State for the Labour and Social Security Offices, the National Institute of Statistics, the National Institute of Vocational Training, the Secretariat of State for the Education Office, the Honduran Export Processing Association (AHM) and COHEP, to undertake the revision and harmonization of existing classifications.

The Committee asks the Government to take steps to ensure progress is made in developing a national classification system, based on objective and non-discriminatory criteria free from gender bias. The Government is also asked to provide specific information on the progress made in formulating a job classification system for the civil service, and to undertake an examination of the nature and extent of any wage disparities between men and women in the public sector. Please also provide information on the progress made by the inter-institutional working group to undertake the revision and harmonization of existing classifications.

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

India

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

Assessment of the gender remuneration gap. The Committee notes the detailed statistical information provided by the Government. It notes the Sixth Round of the Occupational Wage Survey on ten engineering industries, the report on “Socio-economic conditions of women workers in selected food processing industries including seafood and marine products”, and information compiled by the National Sample Survey Organization providing statistical data on earnings of men and women by occupation, sector or industry, and level of skills or education. The Committee notes that the data provided show that considerable differentials in the earnings of men and women exist, even where they are engaged in the same occupations or where they have the same level of skills or education. ***The Committee asks the Government to continue to provide detailed statistical information on the earnings of men and women. It also encourages the Government to undertake in-depth studies into the reasons for the wide gender remuneration gap, particularly where men and women engage in the same occupations and have the same levels of skills or education, with a view to promoting equal remuneration for men and women for work of equal value.***

Articles 1 and 2 of the Convention. Equal remuneration legislation. The Committee recalls its previous comments concerning the scope of section 4 of the Equal Remuneration Act 1976, which requires employers to pay equal remuneration to men and women for the same work or work of a similar nature. The Committee observed that section 4 was more restrictive than is required to give effect to the principle of equal remuneration for men and women for work of equal value, as set out in the Convention, because the concept of “work of equal value” goes beyond “similar work” and encompasses work that is of an entirely different nature, but which is nevertheless of equal value. Accordingly, the Committee considered that limiting the scope of the legislation to “work of a similar nature” would unduly restrict the scope of comparison of remuneration received by men and women.

In its report, the Government states that replacing the notion of “work of a similar nature” in section 4 with “work of equal value” was not considered necessary in the Indian context, “especially since the term ‘work of equal value’ has not been quantified”. The Committee notes that the importance of the concept of work of equal value lies in its requirements that the content of the work performed is the focus for comparing the remuneration of men and women, and that the scope of comparison is as wide as possible. ***Noting that the Government refers to six cases decided by the Supreme Court of India, the Committee would be grateful if the Government could provide copies of these decisions. It also requests the Government to review and strengthen the existing equal pay legislation, taking into account the Committee’s general observation of 2006 on the Convention.***

Enforcement of the legislation. Further to the abovementioned judicial decisions, the Committee notes that the Government has supplied statistical data on action taken to enforce the Equal Remuneration Act by the respective authorities at the levels of the central Government and the state governments. As regards the establishments falling under the competence of the Central Government, the number of inspections has increased from 3,004 in 2006–07 to 3,224 in 2007–09. The Committee notes that in a large majority of these inspections violations were identified and rectified, and that in a considerable number of cases prosecutions were launched (3,051 violations detected, 2,712 rectified, 439 prosecutions launched in 2007–08). The Committee notes that the increase in the number of inspections was accompanied by an increase in violations detected. This may indicate that, in practice, violations of the Acts are widespread. According to data received from ten states or union territories 27,290 inspections in establishments falling under the competence of the respective authorities had been carried out in 2006–07, and 24,441 in 2007–08. In 2007–09, 172 violations were detected in these ten states and union territories and 158 were rectified, while six prosecutions were launched. The Committee notes that taken together the number of inspections for these ten states and union territories has decreased. The Committee notes with ***concern*** that only very few violations have been detected, particularly when compared to those inspections undertaken by the central authorities. ***The Committee considers that the above information points to a need to make the principle of equal remuneration for men and women, the Convention, and the pertinent national legislation, better known and understood among workers and employers, and also to a need to strengthen enforcement action, particularly at the level of the states and union territories. The Committee also notes that a more in-depth analysis of the violations detected would provide a basis for further action to ensure the effective application of the Convention. The Committee asks the Government to provide information on the measures taken or envisaged with regard to strengthening enforcement of the legislation applying the Convention. The Committee encourages the Government to consider seeking the ILO’s assistance and support in this regard.***

The Committee previously noted a number of proposals made by the Centre of Indian Trade Unions (CITU) with a view to strengthening the application of the Convention. In reply to these proposals the Government indicates that setting up special units exclusively monitoring the implementation of the Equal Remuneration Act by state governments may not be practicable, given the low number of violations reported. The Government agrees that the involvement of female officers in hearing and deciding equal remuneration complaints can be arranged, subject to availability. As regards the suggestion that trade unions should be allowed to lodge complaints under section 12 of the Act, the Government indicates that the central Government has recognized four institutions as competent to bring complaints, in addition to the aggrieved persons, namely the Centre of Women Development Studies, the Institute of Social Studies Trust, the Working Women’s Association and the Self-Employed Women’s Welfare Association (SEWA) which is a recognized central trade union. ***As stated above, the Committee does not interpret the low level of violations detected by the authorities of the states and union territories as indicating that such violations do not occur; it therefore hopes that measures to strengthen these authorities would be considered. In addition, the Committee asks the Government to provide further information on the participation of women officers in the enforcement of the Equal Remuneration Act in practice, and also to elaborate further on the extent to which the abovementioned institutions have made use of the possibility of bringing complaints under section 12 of the Act and the outcome of such complaints.***

Article 3. Objective job evaluation. The Committee recalls that by ratifying the Convention, India has undertaken to take measures to promote the objective evaluation of jobs on the basis of the work to be performed, where such action will assist in giving effect to the provisions of this Convention. In its previous comments, the Committee noted information indicating that women’s remuneration was determined on the basis of classifications which did not reflect the real nature of the work involved. The Committee considered that there was a clear need to promote the use of objective job evaluation methods, as envisaged in *Article 3*. In its reply, the Government states merely that there is no mention of job classification based on sex or otherwise in the Equal Remuneration Act or the Minimum Wages Acts. While noting the Government’s statement, the Committee emphasizes that the Convention envisages the promotion of objective job evaluation as a key aspect of ensuring equal remuneration for men and women for work of equal value. ***Hence, the Committee trusts that the Government will take the measures necessary to give effect to Article 3 of the Convention with a view to promoting the use of objective job evaluation methods as a means of determining wage rates irrespective of the worker’s sex, and to provide information on any further developments in this regard.***

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1960)***

The Committee notes the Government's report, as well as the observations made by the Akhil Bhartiya Safai Mazdur Congress, a trade union, in their communication dated 28 August 2009 which was forwarded to the Government on 18 September 2009.

Articles 1, 2 and 3 of the Convention. Discrimination based on social origin. The Committee notes the information provided by the Government regarding the implementation of India's quota system for employment by the central and state governments of persons considered to belong to "scheduled castes, scheduled tribes and other backward classes". The Committee notes that as of 1 January 2006 persons considered to belong to the scheduled castes, which amount to 16.23 per cent of the Indian population according to the Eleventh Five-Year Plan (2007–12) ("11th Plan"), were represented in central government services as follows: 13 per cent in group A; 14.5 per cent in group B; 16.4 per cent in group C; and 18.3 per cent in group D (excluding sweepers). In November 2008, a special recruitment campaign was launched to fill up the backlog of reserved vacancies. No new information is at the Committee's disposal regarding the achievements of the reservation system in state government employment. The Committee further notes the detailed information provided on the various programmes and schemes aimed at the educational and economic empowerment of the scheduled castes, including education grants, coaching, loans and subsidies. In this context, the Committee also notes that the 11th Plan points to the need for new measures to address the persisting exclusion and discrimination of the scheduled castes, including with regard to employment. More specifically, the Plan states that there is a need to complement protective legislation with "promotive legislation which should cover the rights of scheduled castes with respect to education, vocational training, higher education and employment" (paragraph 6.48), and it also mentions the possibility of affirmative action in the private sector. ***Recalling that discrimination in employment and occupation against men and women on account of being considered to belong to a certain caste is unacceptable under the Convention and that continuing measures are required to end such discrimination, the Committee requests the Government to continue to provide comprehensive information on the implementation of the various existing schemes and programmes in this regard, including the reservation system for the public service at the central and state levels. The Committee also asks the Government to provide information on the design and implementation of any new measures, including those referred to in the 11th Plan. Finally, the Committee reiterates its request to the Government to provide information on the specific measures taken to launch and intensify awareness-raising campaigns on the prohibition and unacceptability of caste-based discrimination in employment and occupation, including information on the steps taken to seek the cooperation of workers' and employers' organizations in this regard.***

With regard to the enforcement of protective legislation, the Committee notes the Government's indication that the Protection of Civil Rights Act, 1955, which provides punishment for the practice of untouchability, is implemented by the respective state governments and union territory administrations. The Government provided statistical information on the cases handled by the police and the courts. According to this information, the total number of court cases regarding scheduled castes under the 1955 Act was 2,613, only 63 of which resulted in a conviction. Similarly, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which aims at the prevention of offences against persons belonging to scheduled castes and tribes is implemented by the states and union territories. According to the Government's report, there were 104,003 cases before the courts in 2007 under the 1989 Act, out of which 6,505 resulted in a conviction. The statistical information suggests that under both Acts large numbers of cases remained pending. The Committee notes the Government's indications that the Parliamentary Committee on the Welfare of the Scheduled Castes and Scheduled Tribes recommended that the competent central ministries and the National Commission for Scheduled Castes and the National Commission for Scheduled Tribes meet regularly to devise ways and means to curb offences of untouchability and atrocities and ensure effective administration of the two Acts. A dedicated committee was set up for this purpose which held three meetings in 2008–09. The Committee also notes that the 11th Plan called for enforcement of the two Acts in letter and spirit and suggests measures to educate judicial officers, public prosecutors and police officials, with a view to ensuring more and speedier convictions. The Government's report states that some 430 million rupees have been provided to 25 states and union territories to strengthen the enforcement of the two Acts. ***The Committee requests the Government to continue to provide detailed information on the measures taken to ensure strict enforcement of the Protection of Civil Rights Act, 1955, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, including the measures mentioned in the 11th Plan, and on the number and outcome of the cases handled by the competent authorities.***

The Committee recalls its comments over many years regarding the practice of manual scavenging and the fact that Dalits, and very often Dalit women, are usually engaged in this practice due to their social origin in contravention of the Convention. The Committee notes that, according to the Government's report, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, so far had been adopted by 20 states and all union territories. Five states that have not adopted the Act report that they do not have dry latrines or that they are scavenger free; two have adopted their own legislation on the subject. With regard to the Act's enforcement, the Government's report states that the state of Uttar Pradesh had reported 27,114 cases of prosecutions. Enforcement information regarding other states has not been provided. The Committee is also aware that in an order of 8 May 2009 the Supreme Court of India (*Safai Karamchari Andolan and others v. Union of India and others*) noted that a detailed report submitted by the petitioner

showed that scavenger work is widely prevalent in various districts of the state of Rajasthan. The Committee further notes that the Akhil Bhartiya Safai Mazdur Congress provided findings of field research in Solapur and Pandarpur, two cities in the state of Maharashtra. This research found the continuing existence of manual scavenging, and that it was practiced by municipal employees belonging to particular castes. Similarly, the National Action Plan for the Total Eradication of Manual Scavenging by 2007, which was subsequently extended, refers to reports that in several states municipal employees still perform manual scavenging.

The Committee notes that the Government's efforts continued to concentrate on the conversion of dry latrines under the centrally sponsored Integrated Low Cost Sanitation (ILCS) Scheme. Following implementation difficulties, the Scheme has been reviewed and new guidelines have been in effect since February 2008. The Government indicates that, within one year of the revision of the guidelines, the states of Andhra Pradesh, West Bengal, Nagaland and Assam had stated that they had no dry latrines in their states. According to the Government, only four states have reported the existence of such latrines (Bihar, Uttar Pradesh, Uttarakhand and Jammu and Kashmir). Under the revised ILCS Scheme it is envisaged that within a period of three years (2007–10) all remaining dry latrines will be converted. The 11th Plan referred to 342,000 remaining manual scavengers, while according to Government's report a total of 138,464 manual scavengers were still to be liberated under the ILCS Scheme as of 31 March 2009. A Self-Employment Scheme for the Rehabilitation of Manual Scavengers has been formulated to rehabilitate the remaining scavengers in a time bound manner by March 2009 through training, and extension of loans and subsidies.

The Committee notes that the Government has continued to take measures towards the elimination of the practice of manual scavenging. However, the Committee expresses *serious concern* that, despite these efforts, thousands of *Dalit* men and women still find themselves trapped in this inhumane and degrading practice. The Committee is particularly concerned at the apparent weak enforcement of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, and that the practice even continues in employment under the Government's authority contrary to *Article 3(d)* of the Convention. ***The Committee urges the Government to ensure the full enforcement of the 1993 Act and to take all measures necessary to ensure that the practice is eliminated effectively, including through low-cost sanitation programmes and promoting decent work opportunities for liberated scavengers. The Committee requests the Government to provide detailed information on measures taken regarding these issues and the results achieved, including statistical information. Please provide detailed information on: (i) the status of the pending litigation on the issue in the Supreme Court together with copies of any orders that may have been passed by the Court; and (ii) the enforcement of the 1993 Act at the central and state levels.***

Equality of opportunity and treatment of women and men. The Government's report provides a general overview of the various vocational training programmes available to women under the responsibility of the central Government, including statistical information on the number of training institutions. The National Council for Vocational Training has recommended that state governments reserve 25–30 per cent of seats in the general Industrial Training Institute for Women. The Government also highlights the Support to Training and Employment Programme (STEP). It further indicates that the Unorganized Sector Workers Social Security Act, 2008, will facilitate the formulation of policies and programmes for women who have so far been deprived from social security coverage. In addition, the Committee notes that overall women appear to have benefited from the National Rural Employment Guarantee Act, 2005 (NREGA), on an equal footing with men. ***The Committee requests the Government to continue to provide information on the vocational training opportunities provided for women, particularly for jobs and occupations other than those traditionally considered "suitable" for women. The Committee also asks for information supported by statistics as to what extent the NREGA has led to employment of women in rural areas of the different states and union territories. The Committee welcomes the Government's indication that it is engaging in extensive consultations to finalize legislation on the protection of women against sexual harassment, and hopes that such legislation will be adopted in the near future.***

While appreciating the measures reported by the Government with a view to promoting women's equality, the Committee notes from the 11th Plan (paragraphs 4.41–4.46) that the labour force participation of women remains very much lower than that of men. In urban areas unemployment is much higher for young women than for men in the corresponding age group in both the unorganized and the private sectors. According to the Plan's analysis, women's labour force participation remains low principally due to wage rates for women being lower than for men for comparable occupations; to women being denied access to certain occupations; and skill development being provided only in a limited number of occupations. ***The Committee requests the Government to continue to provide detailed information on the measures taken to promote and ensure equality of opportunity in employment and occupation, in rural and urban areas, as well as the private, public and unorganized sectors. In this regard, the Committee also requests the Government to provide statistical information on the participation of men and women in employment, according to sector and employment status, if possible.***

Islamic Republic of Iran

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1964)***

The Committee notes the discussion that took place in the Conference Committee in June 2009. In its conclusions, the Conference Committee noted that, during its examination of this case in June 2008, it had requested the Government to take urgent action on all the outstanding issues with a view to fulfilling its promises of 2006 that it would bring all the relevant legislation and practice into line with the Convention by no later than 2010. The Conference Committee noted with concern the lack of information that had been provided to the Committee of Experts, and the range of serious issues that remained outstanding.

The Committee notes that the Conference Committee, while acknowledging that certain achievements had been made in the past in respect of education, vocational training and employment of women, remained concerned at the lack of evidence of any real progress made with respect to their situation in the labour market. Detailed information on the number of women actually finding employment after their education and training was still lacking, and concerns remained with respect to existing and draft legislation limiting women's employment. The Conference Committee also noted the need for information on the quota system in universities and how it was applied in practice, as well as information on the impact on women's employment of the recent bill limiting working hours for women with children. The Conference Committee expressed continuing concern about the situation of religious and ethnic minorities with regard to their equal access to employment and occupation, and the failure to provide adequate statistical information in this regard. It concluded that the Baha'i continued to be subjected to discrimination as regards access to education and employment without any significant measures being taken by the Government to bring discriminatory practices, including on the part of the authorities, to an end.

The Conference Committee urged the Government to take immediate and urgent action to ensure the full application of the Convention, both in law and practice, and to establish genuine social dialogue in this context. It urged the Government to provide full, objective and verifiable information in its report of 2009 on the application of the Convention, in reply to all the issues raised by the Conference Committee and by the Committee of Experts.

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

...

Legislative developments

The Committee notes the Government's indication that a comprehensive Bill prohibiting any form of discrimination in employment and education has been drafted. The Bill relates to access of all Iranian nationals, irrespective of gender, colour, creed, race, language, religion, ethnic and social background, to education, technical and vocational training, and to job and employment opportunities and similar working conditions. The Government states that violations of the proposed Bill would be subject to very heavy penalties and sanctions, unlike violations of the Constitution or the Labour Law. The Committee notes that this Bill is awaiting approval of the Cabinet of Ministers, and that the Government hopes to receive comments of the Office on the Bill. The Committee understands that the proposed Bill has not yet been sent to the Office with a request for comment thereon. ***The Committee urges the Government to forward the proposed Bill on non-discrimination to the Office for its comments as soon as possible.*** The Committee hopes that in drafting the new law, the opportunity will be taken to prohibit direct and indirect discrimination against nationals and non-nationals, on all the grounds enumerated in the Convention, including political opinion, national extraction and social origin. Noting the concern expressed by the Conference Committee that over the years a number of bills, plans and proposals had been referred to which had not come to fruition, the Committee hopes that every effort will be made to adopt a comprehensive law on non-discrimination which is fully in conformity with the Convention, in the near future.

National equality policy

The Committee notes the Government's indication that the Charter of Citizenry Rights referred to in article 100 of the Fourth Economic, Social and Cultural Development Plan (the Plan) was approved by Parliament in 2007. The Committee also notes from the Government's report that disciplinary measures, including dismissal, were taken by the head of the judiciary against the judges who failed to apply the Charter. As regards article 101 of the Plan, calling for the elaboration of a national plan for the development of "meritorious work" on the basis of a number of principles, including "prohibition of discrimination in employment and profession", the Government indicates that regular meetings with the social partners are held in order to survey and monitor the implementation of this provision. No information is provided with regard to article 130 of the Plan empowering the judiciary to take measures towards the elimination "of all types of discrimination – gender, ethnic and group – in the legal and judicial [field]". ***The Committee requests the Government to provide a copy of the Charter of Citizenry Rights as well as information on its application in practice, and detailed information on any measures taken against judges and other officials failing to respect and apply the rights set forth in the Charter, including any disciplinary sanctions imposed. The Committee also reiterates its request for information on the status of the adoption of the National Plan foreseen under article 101 of the Plan and on any measures taken to implement article 130. The Committee would also appreciate receiving specific information on the outcome of the meetings held to survey and monitor the implementation of article 101 of the Plan, including detailed information on the measures taken to implement this provision. The Committee again requests the Government to provide translated summaries of the evaluation reports prepared pursuant to article 157 of the Plan, and any other information on the implementation of the Plan in practice, and the results achieved with respect to furthering equality in employment and occupation. Please also provide information on any measures taken or envisaged to raise awareness of the Plan, in particular with respect to equality rights. The Committee again requests the Government to provide a copy of the***

Charter of Women's Rights, to clarify how the Charter and the Plan interrelate, and to provide information on any measures taken to implement the provisions of the Charter of Women's Rights.

Equal opportunity and treatment of men and women

With regard to the measures taken to improve women's access to employment and occupation, through increasing access to university and technical and vocational training, the Committee recalls that in June 2008 the Conference Committee, while noting the efforts to promote women's access to university education, also noted the Government's acknowledgement that there remained a long way to go in practice to remove the barriers to women's employment. The Committee notes that in his report on the situation of human rights in the Islamic Republic of Iran, the UN Secretary-General pointed out that "women have limited participation in wage labour outside of the agricultural sector, estimated at 16 per cent, which signifies that the progress achieved in female education in the recent past has not as yet translated into increased women's economic participation" (A/63/459, 1 October 2008, paragraph 51). The Committee also notes the ITUC's allegation that quotas restricting women's access to university have been secretly applied since 2006 in up to 39 fields of study.

The Committee notes that, according to official government statistics collected by the ILO, the unemployment rate for women decreased from 17 per cent in 2005 to 15.8 per cent in 2007. In the same period, however, the number of women in the occupational category of legislators, senior officials and managers, decreased by almost 20 per cent. The Committee also notes the Government's indication that the Deputy Minister for Industrial Relations is responsible for the supervision of the Presidential Circular calling for the guarantee of equal access to women and religious minorities to employment opportunities. Moreover, the Government indicates that various empowerment programmes for women were implemented under article 101 of the Plan. The Committee recalls that the Conference Committee urged the Government to provide the Committee of Experts with the detailed statistics it had been repeatedly calling for in order to allow it to make an accurate assessment of the situation of women in vocational training and employment. The Committee notes that these statistics were not provided. ***The Committee urges the Government to provide detailed statistics on the number of women and men in public and private sector employment, disaggregated by category and level of employment. The Committee also requests the Government to provide information on the number of women participating in the empowerment programmes mentioned in the Government's report. Please also provide more information on the content and impact of these programmes. The Committee also asks the Government to provide a copy of the Presidential Circular referred to above and more detailed information on the role of the Deputy Minister for Industrial Relations in supervising the implementation of the Circular. The Committee again requests the Government to provide information on the number of women trained through the Technical and Vocational Training Organization (TVTO) and on the participation rate of women and men in the various disciplines of technical and vocational training in privately run institutes. The Committee further reiterates its request for information on the activities of the Women's Entrepreneurship Guild as well as on the activities of the Centre for Women and Family Affairs.***

The Committee notes from the ITUC's submission that an increasing number of women are working in temporary jobs and contract employment, and thus are not covered by legal entitlements and facilities, including maternity protection. The ITUC states that since Iranian labour law does not require companies employing less than 20 people to abide by these regulatory protections and women often work in small and medium-sized enterprises, they may in practice face serious discrimination in the labour market. The Committee recalls that the Conference Committee had urged the Government to ensure that all entitlements and facilities are made available to women working in temporary and contract employment. ***Noting that no information has been provided by the Government on this point, the Committee urges the Government to take the necessary measures to ensure that women in temporary and contract employment benefit from all the legal entitlements and facilities, and to provide information on progress made in this regard.***

The Committee recalls the Government's acknowledgement that the existing imbalance in women's participation in the labour market in comparison with that of men "is a direct result of cultural, religious, economic and historical factors". The Government also raised the issue of the difficulty of women balancing work and family responsibilities. The Government indicates that the Ministry of Labour and Social Affairs held regular workshops throughout the country to raise public awareness about ILO standards and the rights set out in the Labour Law. The Committee also notes the Government's indication that various workshops were held at provincial level with a view to "teaching Iranian women how best to balance work and family responsibilities". The Committee refers to its previous comments and stresses that restricting measures to reconcile work and family responsibilities to women reinforces the assumption that women are solely responsible for caring for children. ***The Committee requests the Government to provide detailed information on the measures taken to improve awareness, access and enforcement of equality and non-discrimination rights and policies, as well as on protection and benefits aimed at balancing work and family responsibilities. It also again requests the Government to consider extending the special measures for workers with children to men as well as women.***

The Committee recalls the findings of the technical assistance mission regarding the prevalence of discriminatory job advertisements. ***In the absence of the information previously solicited, the Committee again requests the Government to provide information on measures taken or envisaged to prohibit such practice. Further to its 2002 general observation, the Committee also reiterates its request for information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation.***

Discriminatory laws and regulations

The Committee, as well as the Conference Committee, has raised over a number of years the need to repeal or amend discriminatory laws and regulations. In June 2008, the Conference Committee expressed deep regret that despite the Government's statements that it was committed to repealing laws and regulations that violated the Convention, progress in this regard was slow and insufficient. The Committee notes with regret that despite the repeated call from this Committee and the Conference Committee for the amendment or repeal of the laws and regulations restricting women's employment and the discriminatory application of the social security legislation, the Government reports no new developments since the Conference Committee discussion.

Regarding section 1117 of the Civil Code pursuant to which a husband can prevent his wife from taking up a job or profession, the Government states that due to the existence of section 18 of the Family Protection Law, section 1117 is automatically repealed and courts are not authorized to hear complaints regarding section 1117. The Committee notes from the UN Secretary-General's report that a family protection draft Bill was being debated. However, it is not clear if the reference to section 18 in the Government's report is a provision in the draft Bill. The Committee also notes that the same explanation was provided to the Conference Committee, which nonetheless expressed concern that in the absence of the express repeal of

section 1117, the provision would continue to have a negative impact on women's employment opportunities. *The Committee requests the Government to clarify the content of section 18 of the Family Protection Law, and how it automatically repeals section 1117, as well as to provide information on the status and content of the family protection draft Bill. Noting the concern expressed by the Conference Committee that in the absence of an express repeal of section 1117, it would continue to have a negative impact on women's employment opportunities, the Committee urges the Government to take steps to repeal the provision or to ensure that the public is aware of any consequential repeal due to the adoption of new legislation, and the fact that a husband can as a result no longer prevent his wife from taking up a job or profession. Please provide the Committee with detailed information of steps taken in this regard.*

Regarding the discriminatory provisions in social security regulations, the Government indicates that it is collaborating with the social partners to launch a global plan for social security that would address amendments to the social security regulations. With respect to the limitations on women's access to all positions in the judiciary, with particular reference to Decree No. 55080 of 1979, the Government once again refers to a Bill addressing this issue having been drafted. The Government rejects the existence of any administrative rules restricting the employment of wives of government employees. With respect to the age barrier to women's employment, the Government states that the maximum age for employment is 40 years, not 30, and a five-year extension is possible exceptionally in the civil service. On the issue of the obligatory dress code, the Committee notes that no information has been provided by the Government. *The Committee urges the Government to repeal or amend all laws and regulations restricting women's employment, and the discriminatory application of the social security legislation. The Committee also urges the Government to take measures to address any barriers to women being hired after the age of 30 or 40. Please also provide details of the content and status of the most recent Bill regarding women in the judiciary.*

Discrimination on the basis of religion

In its previous comments, the Committee noted that the situation of unrecognized religious minorities, and in particular the Baha'i, appeared to be very serious, and called on the Government to take a range of measures. The Conference Committee also strongly urged the Government "to take decisive action to combat discrimination and stereotypical attitudes, through actively promoting respect and tolerance for the Baha'i", to withdraw all discriminatory circulars and other government communications, and to ensure that authorities and the public were informed that discrimination against religious minorities, in particular the Baha'i, would not be tolerated. In reply, the Government states generally that a circular was recently issued by the President of the Technical and Vocational Training Organization, providing that all Iranian nationals had free access to vocational training. *Noting that the Committee has been urging the Government to take decisive action to address the very serious situation of discrimination against religious minorities, in particular the Baha'i, and the urgency expressed by the Conference Committee with respect to this matter, the Committee deeply regrets that the Government appears to have taken no action along the lines called for by this Committee or the Conference Committee, and urges it to do so without further delay. The Committee is also once again obliged to request information on the practice of "gozinesh" and on the status of the Bill that had been before Parliament asking for a review of this practice.*

Ethnic minorities

Noting the very general information provided by the Government to the Committee's previous request, the Committee once again asks the Government to provide information on the employment situation of ethnic minority groups, including the Azeris, the Kurds and the Turks, including statistics on their employment in the public sector, and information on any efforts taken to ensure equal access and opportunities to education, employment and occupation for members of these groups. The Committee also reiterates its request for information on the positions from which members of ethnic minorities are excluded on the ground of national security.

Dispute settlement and human rights mechanisms

As no information has been provided regarding the Committee's previous request on this issue, the Committee, stressing the importance of accessible dispute resolution mechanisms to address cases of discrimination, again requests the Government to provide information on the nature and number of complaints lodged with the various dispute settlement and human rights bodies and the courts, including the outcome thereof. The Committee urges the Government to take measures to raise awareness of the existence and mandate of the various bodies, and to ensure the accessibility of the procedures for all groups.

Social dialogue

The Committee previously raised concerns that in the context of the freedom of association crisis in the country, meaningful national-level social dialogue regarding issues related to the implementation of the Convention would not be possible. The Conference Committee also expressed deep concern in this regard. The Committee regrets that the Government has provided no information on this issue. The Committee understands, however, that there has been no improvement in the social dialogue situation in the country. *The Committee, expressing its deep concern at the social dialogue situation in the country, urges the Government to make every effort to establish constructive dialogue with the social partners to address the considerable gaps in law and practice in the implementation of the Convention, and to demonstrate concrete results by 2010.*

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

Iraq

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1963)

Articles 1 and 2 of the Convention. Principle of equal remuneration for work of equal value. Legislation. For many years, the Committee has been drawing the Government's attention to the need to revise section 4(2) of the Labour Code to give full expression to the principle of equal remuneration between men and women for work of equal value. The Committee stresses the importance of enshrining this principle in the legislation since wages for skilled workers are determined by agreement between the worker and the employer. The Committee notes the Government's statement that section 4 of the draft Labour Code provides for equal remuneration for men and women for work of equal value. It further notes that the draft text will be discussed by the State Consultative Council. *The Committee asks the Government to*

continue to provide information on the status of the draft Labour Code and in particular on the progress made with a view to adopting provisions that give full legislative expression to the principle of the Convention. The Committee trusts that the Government will soon be in a position to report progress on the adoption of new provisions on equal remuneration for men and women for work of equal value.

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

Ireland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

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

Articles 1 and 2 of the Convention. Equality of opportunity and treatment of men and women. The Committee recalls its previous comments concerning article 41.2 of the Constitution of Ireland which provides that "the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved" and that "the State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home". The Committee expressed concern that these provisions might encourage stereotypical treatment of women in the context of employment, contrary to the Convention and requested the Government to consider reviewing them. In this regard, the Committee notes that the All-Party Oireachtas Committee on the Constitution revisited the issue of article 41.2 of the Constitution in its Tenth Progress Report of 2006, concluding that a change of these provisions was desirable and recommending amendments. ***The Committee requests the Government to continue to provide information on the progress made with regard to the recommended revision of article 41.2 of the Constitution with a view to eliminating any tension between this provision and the principle of equality of opportunity and treatment of men and women in employment and occupation.***

Article 1, paragraph 1(b). Additional grounds of discrimination. The Committee recalls that, for the purpose of this Convention, the term "discrimination" includes differential treatment based on any of the grounds listed in *Article 1(1)(a)*, as well as on any additional ground as may be determined by the Member concerned in accordance with *Article 1(1)(b)*. In its previous comments, the Committee noted that the Employment Equality Act covers a number of grounds beyond those expressly listed in *Article 1(1)(a)* of the Convention (marital status, family status, age, disability, sexual orientation and membership of the Travelling Community) and invited the Government to indicate whether it considers that these grounds are covered by the Convention in respect of Ireland, pursuant to *Article 1(1)(b)*. In its report, the Government confirms that section 6(2) of the Act includes these additional grounds in the definition of discrimination. The Committee also notes the Government's indication that these provisions were drafted in accordance with the usual legislative procedures, including consultations with employers' and workers' organizations and representatives of the Travelling Community. ***Noting with interest the Government's statement that it considers the grounds of marital status, family status, age, disability, sexual orientation and membership of the Travelling Community to be within the parameters of Article 1(1)(b), the Committee requests the Government to continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment in employment of occupation, with a view to eliminating discrimination based on these additional grounds in respect thereof.***

Article 1, paragraph 2. Inherent requirements of the job. The Committee recalls that section 2 of the Employment Equality Act provides that "persons employed in another person's home for the provision of personal services for persons residing in that home where the services affect the private or family life of such persons" are not considered employees under the Act as far as access to employment is concerned. The term "personal services" includes "but is not limited to services that are in the nature of services in loco parentis or involve caring for those residing in the home" (section 2). The Committee notes that these provisions deprive certain domestic workers from protection against discrimination in respect of access to employment. Noting from the Government's report that this exception is meant to balance the competing rights to respect of one's private and family life and to equal treatment, the Committee notes that these provisions, in practice, would appear to have the effect of allowing employers of domestic workers to make recruitment decisions on the basis of the grounds listed in section 6(2) of the Act, without such decisions being considered discriminatory.

The Committee recalls that the Convention is intended to promote and protect the fundamental right to equality of opportunity and treatment in employment and occupation and that it only allows for exceptions from the principle of equal treatment as far as they are based on the inherent requirements of the particular job. It therefore considers that the right to respect for one's private and family life should not be construed as protecting conduct that infringes on this fundamental right (including conduct consisting of differential treatment of candidates for employment on the basis of any grounds covered by *Article 1* of the Convention where this is not justified by the inherent requirements of the particular job in question). The Committee also notes that the definition of personal services affecting private or family life contained in section 2 of the Act appears to be broad and non-exhaustive, and open for extensive interpretation. The Committee considers that the exclusion of domestic workers from the protection against discrimination in respect to access to employment, as currently provided for in section 2, may lead to discrimination against these workers contrary to the Convention. ***The Committee requests the Government to provide information on the practical application of these provisions, including information on any relevant administrative or judicial decisions. It also requests the Government to indicate whether it is considering amending the relevant parts of section 2 of the Employment Equality Act to ensure that decisions concerning the recruitment of all domestic workers cannot be based on any of the grounds contained in section 6(2) of the Act except where this is justified on the basis of inherent job requirements.***

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

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

Jamaica

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1975)

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

Article 1(b) of the Convention. Legislation – equal remuneration for work of equal value. The Committee has been pointing out for a number of years that section 2 of the Employment (Equal Pay for Equal Work) Act of 1975 by referring to “similar” or “substantially similar” job requirements only applies the principle of equal remuneration for equal work, whereas the Convention provides for equal remuneration for men and women for work of “equal value”, even though the jobs compared are different in nature. Although the Committee has noted in the past the commitment and efforts made by the Government to make progress in reducing the wage differentials between men and women, it regrets that once again the Government states that no consideration has yet been given to the amendment of the abovementioned legislation. The Committee draws the Government's attention to the general observation of 2006 on this Convention underscoring the importance and clarifying the meaning of “work of equal value”. In this observation, the Committee, noting that legal provisions that are narrower than the principle laid down in the Convention hinder progress in eradicating gender-based pay discrimination against women, urges governments to take the necessary steps to amend their legislation. Such legislation should provide not only for equal remuneration for equal, the same or similar work, but should also prohibit pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value. ***The Committee urges the Government to take steps to revise section 2 of the Employment (Equal Pay for Equal Work) Act, 1975, and to indicate the progress made in this regard as well as any other measures taken to ensure conformity with Article 1(b) of the Convention.***

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

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

Japan

Workers with Family Responsibilities Convention, 1981 (No. 156) (ratification: 1995)

The Committee notes the observations of the All Japan Construction, Traffic and Transportation Workers' Union Tokyo dated 13 October 2009, concerning the long hours of bus workers, which the union states are incompatible with taking responsibility for the family, and thus violate the Convention. ***As the Government has not yet had an opportunity to reply to these observations, the Committee invites the Government to provide any information that could be of assistance to the Committee in examining this matter.***

Kazakhstan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

Articles 1 and 2 of the Convention. Equal remuneration for men and women for work of equal value. In its previous comments, the Committee drew the Government's attention to the fact that the right to equal remuneration set out in section 7(2) of the 1999 Labour Act was narrower than the principle of equal remuneration for work of equal value set out in the Convention. In this regard, the Committee notes that the new Labour Code of 2007 contains the same provision in section 22(15) providing that the employee shall have the right to “equal payment for equal labour without any discrimination”. In addition, section 7(1) prohibits sex discrimination in the exercise of labour rights.

The Committee recalls its general observation of 2006 in which it emphasized that the concept of “work of equal value” includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The Committee urged countries still retaining legal provisions that are narrower than the principle of the Convention to amend their legislation to ensure that it not only provides for equal remuneration for equal, the same or similar work, but also prohibits pay discrimination that occurs in situations where men and women perform different work that is nevertheless of equal value.

The Committee notes with ***regret*** that the Government has failed to take these comments into account when adopting the Labour Code of 2007. It also notes that the Committee on the Elimination of Discrimination against Women had similarly called on Kazakhstan to introduce legislative provisions on equal pay for work of equal value (CEDAW/C/KAZ/CO, 2 February 2007, paragraph 24). ***The Committee urges the Government to take the necessary steps to bring the legislation into conformity with the Convention, providing for the right of men and women to equal remuneration for work of equal value. It asks the Government to provide information on the measures taken to this end.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1999)

Articles 1 and 2 of the Convention. Legislative developments. Prohibition of discrimination. The Committee notes that the new Labour Code, which was adopted on 15 May 2007, includes a number of provisions which give effect

to the Convention. Section 4 declares the prohibition of discrimination to be the principle of the labour legislation of the Republic of Kazakhstan, while section 7 sets out this prohibition in more detail:

- section 7(1) provides that everyone shall have equal opportunities to exercise their rights and freedoms in the sphere of labour;
- section 7(2) provides that no one may be subjected to any discrimination in exercising their labour rights based on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations; and
- section 7(3) provides that differences, exceptions, preferences and restrictions determined by requirements inherent in the nature of the work or dictated by the state's concern for people in need of increased social and legal protection, do not constitute discrimination.

The Committee notes that these provisions cover all prohibited grounds listed in *Article 1(1)(a)*, of the Convention, except the ground of colour. It also notes that section 7(2) also includes a number of additional grounds, as envisaged in *Article 1(1)(b)* of the Convention (namely age, physical disability, tribe and membership in a public association). The Committee *regrets* that the ground of citizenship, which was included as a prohibited ground in the previous Labour Code has been removed. ***The Committee requests the Government to provide information on the implementation of the above provisions, including information on any activities undertaken to make these known and information on the number, nature and outcome of discrimination cases dealt with by the courts or the labour inspectorate. In the absence of such information, the Committee requests the Government to take the measures necessary to collect such data, and to indicate the measures taken to that end. The Committee recommends that the prohibited ground of colour is added to section 7(2).***

Equality of men and women in employment and occupation. The Committee notes with *interest* that the new Labour Code grants paid leave to adoptive parents (either the mother or the father) to care for a newly born adopted child (section 194) and unpaid childcare leave until the child reaches the age of three at the parents' choice, either for the father or the mother (section 195). ***The Committee welcomes these measures, in particular those that are available to women and men on an equal footing, and requests the Government to provide information on the extent to which this entitlement is being used by men and women.***

However, the Committee notes that under section 187 of the Labour Code the employer is prevented from either engaging in night work or overtime work women with children under the age of 7 years and other persons bringing up children under the age of 7 years without a mother, or sending them on business trips or to perform rotational work, without their written consent. Under sections 188 and 189, fathers have the right to child-feeding breaks and to part-time work only in respect of children without a mother. The Committee notes that, in accordance with the principle of gender equality, measures aimed at facilitating the reconciliation of work and family responsibilities should be available on an equal footing for women and men. Provisions which reflect an assumption that caring for a child is the primary role of women prolong and reinforce gender inequality in society and the labour market. ***The Committee therefore requests the Government to amend these provisions accordingly.***

Special measures of protection. The Committee notes that, under section 186(1) of the Labour Code, it is prohibited to engage women to perform heavy work or work under harmful and hazardous working conditions. Under section 186(2), it is prohibited for women to lift and move manually weights in excess of the maximum standards established for them. The list of jobs for which it is prohibited to engage women and the maximum weights for women to lift and move manually shall be determined by the state labour authority in agreement with the health authorities. The Committee recalls that special protective measures for women should be limited to safeguarding maternity, and should be proportional to the nature and scope of the protection needed. ***The Committee requests the Government to provide a copy of the list referred in section 186 of the Labour Code for examination by the Committee.***

Draft gender equality legislation. The Committee previously noted that a draft law on equal rights and opportunities for men and women is under consideration. ***The Committee hopes that such legislation can be passed in the near future and requests the Government to provide the text of the law when adopted.***

Practical application. The Committee notes that the Government has not yet replied to a number of requests for information made by the Committee with regard to the application of the Convention in practice. ***The Committee therefore once again requests the Government to provide the following:***

- (i) ***detailed information on the specific measures taken to promote and ensure equality of opportunity and treatment of women and men in employment and occupation, including measures to promote women's access to occupations and employment in areas where they are currently under-represented, including within the civil service;***
- (ii) ***statistical information on the participation of men and women in the labour market (private and public sectors), branch of economic activity, occupational group and status of employment;***
- (iii) ***information indicating how the principle of gender equality has been integrated into the programmes and measures to promote employment, including statistical information on the number of women who have benefited from employment promotion measures;***

- (iv) *statistical information on the position in the labour market of men and women belonging to ethnic or religious minorities, including information on their participation in employment in the civil service; and*
- (v) *information on the measures taken to plan and implement activities to raise awareness of the principles of equality, in cooperation with workers' and employers' organizations as envisaged under Article 3(a) and (b) of the Convention.*

Kenya

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 2001)***

The Committee notes with *satisfaction* the adoption of the new Employment Act 2007 which covers both the private and public sectors. The Act prohibits direct and indirect discrimination and harassment against an employee or a prospective employee on grounds of “race, colour, sex, language, religion, political or other opinion, nationality or ethnic or social origin, disability, pregnancy, mental status or HIV status” (section 5(3)(a)), in respect of recruitment, training, promotions, terms and conditions of employment, termination of employment or other matters arising out of the employment (section 5(3)(b)), and requires employers to pay equal remuneration for work of equal value (section 5(4)). Under the Act, the Minister, labour officers and the industrial court have a duty to promote equality of opportunity in employment in order to eliminate discrimination, as well as to promote and guarantee equality of opportunity for a person who is a migrant worker or a member of his or her family, lawfully in Kenya (section 5(1)(a) and (b)). Employers, including employment agencies, shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice (section 5(2) and (7)). “Employment policy or practice” is broadly defined by section 5(7)(c) of the Act and covers all aspects of employment. Furthermore, the Act prohibits sexual harassment by the employer, employers’ representatives, as well as co-workers (section 6). The definition of sexual harassment includes quid pro quo and hostile environment, and requires employers of more than 20 employees to adopt and implement a policy statement on sexual harassment (sections 6(1) and (2)). Finally, section 5(6) provides for the shifting of the burden of proof to the employer in the case of an alleged discrimination based on section 5. ***The Committee welcomes the provisions concerning non-discrimination and equality in the Employment Act 2007, and requests the Government to provide information on their practical application.***

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

Kuwait

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1966)***

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the resulting conclusions of the Conference Committee. The Committee also notes the Government’s report received in May 2009, and the additional information received in June and September 2009. The Committee welcomes the Government’s efforts to provide specific information, including statistics, in response to many of the points raised by the Committee and the Conference Committee. ***The Committee encourages the Government to continue to collect and provide such information and analysis, which assists it considerably in assessing the progress made in implementing the Convention.***

The Committee notes that the Conference Committee expressed concern at the considerable obstacles to women’s access to a number of posts and occupations, including stereotyped views regarding the role of women. The Conference Committee urged the Government to remove any existing legal obstacles to women’s access to employment and to take proactive measures to address the practical barriers to women’s access to education and training opportunities and to certain posts and careers. The Conference Committee also urged the Government to ensure that effective measures, in law and practice, were put into place to protect all persons, including foreign workers, from discrimination on the grounds of race, colour or national extraction. Noting the particular vulnerability of migrant domestic workers, the Conference Committee urged the Government to pursue efforts to ensure more effective protection in law and practice against discrimination of these workers, on the grounds set out in the Convention, and to ensure that all workers were aware of their rights relating to non-discrimination, and that there was effective enforcement and access to complaints procedures. The Conference Committee stressed that the range of measures should be part of a coherent national policy on equality of opportunity and treatment in employment and occupation. Noting the Government’s request for ILO technical assistance, the Conference Committee expressed the hope that such technical assistance would be provided to enable the Government to apply the Convention in law and practice.

Legislative developments. The Committee notes from the Government’s report that the draft Labour Code is currently before the National Assembly, and that the Government intends to upgrade the provisions of the draft to expressly prohibit direct and indirect discrimination. The Committee also notes the Government’s indication that the draft Labour Code pays special importance to increasing privileges for women. ***The Committee welcomes the Government’s***

expression of commitment to effectively address discrimination in the new Labour Code, and hopes that the new Labour Code will be adopted in the near future and will promote equality of opportunity in employment and occupation. The Committee requests the Government to ensure that the new Labour Code includes provisions explicitly defining and prohibiting direct and indirect discrimination, on at least all the grounds enumerated in Article 1(1)(a), of the Convention (race, colour, sex, religion, political opinion, national extraction and social origin), with respect to all aspects of employment and occupation, and covering all workers, including domestic workers. Please provide information on any developments in this regard. With regard to the “special privileges for women” to be set out in the new Labour Code, the Committee asks the Government to ensure that it does not include protective measures which exclude women from certain work or jobs, based on stereotypical perceptions of their abilities and role in society, as such provisions would violate the principle of equality of opportunity and treatment. The Committee requests the Government to take the necessary steps to ensure that protective measures for women are strictly limited to maternity protection, and to provide information in this regard.

Access of women to particular occupations. The Committee notes the information provided by the Government on the access of women to jobs in the military, the police, the diplomatic corps, the Administration of Justice Division and the Department of Public Prosecutions. The Government states that there is no legal basis to exclude women from any posts.

Regarding the police and the firefighters, the Committee welcomes the Government’s indication that the first group of female police officers have graduated from the police academy, and that the Public Fire Department expects to welcome the first group of graduate female firefighters shortly. The Committee also notes the Government’s indication that for the first time in the history of the country, four women have recently been elected to the National Assembly. ***The Committee requests the Government to provide information on the number of women and men who have successfully completed their training as police officers and firefighters, and how many of those have obtained positions in the police department and the fire department as a result, and at what level, disaggregated by sex.***

With regard to women in the judiciary, the Government states that “women assume in all freedom a number of posts and occupations suitable to their nature as women”, and points to environmental factors, tradition and the nature and responsibility of the job as playing a large part in guiding authorities in appointments. The Government points out that women have been appointed to positions where they are responsible for investigations, providing formal legal opinions and as State lawyers defending the position of the Government. The Committee notes, however, that women do not seem to have been appointed as judges. With respect to the Ministry of Defence, the Government states that 70 per cent of the employees in the support services are women, and that women work as engineers, doctors and administrative staff at military camps. With respect to the diplomatic corps, the Government provides information evidencing that a few women have been appointed to high-level diplomatic positions (six women out of a total of 384 positions); however, the Government states that women generally refrain from such a career as a result of social and family pressures, since they are required to reside outside the country. ***Noting that there continue to be considerable barriers in practice to women accessing high-level positions in occupations under the Government’s control, including due to stereotyped assumptions regarding what is “suitable to their nature”, the Committee urges the Government to take proactive measures to ensure that women have equal opportunities with men to access all positions under the control of the Government, as well as to promote the equal access of women to positions at all levels in the private sector. Please indicate in this context any measures taken or envisaged to address gender stereotypes and the need to balance work and family responsibilities for both men and women.***

Sexual harassment. The Committee notes the Government’s response to its previous request for information on the measures taken to prevent and combat sexual harassment in employment and occupation, indicating that it considers the provisions of the Penal Code, namely sections 191–192, 198–201 and 204, protecting women against rape and immoral acts, to be sufficient. The Committee notes that the provisions referred to by the Government do not explicitly address sexual harassment. The Committee considers that such provisions regarding crimes of a sexual nature are insufficient to address sexual harassment in the workplace, as sexual harassment includes a much broader range of behaviour and practices than those covered by the Penal Code. ***Recalling its 2002 general observation on this matter, the Committee requests the Government to take the opportunity of the drafting of the new Labour Code to include provisions that specifically define and prohibit sexual harassment in the workplace (both quid pro quo harassment and sexual harassment due to a hostile work environment), as well as providing effective remedies, and asks the Government to provide information on any progress made in this regard.***

Discrimination based on race, colour and national extraction. The Committee has raised concerns in the past regarding the apparent absence of measures to ensure that no person, including foreign nationals, is subjected to discrimination based on race, colour or national extraction. The Committee notes from the Government’s report that it is committed to upgrading its legislation in the light of international labour standards, in the current legislative reform process. ***The Committee welcomes the Government’s expression of commitment to address discrimination based on race, colour and national extraction, and asks the Government to include a prohibition of such discrimination in the new Labour Code, along with effective remedies. The Committee also requests the Government to provide information on the progress of amending the Penal Code to address racial discrimination. Noting the Government’s indication that information would be provided in due course on the participation of residents without nationality (“Bidoons”) in the***

labour market, the Committee hopes that the Government will be in a position to provide such information in its next report, including information on the sectors or branches of work in which they are concentrated.

Migrant domestic workers. The Committee previously raised concerns regarding the absence of legislation protecting migrant domestic workers against discrimination, as discrimination is not addressed in the Regulation of Domestic Service Agencies (Act No. 40 of 1992). The Committee had stressed the particular vulnerability of migrant domestic workers, the majority of whom are women, and the importance of ensuring that they are protected against discrimination in all aspects of employment and occupation. The Committee notes the information provided by the Government to the effect that the mandatory model contract for domestic workers has been amended with respect to the minimum wage, the duration of annual holidays, rest periods and compensation for occupational injuries, and payment of the return ticket. The Government also provides information on government accommodation provided to migrant domestic workers, and assistance provided to a number of domestic workers while awaiting wage settlement from their employers. The Committee also notes the information provided on the number of complaints filed against employment agencies, and the Government's indication that it is currently preparing statistics on the penalties imposed on employers and on the owners of employment agencies found in violation. The Committee also notes from the discussion in the Conference Committee, that preliminary research has been undertaken with a view to reviewing the sponsorship system. ***The Committee welcomes the steps taken by the Government to review the sponsorship system, and to provide support to migrant domestic workers, and asks it to provide information on further developments in this regard. The Committee also asks the Government to provide information on the nature and number of complaints submitted by domestic workers, and on sanctions imposed and remedies provided. Please also provide information on any steps taken to provide specific legal protection for migrant domestic workers against discrimination, whether in the context of the new Labour Code or otherwise.***

National equality policy. The Committee notes that in pursuance of a national policy to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating any discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction and social origin, the Government indicates that as well as preparing the new Labour Code, it is undertaking awareness raising aimed at fighting discrimination in all its forms, including through official television stations, and through campaigns launched by the Ministry of Religious Endowment and Muslim Affairs. The Committee recalls the importance of adopting proactive measures in the context of a national equality policy, including with respect to the areas set out in *Article 3* of the Convention, and draws the Government's attention also to Paragraphs 2 to 4 of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), in this regard. ***The Committee asks the Government to continue to provide information on awareness-raising activities relating to the principles of the Convention, and any other measures taken with a view to declaring and pursuing a national equality policy. Noting that the Government in its report again requests ILO technical assistance with respect to the revision of the Labour Code, the Committee hopes that, with ILO assistance, the Government will develop and implement a coherent national policy on equal opportunity and treatment in employment and occupation, a component of which would be the revision of the Labour Code.***

Lebanon

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

Legislation to provide for equal remuneration for men and women for work of equal value. The Committee recalls its previous comments in which it asked the Government to resolve the discrepancy in the national legislation concerning the concept of equal value (i.e. draft section 56 amending the Labour Law provides for equal remuneration for men and women wage earners for work of equal value, and Legislative Decree No. 29 of 13 May 1943 refers to the same basic wages for men and women when performing "equal work and tasks"). The Committee notes the Government's reply that Legislative Decree No. 29/1943 is no longer in force. The Government further confirms that the draft amendment to the Labour Law, which is still being discussed, should be understood within the meaning of *Article 1(b) of the Convention* and the explanations provided by the Committee in its 2006 general observation. ***The Committee urges the Government to adopt draft section 56 of the Labour Law so that finally full legal expression can be given to the principle of equal remuneration for men and women for work of equal value.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1977)

Legislative prohibition of discrimination in employment and occupation. The Committee recalls its previous observation indicating that section 1 (definition of wage earner) and section 35 (protection of women against discrimination) of the most recent version of the draft Labour Law still fell short of prohibiting discrimination in employment and occupation based on all the grounds defined in the Convention. The Committee notes the Government's statement that the commission charged with the revision of the draft Labour Law is still finalizing its work. ***Recalling that the Committee has been drawing the Government's attention to this point for many years, the Committee trusts that the Government will make every effort to ensure that the draft Labour Law will soon be adopted and that its final version***

will include an explicit prohibition of direct and indirect discrimination based on race, colour, sex, religion, national extraction, political opinion and social origin in respect of all aspects of employment. The Committee asks the Government to provide detailed information on any progress made in this regard.

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

Lesotho

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1998)

Articles 1, 2 and 3(c) of the Convention. Discrimination on the basis of sex. The Committee recalls its previous comments concerning the fact that, under customary law and in common law, married women were considered to be minors and therefore could not conclude a contract, open a bank account, obtain a loan or apply for a passport without their husband's consent. In this regard, the Committee notes with **satisfaction** that the Legal Capacity of Married Persons Act enacted in 2006 repeals "common law, customary law and any other marriage rules in terms of which a husband acquires marital powers over the person and property of his wife" (section 3(1)). The Committee notes that the Act removes restrictions on the legal capacity of married women as regards the following: (a) entering into a contract; (b) suing or being sued; (c) registering immovable property in her name; (d) acting as an executive of a deceased's estate; (e) acting as a trustee of an estate; (f) acting as a director of a company; (g) binding herself as surety; and (h) performing any other act which was restricted by any law due to marital power before the commencement of the Act (section 3(3)). The Act also provides for spouses "married in community of property" to have equal powers (section 5). ***The Committee requests the Government to provide detailed information on the measures taken to ensure the Act's full implementation and on its impact on women's employment and access to occupations. In this regard, the Committee requests the Government to provide information on any judicial decisions issued enforcing the Act's provisions and on the measures taken to raise awareness of the Act. The Committee also requests the Government to provide information on any measures taken specifically to prevent continued application, in practice, of customary law regarding marital powers restricting women's equality in employment and occupation.***

Measures to promote equality of opportunity and treatment of men and women in employment and occupation. The Committee recalls its previous comments concerning the participation of men and women in the labour market, requesting the Government to provide information on the measures taken to ensure that men and women enjoy equal employment opportunities in all sectors and industries, based on merit and excluding stereotypical considerations. In this regard, the Committee notes that, during the Extraordinary Meeting of the African Union Conference of Ministers of Gender and Women's Affairs held in Maseru on 18 December 2008, the Prime Minister announced plans to set up a Gender Commission which would provide support for the implementation of the 2003 Gender and Development Policy and that the ministry responsible for gender issues is establishing a women's credit scheme to stimulate self-employment. The Decent Work Country Programme (2006–09) document indicates that job cuts in the textile industry severely impacted on women's job opportunities and identifies job creation as a priority area to be addressed. ***The Committee requests the Government to provide information on the establishment of the Gender Commission and its activities to promote gender equality in employment and occupation, the implementation of the women's credit scheme, as well as information on any other measures taken to promote and ensure equality of opportunity and treatment of men and women in employment and occupation. In this context, the Committee requests the Government to indicate the measures taken to ensure that men and women benefit from job-creation programmes on an equal footing. Noting that updated information on the participation of men and women in employment is not yet available, the Committee requests the Government to provide such data as soon as possible.***

Equality of opportunity and treatment irrespective of race, colour or national extraction. The Committee previously noted that a Race Relations Bill, 2004, had been drafted which prohibits racial discrimination in respect of access to schools, services and public facilities. The Committee had also noted information concerning ethnic tensions between the Basotho and ethnic Asian communities, including at the workplace. In this regard, the Committee notes from the Government's report that no further developments have occurred with regard to practical measures to ensure equality of opportunity and treatment of all workers in Lesotho, irrespective of race, colour or national extraction. ***The Committee requests the Government to indicate whether any progress has been made with regard to adopting legislation addressing racial discrimination. Please also provide information on the employment situation of the various ethnic communities, and on any measures taken to promote and ensure equality in employment and occupation, irrespective of race, colour or national extraction.***

Article 3(a). Cooperation with workers' and employers' organizations. The Committee notes the Government's indication that it had not yet been able to take any action to seek the cooperation of workers' and employers' organizations with a view to promoting the application of the Convention. ***The Committee encourages the Government to take active steps to seek the cooperation of the social partners with a view to discussing and deciding on specific measures to promote equality at work, including through awareness raising and training on the principles of the Convention and the non-discrimination provisions contained in the legislation. The Committee requests the Government to provide information on any measures taken to this end.***

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

Libyan Arab Jamahiriya

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) **(ratification: 1961)**

Discrimination on the basis of race, colour or national extraction. The Committee recalls its previous observation in which it expressed regret regarding the lack of measures taken by the Government to address discrimination against foreign workers, especially those originating from sub-Saharan Africa, on the basis of race, colour or national extraction in employment and occupation. The Committee **regrets** that the Government continues to give general replies and it is concerned at the Government's apparent lack of consideration of the need to take active measures to protect both citizens and non-citizens against ethnic and racial discrimination. Without specific information on the actual situation of foreign workers from sub-Saharan Africa in the Libyan labour market, and on the measures taken to promote and ensure their equality of opportunity in law and in practice, it is difficult for the Committee to assess to what extent the Convention is being effectively applied in their regard. ***The Committee urges the Government to take immediate steps to examine the situation of alleged racial and ethnic discrimination against foreign workers originating from sub-Saharan Africa, and to report on the findings. The Committee also urges the Government to provide detailed information on all measures it is taking to prevent and eliminate the occurrence of ethnic or racial discrimination in law and in practice in all aspects of employment and occupation, and to take measures to promote tolerance, understanding and respect between Libyan citizens and workers from other African countries.***

Lack of national policy on equality. In previous observations, the Committee expressed serious concern about the persistent lack of information in the Government's report on its obligation under *Article 2 of the Convention* to declare and implement a national policy on equality with respect to all the grounds covered by the Convention. The Committee recalled that Act No. 20, 1991, on the promotion of freedom only concerned equality between men and women and that there was no comprehensive legislation to prevent and prohibit direct and indirect discrimination in all aspects of employment and occupation on the grounds contained in *Article 1(1)(a)*, of the Convention. The Committee **regrets** that the Government continues to maintain that the principle of equality and prohibition of discrimination is reflected in the national legislation but fails to provide any information about the concrete measures taken to declare and pursue a national policy on equality in employment and occupation with respect to all the grounds covered by the Convention. ***The Committee therefore urges the Government to take immediate steps to declare and pursue a national policy on equality of opportunity and treatment in employment and occupation with respect to the grounds of race, colour, religion, political opinion, national extraction and social origin. Noting that the new Labour Code has been submitted to the General People's Congress, the Committee firmly hopes that the Code will contain provisions clearly prohibiting direct and indirect discrimination in all aspects of employment and occupation on all the grounds contained in the Convention, and requests the Government to provide information on status of the adoption of the Code.***

Equality of opportunity and treatment between men and women with respect to employment and occupation, vocational training and placement services. The Committee recalls its previous observation in which it had noted that, while increasing, women's economic activity remained low (29.59 per cent). The Committee further recalls Decision No. 258, 1989, of the General People's Committee relating to the rehabilitation and training of Libyan women which provides that all workplaces are obliged to employ women who have been referred to them by the employment offices (section 2). Decision 258 also provides for the establishment of municipal employment units responsible for providing job opportunities to women and for the formulation of a specific training programme for women (sections 3 and 4). The Committee had expressed concern that the practical effect of certain provisions in Decision No. 258, 1989 referring to "suitable job opportunities to women", "suitable to women's nature and social conditions" or "suitable their psychological and physical make-up" could result in gender inequalities in the labour market, and encourage occupational gender segregation.

The Committee notes that with respect to access to employment the Government's report merely includes information previously provided regarding the access of women in certain government, judicial and public prosecution posts and in the judicial administration. With respect to access to vocational training, the Government replies that there are no areas of education or training prohibited to women and that in 2007 women represented 69.2 per cent of the university graduates, accounted for 39.6 per cent of the higher education graduates and 44.2 per cent of the graduates of intermediate technical schools. The Committee notes this information but considers it to be insufficient to assess to what extent real progress has been made with respect to the promotion of women's participation in all fields of study and in a wide range of job opportunities at all levels. ***The Committee therefore urges the Government to provide full information on the following:***

- (i) ***the meaning of "suitable job opportunities to women", "suitable to women's nature and social conditions" or "suitable to their psychological and physical make-up" referred to in Decision No. 258, 1989, of the General People's Committee on the rehabilitation and training of women;***

- (ii) *the concrete measures taken or envisaged to ensure that the practical effect of Decision No. 258, 1989, does not lead to women being excluded or discouraged from participating in vocational training courses or being denied job opportunities in traditionally male areas, and the results achieved;*
- (iii) *detailed statistical data disaggregated by sex on the employment of men and women in the various occupations and sectors of the economy, including their employment in high-level posts in both the public and the private sectors;*
- (iv) *the practical effect given to sections 2 to 4 of Decision 258, 1989, and their impact on improving the position of women in the labour market; and*
- (v) *detailed statistical data disaggregated by sex on women's and men's participation in all fields of vocational training and education, and the measures taken to ensure that women are offered a wide range of job opportunities at all levels, including in sectors in which they are currently absent or under-represented.*

Lithuania

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1994)

Assessment of the gender wage gap. In its previous comments, the Committee recalled the observations submitted by the trade union Lietuvos Darbo Federacija (LDF) concerning the continued existence of a gap between men's and women's remuneration in spite of the legislative provision for equal remuneration, and noted that since 2000 the gap had been widening in the private sector. The Committee notes from Eurostat that the differential in men's and women's average gross hourly earnings has continued to increase from 13.2 per cent in 2002 to 17.1 per cent in 2006 and 20 per cent in 2007. The Committee notes that the statistics provided by the Government confirm that this trend mainly concerns the private sector where the gender wage gap has steadily increased from 14.6 per cent in 2002 to 22.2 per cent in 2007. The Committee also notes that, although no further widening of the gap was registered in the public sector, the progress made in reducing the gender wage gap appears slow as the disparity between the remuneration received by men and women has remained around 18 per cent since 2005. The Committee further notes that in 2007 the widest gender wage gap existed in the financial mediation (42.6 per cent) and manufacturing (29.1 per cent) sectors. The Committee notes the Government's indication that under the Programme on Equal Opportunities for Men and Women (2005–09), various workshops were organized with the aim of overcoming traditional stereotypes concerning women's role in economic activities. A number of projects to this end were also carried out by scientific institutions and women's organizations under European Union Structural Funds. **The Committee therefore urges the Government:**

- (i) *to step up its efforts to reduce the gender wage gap, particularly in the private sector, and to provide full information on the measures taken in this regard and the impact thereof, including measures pursuant to the Programme for Equal Opportunities for Women and Men and the European Union Structural Funds;*
- (ii) *to analyse the underlying causes of the present differentials in women's and men's remuneration levels and to take measures to address them accordingly; and*
- (iii) *to collect and submit statistical information on the distribution of women and men in the different sectors of economic activity, occupational categories and positions and to continue to provide statistical data on the levels of women's and men's earnings.*

Articles 3 and 4 of the Convention. Objective job evaluation. Cooperation with workers' and employers' organizations. In its previous comments, the Committee noted with interest the adoption by the Tripartite Council of the "Methodology for the Assessment of Jobs and Positions" which was recommended for use by enterprises, institutions and organizations. It also noted that on 12 June 2005 trade unions and employers' organizations signed a bilateral agreement on the application of the Methodology. The Committee notes the Government's indication that in 2009–10 the practice of applying the Methodology will be reviewed. **The Committee asks the Government to provide information on the outcome of the review of the application of the Methodology for the Assessment of Jobs and Positions and reiterates its request for information on how collective agreements have been used to promote objective job evaluation as a means to ensure that remuneration for women and men is determined in a non-discriminatory manner. Please also provide information on the number of undertakings applying the Methodology.**

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1994)

Legislative developments. The Committee notes with *interest* the amendments to the Law on Equal Opportunities for Women and Men adopted on 18 December 2007, pursuant to which the burden of proof has been shifted from the alleged victim of discrimination to the person or institution against which a complaint is filed (section 2(1)). The Committee also notes that a second paragraph was added to section 9 of the Law providing that a workers' or employers' organization or any other legal persons may represent the alleged victim of discrimination in judicial or administrative procedures upon receiving his or her written consent. **The Committee asks the Government to provide information on the**

number, nature and outcome of cases brought pursuant to the Law on Equal Opportunities for Women and Men, as amended.

Practical application. In its previous comments, the Committee noted the observations of the Lietuvos Darbo Federacija (LDF) indicating, among other things, that workers continue to experience discrimination on the basis of gender, age, sexual orientation and family status despite the fact that the Labour Code prohibits such treatment. Accordingly, the Committee urged the Government to take all necessary steps to ensure that the legislation is known, understood and observed in practice, and requested information on the measures taken to this end and on the number, the nature and the outcome of cases concerning discrimination in employment and occupation addressed by the competent authorities. The Committee notes from the Government's report that in 2006 the National Antidiscrimination Programme for 2006–08 was launched with the objective of promoting the implementation of the legislation establishing the principle of non-discrimination and equal opportunities and of raising public awareness of the relevant provisions, the measures for protection and the possible manifestation of discrimination. The Committee also notes that a similar programme was drafted for the period 2009–11. ***The Committee requests the Government to provide detailed information on the measures taken to implement the National Antidiscrimination Programme and to submit a copy of the last annual report on its implementation. The Committee also requests the Government to indicate whether the draft programme for 2009–11 has been adopted and, if so, to provide information on its implementation. The Committee also reiterates its request for information on the number, nature and outcome of cases concerning discrimination in employment and occupation which have been dealt with by the competent authorities.***

The Committee notes with ***regret*** that the Government's report again contains no reply to its previous comments concerning discrimination on the basis of political opinion. It is therefore bound to repeat the relevant parts of its previous observation, which read as follows:

Discrimination on the basis of political opinion. The Committee recalls its previous comments regarding section 9(6)(3) of the Act on Civil Service of 8 July 1999 (No. VII-1316), which provided that former staff officers of the USSR State Security Committee shall not be eligible for the civil service. The Committee expressed concern that this provision could amount to discrimination on the ground of political opinion. The Committee requested the Government to confirm that the exclusion established under section 9(6)(3) of the Act on Civil Service had been abolished and to provide a copy of the Act as in force. The Government was also asked to indicate any additional grounds for non-eligibility that may have been adopted in any laws.

The Committee notes that the Government's report contains no information concerning these matters. It nevertheless notes from the official translation published by the *Seimas* of the Act on Civil Service of 8 July 1999 (No. VII-1316), as amended on 23 April 2002 (No. IX-855), that section 9(6)(3) has been repealed, while the new section 9(3) states generally that persons shall not be eligible for the civil service in case this is provided for by other laws. The Committee also notes that restrictions not only in respect of access to employment in the civil service but also in the private sector are provided for in the Act on the Evaluation of the USSR State Security Committee (NKVD, NKGB, MGB, KGB) and the Present Activities of Former Permanent Employees of the Organization of 16 July 1998, which entered into force on 1 January 1999 ("SSC Act"). Section 2 of the SSC Act provides as follows:

For a period of ten years from the date of entry into force of this Act, former employees of the SSC may not work as public officials or civil servants in government, local or defence authorities, the State Security Department, the police, the prosecution, courts or diplomatic service, customs, State supervisory bodies and other authorities monitoring public institutions, as lawyers or notaries, as employees of banks and other credit institutions, on strategic economic projects, in security companies (structures), in other companies (structures) providing detective services, in communications systems, or in the educational system as teachers, educators or heads of institutions[;] nor may they perform a job requiring the carrying of a weapon.

(Judgement of 27 July 2004, in the case of *Sidabras and Džiautas v. Lithuania*, paragraph 24)

The Committee notes that the European Court of Human Rights, in its judgement of 27 July 2004, in the case of *Sidabras and Džiautas v. Lithuania*, held that the restrictions imposed under the SSC Act on the applicants to apply for private sector jobs violated their rights under article 14 (prohibition of discrimination) in conjunction with article 8 (private life) of the European Convention on Human Rights. Taking the Committee of Expert's surveys and observations concerning similar situations into account, the Court held that section 2 of the SSC Act was a disproportionate measure. In the Court's view, such a legislative scheme must be considered as lacking the necessary safeguards for avoiding discrimination and for guaranteeing adequate and appropriate judicial supervision of the imposition of such restrictions (paragraph 59). In the case of *Rainys and Gasparavičius v. Lithuania* (judgement of 7 April 2005), the Court reached the same conclusion in respect of the applicants' dismissal from private sector jobs on the basis of their status as "former permanent employees of the SSC".

The Committee also notes that the European Committee on Social Rights, in its 2006 conclusions concerning Lithuania, considered that the situation described above was not in conformity with the European Social Charter. That Committee concluded that while the measures in question served the legitimate purpose of protecting national security, they are not necessary and proportionate in that they apply to a large field of employment and not solely to those services which have responsibilities in the field of law and order and national security or to functions involving such responsibilities.

The Committee recalls that Convention No. 111 provides protection from discrimination in respect of access to employment and work in the public and private sectors. It recalls that requirements of a political nature can be set for a particular job but, to ensure that they are not contrary to the Convention, they should be limited to the characteristics of a particular post and be in proportion to its labour requirements. The Committee observes that the exclusions provided for under section 2 of the SSC Act apply broadly to employment in the public sector and to parts of the private sector rather than to specific jobs, functions or tasks (with the exception of the references to "lawyers or notaries", and "teachers and educators or heads of institutions" in educational institutions). The Committee is concerned that these provisions appear to go beyond justifiable exclusions in respect of a particular job based on its inherent requirements as provided for under *Article 1, paragraph 2, of the Convention*. It recalls that in order to ascertain whether a distinction could be permissible under *Article 1(2)*, careful examination of each individual case is required. For measures not to be deemed discriminatory under *Article 4*, they must be measures affecting an individual on account of activities he or she is justifiably suspected of, or proven to be engaged in, which are prejudicial to the security of the

State. The application of such measures must be examined in the light of the bearing which the activities concerned may have on the actual performance of the job, task or occupation of the person concerned. The Committee also notes that in cases where persons are deemed to be justifiably suspected of or engaged in activities prejudicial to the security of the State, the individual concerned shall have the right to appeal to a competent body in accordance with national practice. As stressed in the Committee's 1996 Special Survey, it is important that the appeals body is competent to hear the reasons for the measures taken against the appellant and to afford her or him the opportunity to represent her or his case in full (paragraph 129).

The Committee considers that the broad exclusion of "former permanent SSC employees" from work in the private and public sectors is not sufficiently well-defined and delimited to ensure that it does not lead to discrimination in employment and occupation based on political opinion. The Committee is concerned that the operation of this scheme may have deprived a considerable number of workers of their human right to equality of opportunity and treatment in employment and occupation. *While noting that the scheme provided for under the SSC Act is due to expire on 1 January 2009, the Committee urges the Government to revise the provisions concerned and, in doing so, to have recourse to the indications provided by the Committee in its General Survey of 1988 on equality in employment and occupation, in particular paragraphs 126, and 135–137, and of paragraphs 192–202 of the Special Survey of 1996.*

The Committee requests the Government to provide information on the measures taken to bring the legislation concerned into conformity with the Convention. It also requests the Government to provide detailed information on the practical application of the SSC Act, including information on the following:

- (a) *the number of persons that are considered "former permanent SSC employees" and the number of such persons that have been dismissed from private or public employment or who had their application rejected;*
- (b) *the procedural protections of appellate review available to affected persons, and information on the outcome of any administrative or judicial decisions relevant to the application of these provisions; and*
- (c) *any measures taken or envisaged to remedy the situation of persons excluded from employment and occupation as a result of national law and practice that is contrary to Lithuania's international obligations.*

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

Madagascar

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1962)

Equal remuneration for work of equal value. Legislation. The Committee notes that section 53 of Act No. 2003-044 of 28 July 2004 issuing the Labour Code provides that for the same vocational qualifications, the same job and work of equal value, wages shall be equal for all workers irrespective of their origin, colour, national extraction, sex, age, union affiliation, opinions and status under the conditions set out in that chapter. In its previous comments the Committee emphasized that such provisions appeared to be more restrictive than those of the Convention since they restrict the application of the principle to identical jobs. It notes the indication in the Government's report that this provision is applied more broadly in practice since there is an exact correspondence with the lowest category of job classification. However, the Committee would like to draw the Government's attention to its general observation of 2006, in which it underlines the importance of establishing the principle of the Convention in the legislation in order to eliminate pay discrimination in situations where men and women carry out work which is different but of equal value. The Committee emphasizes that the concept of "work of equal value" encompasses work that is of an entirely different nature but nevertheless of equal value and that, in order to determine whether different jobs are of equal value, there has to be an examination of the respective tasks involved, on the basis of entirely objective and non-discriminatory criteria in order to avoid an assessment being tainted by gender bias. *The Committee asks the Government to take the necessary steps to ensure that section 53 of the 2004 Labour Code is amended in order to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, in accordance with the Convention, and to supply information on the measures taken to this end.*

Collective agreements. Discriminatory provisions. With regard to the procedure concerning the application of section XII of the Air Madagascar collective agreement relating to conditions of work for commercial air crews, which sets the retirement age at 50 years for men and 45 years for women, the Committee notes that the Court of Appeal of Antananarivo referred in its ruling of 5 April 2007 to the present Convention as ratified by Madagascar and considered that since section XII of the collective agreement provides for different treatment to the detriment of female air crew members, this constitutes gender-based discrimination. Ruling on the merits of the case, the Court of Appeal thus upheld Social Judgement No. 84 of 26 March 1999, which found that there had been unfair dismissals and ruled that the employer must pay damages and interest to the complainants. *Noting this information with interest, the Committee asks the Government to indicate whether this Court of Appeal ruling has had an impact on the employment and remuneration of the female and male air crew members concerned. The Committee also asks the Government to indicate the measures taken to encourage the social partners to remove discriminatory provisions constituting obstacles to equal remuneration for men and women for work of equal value from collective agreements.*

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

Malaysia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Articles 1 and 2 of the Convention. Application in law and practice. In its previous comments, the Committee welcomed the addition of gender to the prohibited grounds of discrimination contained in article 8 of the Constitution. Noting, however, that this provision only protects individuals from discrimination by the State or its agencies and does not reflect fully the principle of equal remuneration for work of equal value, the Committee remained concerned about the lack of a provision reflecting the principle of the Convention in the Employment Act or in the Wages Council Act. The Committee also stressed that the lack of court cases concerning discrimination in remuneration based on sex, rather than indicating an absence of discrimination, could in fact indicate the lack of an appropriate legal basis or procedures for bringing these claims to the attention of competent bodies, and a lack of public awareness of the principle of the Convention and of the existing remedies under the law. The Committee further emphasized that patriarchal attitudes and stereotypes regarding the roles and responsibilities of women and men in society regularly result in gender-biased undervaluation of the work performed by women and discriminatory determination of wages, benefits and other forms of remuneration received by them. The Committee therefore considered that specific measures should be taken, in consultation with the social partners, to ensure the full application of the Convention in law and practice, including a review of the current legislation with a view to giving legislative expression to the principle of equal remuneration for men and women for work of equal value, and ensuring that it covers all the elements of remuneration indicated in *Article 1(a)* of the Convention.

The Committee notes that the Government expresses the view that the purpose of the Convention is that no employer is allowed to discriminate against workers on the basis of gender and that it provides for equal remuneration for the same work or work of a similar nature. The Government also states that the concept of equal remuneration, if based only on job evaluation and analysis, could be considered to be in conflict with the practice of determining remuneration on the basis of other factors such as academic qualifications or length of service. The Committee notes that, according to the Government, equal pay legislation would be incompatible with the practices of Malaysian industries, as under such legislation wage rates would be determined on the basis of a “politically motivating or social justice related factor”, rather than on the basis of productivity. In this regard, the Committee notes that promotional activities on the implementation of the “productivity linked wage system” (PLWG) are being carried out by the Industrial Relations Department. The Committee further notes the Government’s indication that in practice there is no discrimination in remuneration between men and women performing jobs of “the same nature and category” and that no cases of gender discrimination in respect of remuneration have been dealt with by the labour inspectors and the competent courts of law. The Government also states that in the unionized sectors remuneration is fixed by collective agreements, and, the question of discrimination would not arise.

The Committee concludes from the views expressed by the Government that there is a serious misunderstanding as to the meaning of the provisions of the Convention, their scope, and application in practice. At the outset, the Committee points out that the Convention places upon ratifying Members of the ILO the obligation to ensure respect for the principle of the Convention, wherever the State is the employer or is in a position to intervene in the wage-fixing process, and to promote its application in other cases, through all appropriate means. In this connection, the Committee considers that the adoption of legislation which gives effect expressly to the principle of equal remuneration for men and women for work of equal value is essential in order to promote and ensure its application, as required by the Convention. The Committee emphasizes that governments must act in good faith and cannot evade their obligations on the pretext that they are prevented from interfering in the wage-fixing process (see the General Survey of 1986 on equal remuneration, paragraph 29). Recalling its 2006 general observation, the Committee also wishes to stress that the principle of equal remuneration for work of equal value includes but goes beyond equal remuneration for “equal”, the “same” or “similar” work, and that it also encompasses work that is of an entirely different nature, which is nevertheless of equal value. The application of the principle presupposes that work performed by women and men is compared and evaluated on the basis of objective factors, such as skill, effort, responsibilities or working conditions. In this regard, *Article 3* of the Convention envisages the promotion of objective job evaluation methods. Such methods are particularly important in order to avoid the discriminatory undervaluation of jobs in which women are concentrated. The Committee emphasizes that the application of the principle of equal remuneration for women and men for work of equal value by no means excludes consideration of productivity-related criteria, length of service or relevant academic requirements, in the setting of remuneration, as long as these criteria are used in an objective and non-discriminatory manner. ***In light of the above, the Committee asks the Government:***

- (i) to take the necessary steps, in consultation with the social partners, to review the legislation so as to incorporate expressly the principle of equal remuneration for women and men for work of equal value, taking into account that it has to be applied to all the elements of remuneration as defined in Article 1(a) of the Convention;***
- (ii) to take measures to promote the development and use of objective job evaluation on the basis of the work to be performed in line with the indications provided in the general observation of 2006 on this issue;***
- (iii) to take appropriate measures to raise awareness and promote public understanding of the principle of the Convention;***

(iv) *to consider providing specific training on the concept of “work of equal value” and the issues relating to the application of the Convention to judges, labour inspectors and other relevant public officials, such as members of the inter-agency committees established by the Cabinet Committee on Gender Equality to review the national legislation ; and*

(v) *to provide information on any steps taken and results achieved regarding the above.*

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

Mexico

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1952)

Equal remuneration for men and women for work of equal value. The Committee notes that, according to the Government, there have been no changes to the legislation concerning the principle of equal pay for work performed in the same posts, working day and conditions of efficiency. The Committee reiterates that section 86 of the Federal Labour Act, which provides that “there shall be equal pay for equal work performed in the same post, for same working day hours of work and conditions of efficiency”, does not give effect to the principle set out in the Convention of equal remuneration for work of equal value. Work of equal value covers not only work that is equal, the same or similar but also different work in different jobs and different sectors, which is nevertheless of equal value. ***The Committee therefore asks the Government once again to take steps to bring its legislation into conformity with the Convention and to provide information on the measures taken.***

Wage gap. The Committee notes the statistical data provided by the Government. In its previous comments, the Committee noted that, according to the report, the revenue gap between men and women was 31.1 per cent in 2006. The Government indicates that the revenue of men and women are traditionally compared based on net monthly income and that, according to this criterion, there has been a slight downward trend in recent years with regard to the gap, which has ranged from 43.9 per cent in 2000 to 32 per cent in 2007. Furthermore, it indicates that if the earnings per hour worked are compared based on the average income divided by the number of hours actually worked, the gap is reduced to 5 per cent on average. As the Government points out, the 5 per cent is an average across different branches of activity and the Committee notes that these differences are significant. There is a 0.6 per cent gap in wholesale trade, for example, and a 68.8 per cent gap in corporate management. In this regard, the Committee further notes that there is a gap per hour of 55 per cent in health and social assistance, 41.3 per cent in professional, scientific and technical services, 35.2 per cent in information and mass media and 39.5 per cent in manufacturing industries. The Committee considers that examining the gap according to branch of activity may help to uncover the reasons for the gap and facilitate appropriate action to reduce it, whereas the average gap across sectors does not help in investigating its origins. ***The Committee therefore asks the Government to examine in more detail the reasons for the gap in those branches in which the gap is 30 per cent or more and to provide detailed information on this matter. The Committee also asks the Government to continue providing information on any changes in the wage gap according to hours worked and branch of activity.***

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

Republic of Moldova

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1996)

Discrimination on the basis of colour. Further to its previous comments on the absence of any reference to the ground of colour in the anti-discrimination provisions of the Labour Code, the Committee notes the Government’s explanation that “colour” would be covered by section 8(1) of the Code as it falls under the “other criteria which are not linked to the professional qualifications of the workers”. The Committee also notes from the Government’s report under the Framework Convention for the Protection of National Minorities that a draft law on preventing and combating discrimination is being drawn up which will cover, among others, the areas of employment and education, thus complementing and clarifying the existing provisions of the Labour Code (ACFC/SR/III(2009)001, 24 February 2009, pages 7–8). ***Recalling once again the importance of including explicit references to all the grounds enumerated in Article 1(1)(a), of the Convention in national legislation prohibiting discrimination (see paragraph 206 of the Special Survey on equality in employment and occupation, 1996), the Committee encourages the Government to consider inserting an explicit prohibition of discrimination covering all grounds enumerated in the Convention, including colour, in the law on preventing and combating discrimination and requests it to provide a copy of the law once it has been adopted. The Committee also requests the Government to provide information on the practical application of section 8(1) of the Labour Code to cases of discrimination based on colour.***

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

Mozambique

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1977)

Articles 1 and 2 of the Convention. Application of the principle of equal remuneration for work of equal value in law and practice. Over the years, the Committee has been emphasizing the need to ensure the consistent and full application of the principle of the Convention in national legislation. Noting the adoption of the new Labour Act (Law No. 23/2007) on 1 August 2007, the Committee *regrets* that the Government did not take this opportunity to include in the legislation a provision explicitly providing for equal remuneration for work of equal value. The Committee notes that under section 108(3) of the Act all employees have the right to receive equal wages and benefits for “equal work” without distinction based on, among others, sex. However, the Committee once again emphasizes that requiring equal remuneration solely for women and men who perform equal, similar or the same work falls short of fully reflecting the principle of the Convention, which also requires that women and men performing work of an entirely different nature, but which is nonetheless of equal value, be remunerated equally. **The Committee refers to its 2006 general observation on the topic and urges the Government to take steps to amend section 108 of the Labour Act, 2007, so that it fully reflects the principle of equal remuneration for work of equal value.**

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

Namibia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2001)

Article 1 of the Convention. Legislative developments. The Committee notes that the Labour Act (No. 11 of 2007) entered into force on 1 November 2008. It notes with *interest* that the new Act, while essentially maintaining sections 5 and 7 of the former Labour Act, 2004, concerning non-discrimination and the resolution of related disputes, has broadened the scope and the definition of discrimination. Previously, section 5 provided that a person must not discriminate “in any employment practice”; the current section states that a person must not discriminate “in any employment decision ... or adopt any requirement or engage in any practice which has the effect of discrimination”, which appears to cover indirect discrimination. The prohibited grounds, however, remain the same: race, colour, ethnic origin, sex, marital status, family responsibilities, religion, creed, political opinion, social or economic status, degree of physical or mental disability, AIDS or HIV status; or previous, current or future pregnancy. A new provision in section 33 has been added, providing that dismissal on the basis of an employee’s sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status is unfair dismissal. The Committee notes, however, that section 33 omits the additional grounds of AIDS or HIV status, degree of physical or mental disability and family responsibilities which are listed in section 5. Further, the Committee *regrets* that the 2007 Act does not prohibit discrimination on the grounds of sexual orientation, which had been covered under the 1992 Act, and which the Government had previously indicated was to be covered pursuant to *Article 1(1)(b)* of the Convention. **The Committee requests the Government as follows:**

- (i) *to provide information on the practical application of sections 5, 7 and 33 of the Labour Act, 2007, including information on the number, nature and outcome of disputes brought before the competent authorities;*
- (ii) *to indicate the measures taken or envisaged to ensure that workers are protected against dismissal on the grounds of HIV or AIDS status, degree of physical or mental disability and family responsibilities, including whether any cases in this regard have been lodged with the courts or other competent bodies and the results thereof; and*
- (iii) *the Committee again requests the Government to provide information on any measures taken or envisaged to ensure that workers are protected against discrimination on the grounds of sexual orientation.*

Articles 2 and 5. Implementation of national policy and affirmative action. In its previous observation the Committee noted that, although the number of affirmative action plans received under the Affirmative Action (Employment) Act, 1998, had increased during 2005–06, this had not necessarily translated into an improvement of the representation of persons in designated groups in management positions. The Committee also noted that the reporting threshold was lowered to workplaces with more than 25 employees. The Committee notes from the 2007–08 annual report of the Employment Equity Commission that the representation of racially disadvantaged persons in managerial positions dropped by 5 per cent. The report also shows that racially disadvantaged persons represented approximately 90 per cent of the total number of employees, and accounted for 59 per cent of the workers in managerial positions but only 27 per cent of them held a post as executive director. Women represented only 16 per cent of the total numbers of executive directors while accounting for 41.47 per cent of employees. As to persons with disabilities, the Committee notes that they represented 0.4 per cent of the total number of employees reported and they held 0.8 per cent of the managerial positions. The Committee further notes that the scarcity of skilled persons from designated groups (racially disadvantaged persons, women, persons with disabilities) was cited by some employers as an obstacle to the implementation of affirmative action. The Committee also notes that persons from designated groups are concentrated in the public service and the service sector. **The Committee requests the Government to continue to provide information on the measures taken or envisaged**

to implement affirmative action in employment and occupation, and on any measures to increase the impact thereof. Please include information on measures to ensure and promote equality of opportunity and treatment of persons from designated groups in respect of access to vocational training with a view to fostering both their career advancement and their access to a wider range of jobs. The Committee also requests the Government to supply information on any other policies and measures taken to promote and ensure the application of the principle of the Convention with respect to the designated groups, in cooperation with the social partners, and their impact.

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

New Zealand

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

The Committee notes the extensive information in the Government's report and the comments by the New Zealand Council of Trade Unions (NZCTU) and by Business New Zealand (Business NZ) attached to the Government's report.

Articles 1 and 2 of the Convention. Equal pay legislation. The Committee recalls that the Employment Relations Act, 2000, (ERA), the Human Rights Act, 1993, (HRA) and the Equal Pay Act, 1972, (EPA) limit the requirement for equal remuneration for men and women to the same and similar work, which is more restrictive than the concept of "equal value" provided for in the Convention. Furthermore, the ERA limits the scope of comparison to situations where men and women work for the same employer. The Committee notes the Governments' statement that the EPA provides broad protection which is further strengthened by other legislation, policies and initiatives, including the Five-Year Plan of Action on Pay and Employment Equity. The Government also indicates that it has no current plans to review the EPA but will continue to monitor developments in this regard. The Committee recalls that in 2004 the Task Force on Pay and Employment Equity defined "pay equity" as "men and women receiving the same pay for the same work and for work which is different, but of equal value". *The Committee, recalling its 2006 general observation on this Convention asks the Government to continue to report on any developments with respect to the amendment of its equal pay legislation, with a view to giving full legal expression to the principle of equal remuneration for men and women for work of equal value. The Government is also requested to provide information on any judicial decisions indicating that the Equal Pay Act is being interpreted by the courts in conformity with the broader meaning of Articles 1(b) and 2 of the Convention.*

Applying the principle in the public service. The Committee notes with *interest* the implementation of the Five-Year Plan of Action on Pay and Employment Equity in the public service, and particularly the pay and employment equity reviews and response plans that have been undertaken in the thirty nine departments. The findings of the reviews carried out by mid-2008 indicate a gender pay gap ranging from 3 to 25 per cent, higher starting rates and performance pay for men, an under-evaluation of women's work, an under-representation of women in management and their concentration in administrative and clerical work with limited career paths, difficult career-advancement for part-time workers, and workplace cultures that limit women's contributions. The Committee notes that the organizations' responses to the pay reviews include reviewing job-evaluation methods for gender bias, undertaking job-evaluation exercises, ensuring that performance pay systems are gender-neutral, improving access to flexible work, supporting managers in managing flexible work, and improving professional development and career-paths for jobs primarily performed by women. The Government indicates that action on the responses is at an early stage but would include some of the following interventions: pay increases for re-evaluated jobs, gender-sensitive human resources policies, systems and data, more flexible work arrangements, some permanent employment contracts and new career paths across job levels. The Committee notes that two pay investigations have been agreed in public sector-based occupations in which women are predominant. The Pay and Employment Equity Unit of the Ministry of Labour will monitor and analyse action on the responses proposed, and report on the progress made. *The Committee welcomes the efforts made in promoting and applying the principle of equal remuneration for work of equal value in the public service through pay and employment equity reviews, and asks the Government to continue to report on the action taken to implement the recommendations made by the reviews.*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1983)

The Committee notes the information provided by the Government in its report as well as the communication from the New Zealand Council of Trade Unions (NZCTU) and the Government's reply thereon. With respect to the NZCTU's comments concerning migrant workers under the Recognized Seasonal Employer (RSE) Scheme, the Committee notes that the issues raised primarily relate to inequalities with respect to social security, remuneration, accommodation and trade union membership covered by the Migration for Employment Convention (Revised), 1949 (No. 97). As some of the issues have been addressed by the Committee in its observation of 2007 on Convention No. 97, the Committee will examine the NZCTU's comments on the RSE Scheme together with the Government's next report on that Convention.

Access to employment and vocational training – Maori and Pacific Island peoples. The Committee recalls its previous observation addressing issues relating to the occupational segregation of Maori and Pacific Island people into certain occupations and their generally lower education, qualifications and skills levels. The Committee notes the

Government's statement that despite the increasing labour force participation of Maori there is a need to ensure that skills of those Maori entering employment are matched to higher skilled and higher wage jobs. The Government also indicates that Pacific Island people, especially women, continue to be overrepresented among the unemployed, lower skilled and low-income earners. Maori and Pacific Island people also continue to be disproportionately represented in services and sales, trades and elementary occupations. The Committee further notes from the communication of NZCTU that, according to 2005 statistics, 20 per cent of Pacific Island workers earned less than the current minimum wage level. The Committee notes that there are a number of initiatives in place to increase skills levels of, and provide employment assistance to, Maori and Pacific Island people. The positive outcomes for Maori under the initiatives to improve sustainable employment, as well as the positive outcomes of the training programmes run in 2007 by the Tertiary Education Commission to achieve equality in employment and vocational training are particularly noteworthy. However, participation of Maori and Pacific Island people remains low in industry training and particularly in the Modern Apprenticeship Scheme. ***While welcoming the Government's commitment to improving the education levels of Maori and Pacific Island people and to increase their training and employment opportunities, the Committee invites the Government to accelerate its efforts to address the continuing inequalities faced by Maori and particularly Pacific Island people in the labour market. The Government is requested to provide information on what lessons have been learned on the impact achieved so far from the various strategies, programmes and initiatives used to improve the skills levels and sustainable employment for men and women belonging to Maori and Pacific Island communities.***

Access to vocational training and occupation – Women. The Committee recalls that training and vocational guidance are of paramount importance for achieving equality in the labour market in that they are a key element in determining the actual possibilities of gaining access to a wide range of occupations and employment. The Committee recalls the low participation rate (26.7 per cent) of women in courses provided by industry training organizations (ITOs) and the extremely low (less than 10 per cent) participation rate of women in some of the courses offered by the Modern Apprenticeship Scheme. The Committee notes the information concerning the training programmes run by the Tertiary Education Commission, including the positive outcomes regarding the participation rates and subsequent employment of women for some of the programmes. It also notes, however, that the NZCTU continues to express concern at the low participation of women in the Modern Apprenticeship Scheme, and points out that female participation is almost nonexistent in the three industries dominating the Scheme, notably building and construction, engineering and motor engineering. According to the NZCTU, public sector and tourism are the only sectors where there are more women than men. The Committee notes the Government's indication that the Equal Employment Opportunities (EEO) Commissioner and the Industry Training Fund (ITF) continue to take measures to improve diversity in the Modern Apprenticeship Scheme and to promote the spread of industry training into new industries in which women predominate. No information had been provided however on the specific results of these efforts. ***The Committee asks the Government to step up its efforts to extend industry training and the Modern Apprenticeship Scheme to industries in which women predominate and to encourage women's enrolment in courses where their participation is particularly low. The Government is also requested to continue to report on the results achieved by the EEO Commissioner and the ITF to promote diversity and to promote equality of opportunity and treatment with respect to the vocational training courses offered to men and women. With respect to occupational segregation, the Committee also refers to its observations on the Equal Remuneration Convention, 1951 (No. 100).***

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

Pakistan

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2001)

Articles 1 and 2 of the Convention. Legislation. The Committee recalls that since the Convention's ratification by Pakistan, it has been commenting on the importance of enacting legislation to ensure the effective application of the Convention. In this regard, the Committee notes the Government's indication that a draft "Employment and Service Conditions Act" has been prepared which includes provisions on equal remuneration for men and women. The Committee stresses that provisions intended to give effect to the Convention should give full expression to the principle of equal remuneration for men and women for work of equal value. In particular, the provisions should not be limited to providing equal remuneration for "equal", the "same" or "similar" work, but should also provide for equal remuneration for men and women for work that is of an entirely different nature, but which is nevertheless of equal value. In addition, the legislation should ensure that this equal remuneration principle applies to all aspects of remuneration, as broadly defined in *Article 1(a)* of the Convention. ***The Committee asks the Government to continue its efforts to put in place legislation giving effect to the Convention and to ensure that this legislation is in full conformity with the Convention.***

Minimum wages. In its previous observation, the Committee asked the Government to provide information on the specific and practical measures taken to ensure that minimum wages are set in accordance with the principle of equal remuneration for men and women for work of equal value. In reply, the Government states that in view of the presence of employers, workers and government representatives on the provincial minimum wages boards, care has been taken to ensure that no bias is shown as regards jobs predominately performed by women. The Committee considers that the tripartite nature of the Provincial Minimum Wages Board, while important, does not in itself ensure, that wage rates for

categories of work predominately performed by women are not set at lower levels than the rates for male-dominated work where the work performed by men and women is, in fact, of equal value. *The Committee therefore encourages the Government, in cooperation with employers' and workers' organizations to examine the functioning of the mechanisms for the setting of minimum wages in the light of the need to promote and ensure the principle of equal remuneration for men and women for work of equal value, and to indicate any steps taken in this regard. The Committee also asks the Government to provide copies of the minimum wage notifications currently in force, and to indicate which of the occupational groups covered tend to be female dominated.*

Awareness raising and training. The Committee notes the Government's statement that the Directorate of Workers' Education under the Ministry of Labour, Manpower and Overseas Pakistanis, the National Institute of Labour Administration and Training and the Industrial Relations Institute are undertaking education and training activities for workers through seminars, workshops and training courses, including activities relating to the Convention. *The Committee asks the Government to provide more detailed information on these training activities, including the number of courses and participants, as well as examples of the training materials used as regards the principles of equal remuneration for men and women for work of equal value. Further, please indicate any activities specifically implemented for employers, and whether any of these activities have addressed the issue of objective job evaluation.*

Cooperation with employers' and workers' organizations. The Committee recalls that the Government has closely cooperated with the employers' and workers' organizations in the preparation of the Labour Protection Policy (2006). It notes the comments received from the Pakistan Workers' Federation on the dialogue held with the Government and the Employers' Federation of Pakistan on strengthening the labour inspection machinery. The Committee also notes that, as a follow-up to the labour protection policy, the Government has started studies on a number of important issues, including the links between working and living conditions and productivity, labour protection in the informal economy, and the effectiveness of the labour administration. *Trusting that these studies will provide an opportunity to examine issues relating to the principle of equal remuneration for men and women for work of equal value, and identify measures to strengthen its application, the Committee asks the Government to provide information on the measures taken with a view to examining the issue of equal remuneration in the context of the abovementioned studies, and the results of these studies, once available.*

Statistical information. The Committee notes that the Government has not yet provided statistical information on the earnings of men and women. *Recalling that statistical information on the levels of remuneration of men and women working in the different sectors of the economy is an important means to monitor progress with regard to promoting and ensuring respect for the principle of equal remuneration, the Committee asks the Government to indicate to what extent such data are being collected and published.*

Enforcement. The Committee notes the Government's indication that under the Payment of Wages Act, 1936, provincial governments have appointed inspectors who can examine documents relating to the calculation of wages and payment of wages. Further, the provincial payment of wages authorities can hear and decide any matter relating to the payment of wages. The Committee concludes from the indications given in the Government's report, that the labour inspectorate and the labour courts have apparently not yet addressed any cases concerning violations of the principle of equal remuneration for men and women for work of equal value. *The Committee asks the Government to indicate whether the provincial wages inspectors and payment of wages authorities have dealt with any cases involving equal remuneration for work of equal value, and to continue to provide information on any such cases that might have been dealt with by other competent bodies, including the labour courts. The Committee encourages the Government, in addition to including equal remuneration provisions in the legislation, to take appropriate measures with a view to strengthening the mechanisms to enforce the principle of equal remuneration for men and women for work of equal value, and to indicate the measures taken in this regard.*

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Legislation. Prohibition of discrimination. The Committee notes the Government's statement that under the Constitution of Pakistan, all citizens have equal opportunities in private and public employment and that the labour legislation was being applied equally to all workers, without discrimination. The Government adds that no complaints of discrimination in any industrial or commercial undertaking had been recorded. The Committee notes that the Convention aims at the protection against discrimination in employment and occupation of all workers, both citizens and non-citizens. The Committee also recalls that constitutional protection alone, while being important, may not be sufficient in terms of granting effective protection from discrimination in employment and occupation, and that the mere absence of discriminatory provisions in the legislation does not amount to a prohibition of discrimination, nor does it generally provide an appropriate legal basis for discrimination complaints to be brought.

The Committee recalls that the Convention aims at the elimination of discrimination as defined in *Article 1 of the Convention* through the adoption and implementation of a national policy to promote equality of opportunity and treatment (*Article 2*). Under *Article 3(b)*, Pakistan has undertaken to enact such legislation as may be calculated to secure the acceptance and observance of such national policy. The Committee also recalls that, in its 2008 General Report, it stressed the importance of adopting non-discrimination and equality legislation in order to give effect to the Convention.

In this context, the Committee refers to its comments under the Equal Remuneration Convention, 1951 (No. 100), in which it notes that the Government has prepared a draft Employment and Service Conditions Act which contains a provision on equal remuneration for men and women. The Committee trusts that the Government will give due consideration to introducing into the legislation non-discrimination provisions prohibiting discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction or social origin, and any other ground determined after consultations with workers' and employers' organizations, as provided for under *Articles 1(1)(a) and 1(1)(b)* of the Convention. The Committee recalls that where provisions are being adopted to give effect to the Convention, they should, as a minimum, cover discrimination on all the seven grounds explicitly listed in *Article 1(1)(a)* of the Convention. It is equally required by the Convention that equality of opportunity and treatment is ensured with respect to selection and recruitment, all terms and conditions of employment, as well as termination. ***The Committee requests the Government to provide information on the measures taken with a view to including provisions on non-discrimination and equality in employment and occupation in the draft Employment and Service Conditions Act and to provide a copy of the Act as soon as it is adopted.***

Sexual harassment. With regard to its previous comments concerning the prevalence of sexual harassment in the workplace and the ongoing efforts to address it, the Committee notes the Government's indications that the Ministry of Women's Development has prepared two draft bills which comprehensively address sexual harassment of women in the workplace. The Committee understands that since the Government submitted its report, the bills were approved by Cabinet on 9 February 2009 and are now pending in Parliament. ***The Committee requests the Government to provide information on the progress made in adopting legislation on sexual harassment in the workplace, and to provide a copy of the new legislation as soon as it is adopted.***

Equality of opportunity and treatment of men and women. The Committee notes that according to the Labour Force Survey 2007/2008, the labour force participation rate (refined) was 69.5 per cent for men and 19.6 per cent for women, whereas the corresponding figures for 2001–02 were 70.3 per cent for men and 14.4 per cent for women. While welcoming the progress made with regard to women's participation in the labour force, the Committee observes that the gender differential, as regards labour force participation, continues to be high. The Committee also notes that women's participation rate increased in rural areas, whereas it actually decreased in urban areas. With regard to the employment status of men and women, the Committee notes from data established for 2001–02 and 2007–08, that the percentages of women being employees and own-account workers significantly decreased, combined with a gradual increase of women in the category of unpaid family workers (from 46.9 to 65 per cent). Women remain concentrated in unskilled elementary occupations or skilled agricultural work. In this context, the Committee notes the observations made by the Pakistan Workers Federation (PWF) in their communication dated 21 September 2008, stressing the need for measures to enable women to move from the informal to the formal economy, including through extending social security and minimum wages, and training and education for rural women.

The Committee notes the information provided by the Government in reply to the Committee's comments regarding gender equality in employment and occupation. The Government indicates that the Ministry of Women's Development is implementing a National Gender Reform Plan (GRAP) which provides for measures to increase women's employment in the public sector, including through improvements of office facilities to provide for restrooms and day care facilities. The Government also continued to implement a 10 per cent quota for women in government employment at the federal level; efforts are under way to increase the quota to 20 per cent. ***The Committee requests the Government to provide more detailed information on the implementation of the public sector quota system, including statistical information on the current distribution of men and women in the different government departments, jobs and positions. The Committee further requests the Government to provide detailed information on the measures taken to promote and ensure women's equality of opportunity and treatment in employment and occupation beyond the public sector, as well as statistical information indicating the progress made in enhancing their participation in the labour market, both in rural and urban areas. In this regard, the Committee requests the Government to indicate the specific measures taken:***

- (i) to promote gender equality in the private sector; and***
- (ii) to enable women to move from the informal to the formal economy.***

As regards the access of women and girls to education and training, the Government states that emphasis is presently placed on increasing participation of girls in secondary school education. The measures taken in this area include scholarships and subsidies for low-income households, revision of the curricula and textbooks to avoid gender stereotypical views and media campaigns to change social attitudes towards girls' education. The new draft National Education Policy sets the target of achieving gender parity among teachers at all levels of education by 2015. ***The Committee requests the Government to continue to provide information on the measures taken to promote equal access of girls to education and training at all levels, as well as updated statistical information in this regard.***

Equality of opportunity and treatment in employment and occupation of minorities. The Committee notes with interest that by a Cabinet decision of 20 May 2009, the Government introduced a 5 per cent quota for the employment of minorities in federal government employment. The modalities of implementation of the quota have been notified in Office Memorandum No. 4/15/94-R-2, dated 26 May 2009, of the Cabinet Secretariat's Establishment Division. The Committee notes that the quota is to apply to any person who is "a non-Muslim" as defined in article 260(3)(b) of the Constitution ("a person belonging to the Christian, Hindu, Sikh, Buddhist or Parsi community, a person of the Qadiani Group or the

Lahori Group who call themselves ‘Ahmadis’ or by any other name, or a Bahai, and a person belonging to any of the Scheduled Castes”). ***The Committee requests the Government to provide information on the progress made in implementing the 5 per cent quota for employment of minorities in the federal government employment, including statistical information on the number of minority members employed, disaggregated by sex and minority group, and according to government department, jobs and positions.***

The Committee further notes that, as indicated by the Government, the National Commission for Minorities, which was formally established in 1993, is non-functional at present, although a proposal to reconstitute it was before the Prime Minister for approval. Chaired by the Minister for Minorities, the Commission is mandated, inter alia, to examine laws and administrative practices alleged to be discriminatory against minorities, to recommend to the Government steps to ensure full and effective participation by minorities in all aspects of national life, and to look into grievances of minority communities. The Committee notes that the Government also implements a development scheme and offers scholarships to minority students. ***The Committee trusts that the National Commission for Minorities will be reconstituted in the near future and requests the Government to provide information on any developments in this regard. It also asks the Government to continue to provide information on the implementation of schemes and programmes to promote and ensure equality of opportunity and treatment for minorities in training and education, and also to provide information on any other measures taken to promote access of minorities to employment and occupation, including self-employment.***

Discrimination based on social origin. The Committee notes that the Committee on the Elimination of Racial Discrimination, in its concluding observations of 4 March 2009, has expressed concern about the persisting de facto segregation and discrimination against Dalits regarding their enjoyment of economic, civil, political and social rights, and the fact that no specific legislation prohibiting discrimination based on caste has been adopted (CERD/C/PAK/CO/20, 4 March 2009, paragraph 21). Recalling that discrimination based on caste is a form of discrimination based on social origin covered by the Convention, the Committee stresses that ratifying States have an obligation to take effective measures towards the elimination of such discrimination in employment and occupation. ***In this regard, the Committee recommends that a prohibition of discrimination based on social origin, including caste, be included in the legislation. The Committee also requests the Government to provide information on the measures taken to promote and ensure equality of opportunity and treatment in employment and occupation, irrespective of caste, through legislation and other appropriate measures.***

Discrimination based on religion. The Committee recalls its previous comments concerning certain provisions of the Penal Code relating to offences relating to religion (“blasphemy laws”). Some of these offences single out the members of the Ahmadi minority. For instance, section 298C establishes sentences of imprisonment for up to three years for members of this group who, inter alia, preach or propagate their faith, whether by spoken or written words, or by visible representations. The Committee also recalls that Pakistani passports include a mention of religion and that Muslims applying for a passport must sign a declaration to the effect that the founder of the Ahmadi movement is an impostor, which is designed to prevent members of this movement from obtaining passports identifying them as Muslims. The Committee recalls that the ILO supervisory bodies have expressed concern for many years over the impact of these measures on the enjoyment of equality of opportunity and treatment in employment and occupation of the religious minority concerned. The Committee also recalls that the United Nations Special Rapporteur on the question of religious intolerance concluded in 1996 that provisions specifically applying to the Ahmadi minority were questionable, stressing that blasphemy legislation should not be discriminatory and should not give rise to abuse. The Special Rapporteur also recommended that no mention of religion should be included in passports and that the declaration mentioned above be deleted (E/CN.4/1996/95/Add.1, paragraphs 82 and 85). More recently, the Committee on the Elimination of Racial Discrimination expressed concern about the risk that blasphemy laws may be used in a discriminatory manner against minority groups (CERD/C/PAK/CO/20, paragraph 19). The Committee also notes that during the Universal Periodic Review of Pakistan under the auspices of the UN Human Rights Council, the Government announced that “specific steps are being considered to strengthen laws and procedures to reduce incidence of their abuse” (A/HRC/8/42/Add.1, 28 August 2008, paragraph 8). ***While noting the general explanations provided by the Government in its report regarding the protection of freedom of religion available under the Constitution, the Committee once again urges the Government to take the necessary steps to review the abovementioned measures, and to provide information on any steps taken in this regard, as announced during the Universal Periodic Review.***

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

Panama

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1958)

The Committee notes the communication of the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), dated 23 July 2009, sent to the Government on 31 August 2009. The Committee notes that the communication refers to the violation of the principle of equal remuneration for work of equal value in the public sector and, specifically to the absence of rates of remuneration established without discrimination based on sex. The Committee notes that it has not yet received the Government’s observations in reply to the comments made by FENASEP.

The Committee asks the Government to provide information on the application of the Convention in the public sector, including statistics on the wage levels of public servants disaggregated by sex, occupational category and post, and any other information that it considers appropriate in reply to the comments submitted by FENASEP.

Article 1 of the Convention. Work of equal value. The Committee refers to its previous comments in which it asked the Government to amend section 10 of the Labour Code, which is limited to guaranteeing equal remuneration for “equal work”, in order to give full legislative expression to the concept of equal remuneration for men and women for “work of equal value”, as provided for under the Convention. The Committee notes the Government’s indication that no progress has been made in this regard given that a consensus has not been reached among the social partners to amend the Labour Code. The Committee also notes that the Government reiterates the arguments put forward by the Legal Advisory Department of the Ministry of Labour and Employment Development (MITRADEL) that there is no inconsistency between section 10 of the Labour Code and the Convention. The Committee notes, in particular, that the Government indicates in its report that the Convention takes legal precedence over Panama’s national law and must therefore be applied in all labour relations and employment contracts.

However, the Committee notes the jurisprudence of the Supreme Court of Justice of Panama, referred to by FENASEP in its communication, that international conventions normally lack constitutional hierarchy and that the State therefore has an obligation to adapt its domestic legislation to the provisions of such conventions (Legal Registry of May 1991). The Committee also notes the difficulties which continue to be encountered in applying the Convention in practice, which are reflected in a significant and persistent wage gap between men and women. The Committee considers that there is a lack of understanding concerning the scope of the principle of the Convention and that incorporating this principle into the national legislation in accordance with the Convention would help to clarify the situation.

The Committee therefore draws the Government’s attention once again to its general observation of 2006. The Committee emphasizes that the concept of equal remuneration for “work of equal value”, although encompassing equal remuneration for “equal”, “the same” or “similar” work, is broader than that because it requires that equal remuneration also be given to workers carrying out work that is of an entirely different nature, but which is nevertheless of equal value. This comparison between different jobs is essential due to the gender segregation which exists in the labour market, which results in certain jobs being performed mainly or exclusively by men or women. The Committee also reminds the Government that provisions that are expressed more narrowly than the principle of equal remuneration for work of equal value hinder progress in eradicating gender-based pay discrimination. ***The Committee therefore asks the Government to:***

- (i) promote dialogue with the social partners on the need to expressly prohibit pay discrimination in situations in which men and women perform different jobs which are nonetheless of equal value with a view to amending section 10 of the Labour Code;***
- (ii) expressly establish in its legislation the principle of equal remuneration for work of equal value;***
- (iii) provide information on any progress made in these respects; and***
- (iv) provide information on the steps taken or envisaged to promote understanding of the principle of the Convention by the authorities and organizations of workers and employers.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1966)

The Committee notes the communication sent by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), dated 23 July 2009, sent to the Government on 31 August 2009. The Committee notes that the communication refers to the risk of public servants being dismissed because of their political opinions in connection with elections. The Committee notes that it has not yet received the Government’s observations in reply to these comments. However, the Committee recalls that FENASEP had already raised the problem of discrimination on political grounds in its previous communications and the Committee addressed that matter in its previous observations.

Discrimination based on political opinion. In its previous comments, the Committee noted a communication from FENASEP in 2001, in which it indicated that the Government had dismissed more than 19,000 public servants without just cause and without following the procedures established by law. FENASEP pointed out that 80 per cent of those dismissed were registered members of the political party called the Democratic Revolutionary Party (PRD) and that the dismissals constituted discrimination on political grounds in breach of *Article 1 of the Convention*. In its 2008 observation, the Committee noted another communication sent by FENASEP, received on 7 October 2008 and sent to the Government on 13 October 2008, which pointed out the lack of progress made in the work of the bipartite commission comprising officials of the Ministry of Labour (MITRADEL) and FENASEP aimed at reinstating the persons concerned. The Committee notes the Government’s indication in its report that the majority of leaders dismissed were reinstated in their posts or appointed to the various state bodies. The Committee also notes that in May 2008, the Government issued the necessary instructions for all public servants working under a contract with government bodies to be made permanent so that they would be able to enter the administrative career system. ***The Committee hopes that the Government will make every effort to prevent the recurrence of similar cases of discrimination based on political opinion and requests it to provide information on the measures taken or envisaged to that end. The Committee also requests the Government to***

continue its efforts through the above bipartite commission, to solve the cases of dismissal based on political opinion which are still pending.

Administrative career system. The Committee recalls that the Government re-established the administrative career system to integrate public servants into the system in order to protect them from political pressure. The Committee notes that, according to the Government's report, Act No. 9 of 20 June 1994 which establishes and regulates the administrative career system was amended by Act No. 24 of 2 July 2007 and Act No. 14 of 28 January 2008 with the result that from 30 April 2008, the special procedure for entry into the administrative career system could no longer be used and the only way of entering the public administration was the regular procedure by means of competitive examination. The Committee notes the Government's indication that the aim of this amendment was to eliminate the possibility of appointing political officials to administrative career posts on a discretionary basis. The Committee also notes that according to the provisions of section 136 of Act No. 9, as amended by the above Acts, the stability of employment of career public servants is dependent, inter alia, on their effective, productive, honest, efficient and responsible performance. The Committee also notes that section 5 of Executive Decree No. 44 of 11 April 2008 stipulates that the administrative career system shall promote the occupation of all public posts by public servants who stand out for their suitability, competence, loyalty, morals and honesty. ***The Committee requests the Government to provide information on the application in practice of section 136 of Act No. 9 and section 5 of Executive Decree No. 44, particularly concerning the interpretation of the requirement of loyalty from public servants, including information on any court decisions handed down in this regard. The Committee also requests the Government to provide information on the percentage of public servants who have been integrated into the administrative career system through the special entry procedure in accordance with section 67 of Act No. 9.***

Gender-based discrimination. The Committee refers to its previous comments in which it considered communications received from FENASEP concerning cases of the dismissal of women on the grounds of maternity or pregnancy. The Committee notes the Government's indication that the women were employed under fixed-term contracts and that they were removed from their posts simply because the period for which they had been recruited came to an end. The Committee notes that in its 2008 communication, FENASEP refers to new cases of the dismissal of women who were pregnant or on maternity leave by the National Bank of Panama. The Committee also notes that the United Nations Human Rights Committee expressed concern at the practice of requiring pregnancy tests as a condition for access to employment (CCPR/C/PAN/CO/3, 17 April 2008, paragraph 16). ***The Committee urges the Government to take the necessary measures to prevent discrimination on the ground of pregnancy, especially with regard to access to employment and job security and to ensure that temporary contracts are not used as a means to discriminate against woman based on pregnancy. The Committee also requests the Government to provide information on the measures taken or envisaged in the context of its equality policy to ensure that women on temporary contracts do not find themselves in situations where they are vulnerable to discrimination on the basis of pregnancy.***

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

Peru

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)

Equality between men and women. Policies, plans, programmes and application. In its previous comments, the Committee noted the adoption of Act No. 28983 of 2007, Law of Equality of Opportunity for Men and Women, and asked the Government to provide information concerning the policies, plans and programmes adopted under this Law. The Committee notes that since the entry into force of this law, a budget with a focus on gender has been approved at the national level (Act No. 29083, National Budget System). On the basis of this budget, public authorities include the impact of gender equality policies in the analysis of budget evaluation. The Committee notes that among the national policies to be implemented by the national government authorities, the second policy "equality between men and women" was adopted together with targets and indicators. The Committee notes that in 2007 various regional and local authorities referred to in the Government's report adopted policies on equality of opportunity for men and women. With regard to education, the Government refers to inclusive education programmes and mentions, among others, Directive No. 001-2007-VMGP/DITOE which promotes the inclusion of a focus on gender in the initial, primary and secondary levels. The Government also provides information on the National Programme to Foster Literacy, as a result of which in 2007, 666,000 persons were taught to read and write throughout the country, 79 per cent of which were women. With regard to the indicators and statistical information, the Government indicates that it has developed a system to follow up and monitor the Plan of Equality of Opportunity for Men and Women and that the National Institute of Statistics and Computing prepared a Statistics Plan 2008–12 which will allow the development of indicators linked to the theme of gender. The Committee notes that in 2010, official statistical information disaggregated by sex will be available with gender indicators and that in certain areas referred to in the Government's report, such statistics already exist. Moreover, the Committee notes that three Observatories of Women have been established in Puno, Apurimac and Ayacucho. ***The Committee asks the Government to provide information on the implementation of the measures adopted, particularly the indicators and***

statistics and on any new measure adopted under the Law of Equality of Opportunity for Men and Women. Please also provide information on the participation of the social partners in the elaboration and implementation of these measures.

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

Romania

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1957)

Articles 1 and 2 of the Convention. Equal remuneration for work of equal value. The Committee recalls its previous comments concerning section 6(2) of the Labour Code (Act No. 53/2003) which provided for equal pay for equal work rather than for equal remuneration for work of equal value, as required by the Convention. In this regard, the Committee notes with **satisfaction** that Emergency Ordinance No. 55/2006 amended the Labour Code to provide in section 6(3) that “any discrimination based on sex shall, as regards all elements and conditions of compensation, be prohibited for equal work or work of equal value”. The Committee notes that the Emergency Ordinance was approved by Act No. 94/2007 of 16 April 2007. **The Committee asks the Government to provide information on the enforcement of section 6(3) of the Labour Code, including relevant decisions of the labour inspectorate or the courts.**

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1973)

Discrimination based on political opinion – inherent requirements of the job. In its previous observations, the Committee drew the Government’s attention to section 50 of Act No. 188/1999 on civil servants, as amended and reissued in 2004, which provides that “to hold public office a person shall meet the following conditions: ... (j) [shall] not have been carrying out an activity in the political police as defined by the law”. The Committee noted that this restriction regarding entry into the civil service may go beyond what would be a justifiable exclusion in respect of a particular job based on its inherent requirements as provided for under *Article 1(2) of the Convention*.

The Committee cannot but **regret** that for the second consecutive time, the Government has failed to reply to the Committee’s comments on this matter. It recalls that without the cooperation of governments, it is unable to fulfil the mandate entrusted to it. **The Committee, therefore, requests the Government once again to supply information on what constitutes an “activity in the political police” under section 50(j) of Act No. 188/1999, as amended, including relevant laws and judicial decisions, and to provide detailed information on the rationale and practical application of this provision, including the number of persons that have been excluded from the civil service on this basis.**

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

Russian Federation

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1956)

Application in practice. The Committee notes the Government’s report which contains general information regarding the situation of women in the labour market. However, the Government has once again failed to provide the information requested by the Committee in its previous comments. **The Committee therefore reiterates its request to the Government to provide the following:**

- (i) **detailed statistical information on the earnings of women and men in the private and public sectors, as far as possible as set out in the Committee’s 1998 general observation;**
- (ii) **information on the measures taken or planned to raise awareness and understanding of the right to equal remuneration for women and men for work of equal value among workers and employers, as well as public officials responsible for monitoring the application of the Convention;**
- (iii) **information on equal pay cases dealt with by the competent administrative and judicial authorities; and**
- (iv) **information on the specific steps taken to seek the cooperation of employers’ and workers’ organizations with a view to giving effect to the provisions of the Convention.**

The Committee urges the Government to provide the information requested in its next report.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1961)

Articles 2 and 5 of the Convention. Gender equality and special measures of protection. The Committee recalls its comments regarding Resolution No. 162 adopted by the Government on 25 February 2000 which contains a list of industries, occupations and work from which women are excluded. The Resolution excludes women from being employed in 456 occupations in 38 sectors of industry. In its report, the Government states that the list contained in Resolution No. 162 is in accordance with section 253 of the Labour Code which provides that “the use of labour of women in arduous

work and work in harmful and/or dangerous conditions, and also in underground work, except for non-physical work or work with regard to sanitary and domestic servicing, shall be limited". The Government states that the list contained in Resolution No. 162 has been established on the basis of consultations with representatives of scientific and research institutes and that every restriction has been medically justified. The Government confirms that the list's intention was not specifically to protect women's reproductive health, but more broadly to "exclude women from such working conditions which generally do not correspond to the requirements of life and health protection of workers". The Government points out that, in accordance with Resolution No. 162, the employer may decide to assign women to work included on the list provided that the employer creates safe working conditions and these are certified as safe by the competent state authorities. In the Government's view, Resolution No. 162 did not require any changes as it did not establish unjustified restrictions.

The Committee maintains that Resolution No. 162 raises issues with regard to equality of opportunity and treatment in employment and occupation of men and women. It recalls that the Convention aims at promoting and ensuring equality of men and women, inter alia, in respect of terms and conditions of employment, including regarding occupational safety and health measures. The Convention therefore requires the Government to provide occupational safety and health protection to men and women on an equal footing. However, the approach embodied in Resolution No. 162 raises doubts as to whether adequate measures are being taken to provide such equal protection. Further, the Committee recalls that, where special measures of protection for women within the meaning of *Article 5* of the Convention are being taken, it must be ascertained that exclusions from employment opportunities are limited to cases where this is strictly necessary to protect women's reproductive health and that the measures are proportional to the nature and the scope of the protection needed. The Committee considers that the exclusion of women from any work or employment due to arduous, hazardous or dangerous working conditions that involve equal risks for men and women goes beyond what is permitted under *Article 5*. On this basis, the Committee also remains concerned that broad exclusions from employment opportunities due to occupational safety and health concerns that only apply to women not only have a discriminatory effect on women's equality in the labour market, but may also hinder further progress in providing healthy and safe working environments to men and women. ***The Committee therefore urges the Government to take the necessary steps to review the current system of protective measures excluding women from employment opportunities with a view to ensuring equal opportunities for women and men and equal protection of health and safety, and provide information on the action taken in this regard. Please also include information on the measures taken to consult workers' and employers' organizations and the results of such consultations.***

Enforcement of the Labour Code's non-discrimination provisions. The Committee previously noted that, following the 2006 amendments to the Labour Code, persons considering themselves to be discriminated against in the sphere of labour can no longer petition the labour inspectorate. In this connection, the Committee notes the Government's explanation to the effect that due to the special nature of labour disputes regarding discrimination, it was considered preferable to have such matters decided by the courts through civil legal proceedings, rather than by the labour inspectorate through administrative proceedings. Accordingly, the legislation does not permit the Federal Service on Labour and Employment to settle disputes regarding discrimination. ***The Committee requests the Government to provide information on the number of cases concerning discrimination in employment and occupation brought before the court under the Labour Code, and on the outcome of such cases. In addition, noting that the broad mandate of the Federal Service on Labour and Employment would not appear to exclude it from providing information and at least advice on the prohibition of discrimination to workers and employers, the Committee requests the Government to provide information on any measures taken to strengthen the capacity of labour inspectors to provide such advice.***

Articles 2 and 3. Equality of opportunity and treatment of men and women. The Committee notes from statistical data compiled by the ILO that in 2008 the rate of economically active women (over 15 years of age and older) was 56.1 per cent, compared to a rate of 70.4 per cent for men. The Committee notes that the labour market in the Russian Federation remains highly segregated, with women being concentrated in clerical occupations and underrepresented in senior positions. The Committee also notes that the Government's report contains no reply to the Committee's previous comments requesting information on the measures taken to promote equal opportunities of men and women in employment and occupation, including information on the specific steps taken to ensure that men and women have equal access to employment in the broadest possible range of sectors and industries, as well as at all levels of responsibility. ***The Committee therefore reiterates its request to the Government to supply the requested information, as well as updated detailed statistical information on the distribution of men and women in the different sectors and industries, as well as levels of responsibility.***

The Committee notes the Government's confirmation that a draft Federal Law on state guarantees of equal rights and freedoms and equal opportunities for men and women in the Russian Federation has been adopted by the State Duma in a first reading. However, the report highlights that a number of issues have arisen in the course of the elaboration of the draft Law. More specifically, the Government indicates that some of the provisions should rather be included in the federal Constitution. The Government also notes that there are overlaps with legislation already in force and uncertainties as to which government body would be in charge of supervision. The Government adds that it would be preferable to introduce amendments to the Labour Code instead. ***The Committee hopes that further efforts will be made to strengthen***

the legal framework in the Russian Federation to promote and ensure gender equality in employment and occupation and requests the Government to provide information on the measures taken and progress made in this regard.

Equality of opportunity and treatment of ethnic minorities and indigenous peoples. In its report, the Government refers to the Constitution which requires the State to guarantee the equality of human and citizens' rights, regardless of race, nationality, language, origin, place of residence, religion and prohibits "all forms of limitations of human rights on social, racial, national, linguistic or religious grounds" (article 19). The Government also acknowledges that a number of constituent republics of the Russian Federation are built on "national and territorial principles", which explains some of the problems in these republics with regard to preferences being given to people belonging to the locally predominant ethnic group. The Government considers that these problems cannot be overcome by legal means. It states that with a view to overcoming "discriminatory trends in the field of employment and occupation" and to build harmonious inter-ethnic relations, it is necessary to encourage ethnic associations created under the Federal Law on National and Cultural Autonomy, 1996, to participate in addressing these problems. In this connection, the Committee also notes that the UN Committee on the Elimination of Racial Discrimination has recently recommended that measures be taken to address discrimination against ethnic minority workers in respect of recruitment (CERD/C/RUS/CO/19, 20 August 2008, paragraph 25). The Committee welcomes the Government's acknowledgement that there is a need for measures promoting non-discrimination in employment and occupation based on ethnic or national origin and to promote tolerance between the various ethnic groups in the country. The Committee shares the Government's view that promotional measures involving civil society organizations is important, but it also stresses the need to provide effective legal protection from discrimination. ***The Committee recommends that measures be taken to strengthen the enforcement of the Labour Code's provision on non-discrimination, with particular emphasis on discrimination on racial or ethnic grounds. It requests the Government to continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment of ethnic minorities through promotional measures as well as effective enforcement of the legislation. It reiterates its request to the Government to provide information with regard to equal opportunities and treatment in employment and occupation of the indigenous peoples.***

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

[The Government is asked to supply full particulars to conference at its 99th Session and to reply in detail to the present comments in 2010.]

Rwanda

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1980)

Article 2(2)(a) of the Convention. Application of the principle of equal remuneration for work of equal value. ***Legislation.*** The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda. It notes that the new Act refers to the present Convention in its Preamble and that it contains a definition of the expression "work of equal value" (section 1.9). However, it notes that this definition is too narrow to give full effect to the provisions of the Convention since it refers to "similar work", and further, that the new Act contains no substantial provisions prescribing "equal remuneration for work of equal value". Furthermore, the Committee notes that the Government mentions in its report article 11 of the Constitution which prohibits any discrimination in general, and notes that article 37 of the Constitution specifies that "every person having equal competence and capacity shall have the right, without any discrimination, to equal pay for equal work". Referring to its previous comments, the Committee notes with ***regret*** that the Government has not taken the opportunity to give full legislative expression to the principle of equal remuneration for work of equal value within the meaning of the Convention.

While it is important to prohibit discrimination on the basis of sex in employment, this is not sufficient to ensure the full application of the principle of equal remuneration pursuant to the Convention. Referring to its general observation of 2006, in which it clarifies the meaning of the concept of "work of equal value" under the Convention, the Committee would like to stress that, whilst this concept encompasses the concept of "equal", "the same" and "similar" work it also goes beyond that because it encompasses work which is of an entirely different nature but which is nevertheless of equal value. The concept of "work of equal value" therefore allows for a much broader comparison to be made between jobs performed by men and women in different places or sectors, or between different employers. It therefore allows pay discrimination to be combated more effectively where men and women traditionally perform work that is of an entirely different nature but which is nevertheless of equal value. ***The Committee therefore once again urges the Government to take the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value as set out in the Convention.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1981)

Article 1 of the Convention. Legislative developments. Scope of protection of workers against discrimination. The Committee notes that section 12 of Act No. 13/2009 of 27 May 2009 regulating labour in Rwanda extends the protection afforded to workers covered from all the grounds of discrimination prohibited under *Article 1(1)(a)* of the

Convention as well as from other grounds (*Article 1(1)(b)*). Section 12 of that Act prohibits any discrimination, either directly or indirectly, in the course of employment intended to deprive workers of equality of opportunity and treatment where such discrimination is based on: (1) race, colour, origin; (2) sex, marital status or family responsibilities; (3) religion, beliefs or political opinions; (4) social or economic conditions; (5) national extraction; (6) handicap; (7) previous, current or prospective pregnancy; and (8) any other form of discrimination. The Committee also notes that the new Act establishes general penalties in the case of the violation of its provisions (section 169), namely two months' imprisonment and/or a fine of 50,000 to 300,000 Rwandan francs. It notes, however, that, in the French version of the Act at least, direct or indirect discrimination is prohibited only "during the course of employment" and that this prohibition does not therefore cover all stages of employment and occupation, particularly recruitment. The Committee also notes that section 12 appears to prohibit acts done with an intention to deny equality of opportunity and treatment, which would be more restrictive than the definition of discrimination set out in *Article 1* of the Convention under which intent is not required. ***The Committee therefore requests the Government to provide information on the measures taken or envisaged to prohibit discrimination during access to employment or to an occupation. It also requests the Government to clarify whether intent is required for an act to constitute discrimination under section 12 of Act No. 13/2009. The Government is also requested to provide information on the application of section 12 of the Act, in practice and to specify, in particular, whether any appeals have been lodged on the basis of any one of the prohibited grounds of discrimination and whether penalties have been imposed under section 169 of that Act.***

Sexual harassment. The Committee notes the adoption of Act No. 59/2008 of 10 September 2008 on the prevention and punishment of gender-based violence, section 24 of which establishes punitive measures in the case of "sexual harassment of a subordinate" imposed on "any employer or any other person who uses his or her position to harass a subordinate by way of orders, intimidation and terror for the purpose of sexual pleasure". It also notes the inclusion in Act No. 13/2009, of provisions prohibiting "gender-based violence" in employment (section 9), that is "any act of a physical, psychological or sexual nature directed at a person or likely to damage their property on the grounds of their sex" which "infringes their rights and affects their integrity". Section 9 of Act No. 13/2009 also prohibits moral harassment at work, either directly or indirectly, which is defined as "any act of harassment at work of any origin, either external or internal to the enterprise, which manifests itself in particular through behaviour, words, intimidation or anonymous written communications designed to have an adverse effect on the dignity of a worker in the workplace, endanger his or her job and constitute an obstacle to his or her work". The Committee welcomes the adoption of these new legislative provisions which, when combined, appear to cover the two essential elements of sexual harassment at work as defined in its 2002 general observation, namely: (1) any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job (*quid pro quo*); and (2) conduct that creates an intimidating, hostile or humiliating working environment for the recipient (hostile work environment). ***However, in order to ensure adequate protection for men and women workers and to clarify the legal regime applicable to this discriminatory practice, the Committee requests the Government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace, ensuring that this definition covers both quid pro quo and the creation of a hostile working environment. Furthermore, the Committee requests the Government to provide information on any measures taken or envisaged to prevent this form of gender-based discrimination in the workplace, particularly in the context of the national gender policy adopted in 2004 (education programmes, awareness-raising campaigns on preventive measures and appeal mechanisms, etc.).***

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

Saint Lucia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1983)

Definition of remuneration. The Committee recalls the absence of a definition of the term "remuneration" in the Equality of Opportunity and Treatment in Employment and Occupation Act, 2000, which provides for equal remuneration for work of equal value. The Committee notes the Government's reply that the new Labour Code, which was the subject of final consultations with the social partners in 2008, will contain a broader definition of remuneration in accordance with *Article 1(a) of the Convention*. ***Noting the Government's statement that it is moving forward to giving effect to the new Labour Code, the Committee asks the Government to confirm that the new Labour Code has been adopted and has entered into force, and that it defines "remuneration" in accordance with the Convention. Please also provide a copy of the Labour Code. The Committee also asks the Government to confirm that the term "remuneration" as used in the Equality of Opportunity and Treatment in Employment and Occupation Act is to be understood as defined in the new Labour Code.***

Different wages and benefits for women and men. The Committee recalls that the Contracts of Service Act provides for different ages for men and women with respect to entitlement to severance pay. It also recalls its previous comments regarding the existence of certain laws and regulations establishing differential wage rates for men and women, contrary to the Convention. The Committee notes the Government's statement that the differences in ages between men

and women with regard to severance pay have been corrected in the new Labour Code. *Recalling the Government's previous statements that the Contracts of Service Act would be revoked with the adoption of the new Labour Code, the Committee asks the Government to confirm that all legislation containing wage differentials for men and women, including the Contracts of Service Act, has been revoked.*

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

Serbia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 2000)***

The Committee notes the Government's report as well as the observations from the Confederation of Autonomous Trade Unions of Serbia and the Trade Union Federation "Nezavisnost", which were received along with the Government's report.

Legislative developments. The Committee notes with **interest** the adoption of the Act on the Prohibition of Discrimination (*Official Gazette* No. 22/09) in April 2009. The Committee notes that the Act prohibits direct and indirect discrimination in a number of areas, including education, vocational training and employment (sections 16 and 19). The Committee notes that the Act's definition of discrimination includes an open list of prohibited grounds as follows: race, skin colour, ancestors, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, financial position, birth, genetic characteristics, health, disability, marital and family status, previous convictions, age, appearance, membership in political, trade union and other organizations and other real or presumed personal characteristics (section 2(1)). The Committee welcomes that the Act goes beyond prohibiting discrimination based on the seven grounds explicitly listed in the Convention, as envisaged in *Article 1(1)(b)*. The Committee also notes that the Act provides for the establishment of a Commissioner for the Protection of Equality. The Commissioner's mandate includes receiving and reviewing complaints regarding violations, the issuing of opinions and recommendations, and filing cases before courts.

Implementation of the non-discrimination legislation. The Committee notes from the comments made by the Confederation of Autonomous Trade Unions of Serbia and the Trade Union Federation "Nezavisnost" that despite the legislation in place, discrimination continues to occur in practice. In this regard, the Committee recalls its previous comments in which it requested the Government to provide information on the manner in which the labour inspection services supervise the application of the provisions prohibiting employment discrimination contained in sections 18 to 23 of the Labour Code. Noting that the Government has not yet provided a reply to these comments, and also in view of the newly adopted Act on the Prohibition of Discrimination, the Committee wishes to emphasize the importance of concrete and practical measures to promote awareness and understanding of the non-discrimination legislation among workers and employers, and the public at large. In addition, efforts may be required to enable the competent administrative and judicial authorities to be able to address cases of employment discrimination including through workshops and training activities. ***The Committee requests the Government to provide information on the measures taken to ensure the full implementation of the provisions relating to discrimination in employment and occupation contained in the Labour Code and the Act on the Prohibition of Discrimination, including promotional and training activities. In addition, the Committee requests the Government to provide information on the number, nature and outcome of employment discrimination cases addressed by the labour inspectorate and the Commissioner for Equality, including information on remedies provided or sanctions imposed. If such information is not available, the Committee requests the Government to take the steps necessary to collect such data, and to provide it in its future reports.***

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

Sierra Leone

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1966)***

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

Articles 2 and 3 of the Convention. Lack of national policy. The Committee regrets that the Government does not provide any new information in respect to the Convention's application. Since Sierra Leone has ratified the Convention, the Government has consistently reported that no legislative or administrative regulation or other measures existed to give effect to the provisions of the Convention and the Government has failed to provide information on any measures taken in this regard. In its latest report the Government repeats the general statement that it had a broad-based policy which ensured jobs for all who apply and are willing to work, regardless of sex, religion, ethnicity or political opinion. The Committee is therefore bound to recall that under the Convention, Sierra Leone has the obligation to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating discrimination regarding vocational training, access to employment and particular occupations, as well as terms and conditions of employment.

In connection with the above, the Committee recalls that articles 7 to 9 of the 1991 Constitution establish economic, social and educational objectives for the State that potentially promote the application of the Convention. Article 15 guarantees the right

to equal protection of the law irrespective of race, tribe, place of origin, political opinion, colour, creed or sex, and article 27 of the Constitution provides constitutional protection from discrimination. The Committee considers that these provisions may be an important element of a national equality policy in line with the Convention, but recalls that provisions affirming the principles of equality and non-discrimination in itself cannot constitute such a policy. As stated in the Committee's 1988 General Survey on the Convention, the national policy on equality of opportunity and treatment should be clearly stated and should be applied in practice, presupposing state implementation measures in line with the principles set out in *Articles 2 and 3* of the Convention and Paragraph 2 of the accompanying Recommendation No. 111.

While being aware of the many challenges the Government is facing in the process of consolidating peace, the Committee encourages the Government to give serious consideration to the application of the Convention in law and practice as an integral part of its efforts to promote peace and social and economic stability. The Government is requested to provide information on measures taken or envisaged to promote and ensure equal access to technical and vocational training, public and private employment, as well as equal terms and conditions of employment, including through educational programmes and cooperation with employers' and workers' organizations. The Committee also reiterates its previous requests to the Government to provide information in particular on the measures taken to ensure equality in employment and occupation between women and men and among members of the different ethnic groups.

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

Slovakia

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1993)

Article 1(a) of the Convention. Application of the principle to all elements of remuneration. The Committee recalls its previous comments with respect to section 118(2) of the Labour Code, 2006, which excluded from the definition of wages certain payments provided in relation to employment. The Committee notes with *satisfaction* that section 119(1) of the Labour Code, as amended in 2007 by Act No. 348/2007 Coll., now provides that wage conditions must be agreed without any form of sex discrimination and that this applies to all remuneration for work and benefits that are paid or shall be paid in relation to employment according to the other provisions of the Labour Code or special regulations. The Committee also takes note of the Government's statement that section 119(1) extends the right to equal remuneration also to those payments which otherwise, within the meaning of section 118(2) of the Labour Code, would not be regarded as wages for labour law purposes.

Work of equal value. The Committee recalls its previous observation in which it noted that section 119(3) of the Labour Code, which provided for equal wages for work of an equal level of complexity, responsibility and difficulty, performed under the "same working conditions and upon achievement of the same efficiency and work results", had been amended in 2007 to guarantee "equal wages for men and women for equal work or work of equal value". The Committee notes that section 119(2) of the Labour Code, as amended in 2007 by Act No. 348/2007 Coll., now states that women and men have the right to equal pay for like work or work of equal value, which is considered as work of the same or comparable complexity, responsibility and arduousness, performed in the same or comparable working conditions, producing the same or comparable productivity and results for the same employer. Furthermore, section 119(3) states that if a system of job evaluation is being used, this must be based on the same criteria for men and women without sex discrimination; the employer may use other objectively measurable criteria in addition to those given in paragraph 2 if they can be applied to all employees without regard to sex. *The Committee asks the Government to confirm that the wording "comparable working conditions, productivity and results" permit a comparison between jobs performed by men and women that are of an entirely different nature but nevertheless of equal value. It also asks the Government to provide copies of judicial decisions concerning the application of section 119 of the Labour Code, and in particular those decisions which show how the courts have interpreted the wording "comparable working conditions, productivity and results".*

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1993)

Discrimination on the basis of race and national extraction. The Committee recalls its previous observation in which it noted the Constitutional Court's ruling regarding the unconstitutionality of section 8(8) of the Anti-Discrimination Act 2004 which provided for specific positive measures aimed at addressing disadvantages linked to race and ethnic origin. It also recalls that the various measures and programmes envisaged by the Government to promote equality in education and employment of persons belonging to the Roma community remained to a large extent unimplemented. The Committee notes from the Government's report that following amendment of the Anti-Discrimination Act 2004, by Act No. 85/2008, effective 1 April 2008, section 8a provides for "the adoption of temporary compensatory measures by state administrative bodies targeted to eliminate forms of social and economic disadvantages and disadvantages arising due to age or disability, with the aim to ensure equality of opportunities in practice". The Committee notes that such measures could include measures "(a) consisting of the promotion of the interests of members of disadvantaged groups in employment, education, culture, health care and services; and (b) ensuring the equality in access to employment and education especially through targeted preparation programs for members of disadvantaged groups or through dissemination of information on these programmes or on possibilities to apply for jobs or places in the

system of education". The Committee further notes the Government's statement that the "Basic propositions of the Government policy concept for the integration of the Roma communities (2003)" is the guiding policy document for addressing Roma issues, which is to be implemented by 2010 and which provides for special temporary measures for social inclusion of the Roma. The Government also approved, in March 2008, the "Medium-term Concept of the Development of the Roma National Minority in the Slovak Republic – Solidarity – Integrity – Inclusion for 2008–13". However, without further information on the actual follow-up to these policy documents, and on the results achieved so far, it is difficult for the Committee to evaluate whether real progress has been made in promoting equality of opportunity and treatment in employment and occupation for persons belonging to the Roma national minority. ***The Committee therefore urges the Government to make serious and concerted efforts with respect to their implementation of the various policy documents regarding social inclusion of the Roma population. In this context, the Committee asks the Government as follows:***

- (i) ***to provide information on any special temporary measures taken aimed at eliminating social and economic disadvantages faced by the Roma population with a view to achieving equality in practice, pursuant to section 8a of the Anti-Discrimination Act; and***
- (ii) ***to indicate the results achieved in obtaining the targets set for 2010 by the basic policy document of 2003 with respect to access to employment and education, and in implementing the policy document for social inclusion of the Roma for 2008–13.***

Noting further that no cases concerning race or ethnic discrimination in employment have been dealt with by the courts or the National Centre for Human Rights, the Committee asks the Government to take appropriate measures, in cooperation with workers' and employers' organizations, to increase the awareness and accessibility of available protection and remedies, and to provide information on the steps taken to this end.

Equality of opportunity and treatment between men and women. In its previous observation, the Committee urged the Government to take steps to increase public awareness with respect to gender discrimination, and to provide information on the specific impact of the various projects carried out with respect to discrimination against women in the labour market, and to promote their access to training and particular occupations. The Committee notes the information provided by the Government on the new administrative structures set up to promote equality, such as the Permanent Committee on Gender Equality and Equal Opportunities. The Committee also notes the new legislative provisions in the Labour Code and Act No. 5/2005 on employment services, as amended in 2007, to assist workers in reconciling work and family responsibilities and to prevent exclusion of disadvantaged groups in employment, such as mothers with children, from the labour market and promote their integration. The Committee further notes the very general reference in the Government's report to projects and campaigns that have been carried out to raise awareness about discrimination. While welcoming these initiatives, the Committee notes that the Government's report does not contain any information regarding specific activities undertaken to raise public awareness on gender discrimination, or on the specific impact of the measures taken to address gender discrimination in the labour market and promote women's access to training and employment, as requested in its previous observation. ***The Committee once again urges the Government to take concrete steps to increase public awareness with respect to gender discrimination in the labour market, and report on the results achieved. It also urges the Government to undertake an impact assessment of its previous and present projects to address sex discrimination in employment and occupation, and to promote women's access to a wider range of training and jobs, and to report on the progress made in this regard. Please also provide up to date statistics, disaggregated by sex, on the participation of men and women in employment and particular occupations and training courses.***

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

South Africa

Equal Remuneration Convention, 1951 (No. 100) (ratification: 2000)

Article 1(b) of the Convention. Equal remuneration for work of equal value. In its previous observation, the Committee noted the Government's indication that Chapter 2 of the Employment Equity Act (EEA) on prohibition of unfair discrimination is understood to encompass the principle of equal remuneration for men and women for work of equal value. Recalling its 2006 general observation on the Convention, in which the Committee urged governments to take the necessary steps to amend their legislation in order to incorporate expressly the principle of the Convention, the Committee asked the Government to consider amending the EEA so as to provide explicitly for equal remuneration for work of equal value. The Committee notes from the Government's report that in the context of the review of the Employment Equity Regulations, which is scheduled for 2008/9, the principle of equal remuneration for work of equal value will be included in the new regulations. The Committee also takes note of the Government's statement that, in the event of an amendment of the EEA, consideration will be given to incorporating the principle of the Convention in the Act. ***Welcoming the Government's intention to include the principle of equal remuneration for work of equal value in the new Employment Equity regulations, the Committee also hopes that the Government will give due consideration to the possibility of including explicitly the principle of the Convention in the EEA and asks it to provide information on any developments in this regard. The Committee also asks the Government to supply a copy of the amended***

Employment Equity Regulations and reiterates its request for information on the practical application of the relevant provisions of the EEA to cover equal remuneration for work of equal value.

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

Sudan

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1970)

Absence of conditions to ensure protection against discrimination in employment and occupation. The Committee recalls its previous observation in which it continued to express serious concern at the human rights situation in Darfur, and in particular at the repression of political dissent as well as arbitrary arrests and detention of individuals, including lawyers, community leaders, teachers and business people, predominantly from the Fur, Maasaalit and Zaghawa tribes. The Committee had urged the Government to take measures to ensure that all parts of the population in Darfur, irrespective of race, colour, national extraction, sex, religion, political opinion and social origin, could exercise their occupations free from discrimination. The Committee notes that the Government has taken some legislative steps to address the human rights situation in Sudan, including the passing of the National Human Rights Commission Act on 21 April 2009 and of the Southern Sudan Human Rights Commission Act on 16 February 2009. However, it also notes the most recent report of the Special Rapporteur on the situation of human rights in Sudan indicating that the general human rights situation in Sudan remains critical, including serious problems with respect to the effective administration of justice and continuing arbitrary detention and ill-treatment of members of political opposition and journalists on the account of their work, opinions or peaceful assembly (A/HRC/11/14, June 2009).

The Committee notes that the Government continues to assert that discrimination in employment and occupation does not exist in Sudan, that no complaints have been submitted to the courts in this regard, and that there is thus no need for specific policies and programmes to address such discrimination. The Committee ***profoundly regrets*** the Government's persisting general statements that no discrimination exists in Sudan. The Committee considers that such a position is contrary to the spirit of the Convention and is a considerable obstacle to its implementation. The absence of discriminatory provisions in the national legislation or the absence of complaints is not sufficient to fulfil the obligations under the Convention; nor is it an indicator of an absence of discrimination in practice. Moreover, the absence of complaints of discrimination in employment and occupation is often due to an inadequate legal foundation or lack of access to dispute resolution and enforcement mechanisms and problems with respect to the administration of justice. The Committee must once again draw the attention of the Government to the fact that in the process of applying the Convention, it is essential to acknowledge that no society is free from discrimination and that continuous action is required to address it. ***The Committee urges the Government to take immediate measures to:***

- (i) ensure that all parts of the population in Darfur, including the Fur, Maasaalit and Zaghawa tribes, can exercise their occupations free from discrimination, irrespective of ethnic origin or political opinion;***
- (ii) ensure the effective enforcement of the right to non-discrimination for all parts of the population, irrespective of race, colour, national extraction, sex, religion, political opinion or social origin, including the establishment of adequate and effective dispute resolution and complaints mechanisms; and***
- (iii) report on the results achieved with respect to all the measures taken.***

In this regard, the Committee urges the Government to take the necessary measures that the National Human Rights Commission and the Southern Sudan Human Rights Commission are established, and asks the Government to provide information on steps taken by them to give effect to the provisions of the Convention.

Article 1, paragraph 1(a), of the Convention. Prohibited grounds of discrimination set out in the Convention. The Committee recalls article 31 of the Interim Constitution of the Republic of Sudan 2005 providing for equal protection of the law to all persons without discrimination based on the grounds set out in the Convention, except social origin. It also recalls the absence of a provision in the 1997 Labour Code of the Republic of Sudan explicitly prohibiting discrimination on the grounds set out in the Convention with respect to all aspects of employment and occupation. The Committee notes that such a provision is included in the Southern Sudan draft Labour Act (section 10(1) and (2)), and that section 18 of the Interim Constitution of Southern Sudan 2005 provides for equal protection without discrimination based on all of the grounds set out in the Convention. The Committee further notes the Government's statement that social origin discrimination does not exist in Sudan. ***Noting the Government's intention to take into account the Committee's comments regarding the need for a legal provision prohibiting direct and indirect discrimination in employment and occupation with respect to all the grounds set out in Article 1(1)(a) of the Convention, in the process of formulating the final Constitution, the Committee requests that concrete steps be taken to insert such a provision in the final Constitution and the Labour Code.***

Article 3. Measures to implement the national policy on equality of opportunity and treatment. With respect to measures taken pursuant to Article 3 of the Convention, the Committee notes the Government's reply that tripartite dialogue and cooperation with employers' and workers' organizations are well-established practices in Sudan; the laws of Sudan do not contain discriminatory provisions nor are there any laws, circulars or administrative practices in force

contrary to the Convention. The Government further maintains that following the adoption of the Comprehensive Peace Agreement 2005, any practice contrary to international human rights Conventions was stopped. The Committee stresses that by ratifying the Convention, the Government has undertaken to take proactive measures to promote equality of opportunity and treatment in employment and occupation in the framework of a national policy, with a view to eliminating discrimination. While the choice of the concrete measures to be taken is left to the Government in view of the national conditions and practice, the Convention requires that these measures be effective. The Committee also recalls that under *Article 3(f)* of the Convention, the Government is called upon to indicate in its reports the action taken in pursuance of this national policy and the results secured by such action. ***The Committee therefore once again urges the Government to provide full particulars in its next report on the specific measures taken by the Federal Committee of Manpower, the Ministry of Education and the High Council of Vocational Training not only to promote the principle of equality of opportunity and treatment, but also to ensure that no inequalities exist nor discrimination is practised on any of the grounds set out in the Convention.***

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

Swaziland

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1981)***

Equality of opportunity and treatment of ethnic minorities. In its previous observation, the Committee had reiterated its earlier request for specific information on the employment situation of those belonging to certain ethnic minority communities, namely the Zulu and the Tonga. The Committee *regrets* that the Government again merely refers to the Constitution and states that no discrimination of such people takes place. The Committee draws the Government's attention once again to the importance under the Convention, not only of the absence of discriminatory legal provisions, but also of declaring and implementing a national policy on equality of opportunity and treatment with respect to all the grounds covered in *Article 1(1)(a)* of the Convention and taking concrete measures to implement the policy in accordance with *Article 3*. ***The Committee urges the Government to ensure that in the context of the national equality policy, concrete measures are taken to ensure that workers from ethnic minorities, in particular the Zulu and the Tonga, are protected against discrimination in employment and occupation, and requests the Government to provide information in this regard. The Committee also asks the Government to provide specific information on the employment situation of ethnic minorities in the country.***

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

Sweden

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1962)***

Grounds of discrimination. The Committee notes the entry into force on 1 January 2009 of the Discrimination Act, 2008, superseding the Equal Opportunities Act and the Prohibition of Discrimination Act. The Committee notes that the new Act is designed to combat discrimination and promote equal rights and opportunities regardless of sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation or age. The Committee also notes that, pursuant to Chapter 2, section 1, of the Act, the protection against discrimination has expressly been extended to include, in addition to employees and jobseekers, also training applicants and trainees, persons enquiring about job vacancies and persons seeking or performing temporary or agency work. Recalling its previous comments concerning the absence in the legislation of the prohibited grounds of political opinion and social origin, the Committee notes that such grounds have not been included in the new Act. The Committee also notes the clarification provided by the Government that the ground of "belief" is not meant to cover political opinion. The Committee wishes to stress that, when provisions are adopted to give effect to the principle laid down in the Convention, they should include all the grounds of discrimination specified in *Article 1(1)(a)* of the Convention. In this regard, it notes the Government's indication that the possibility of adopting an open list of prohibited grounds of discrimination has been envisaged as a subject matter for further study. ***The Committee requests the Government as follows:***

- (i) to clarify the reasons for not including the grounds of political opinion and social origin in the new Discrimination Act, and to indicate any developments concerning the adoption of an open list of prohibited grounds of discrimination;***
- (ii) to indicate how the application of the Convention in respect of the grounds of political opinion and social origin is ensured in practice.***
- (iii) to provide detailed information on the application of the Discrimination Act, including information on the adoption of the "active measures" contemplated in Chapter 3 and their impact on promoting the principle of equality of opportunity and treatment in employment and occupation.***

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

United Republic of Tanzania

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 2002)

Article 1 paragraph 1(b) of the Convention. Legislative developments. HIV/AIDS. The Committee notes with **interest** the adoption in 2008 of the Act on HIV and AIDS (Prevention and control), Part VII of which covers stigmatization and discrimination. The Act contains provisions providing, inter alia, that: (a) nobody shall formulate “a policy, promulgate a law or act in a manner that discriminates directly or by its implications against persons living with HIV and AIDS, orphans or their families” (section 28); (b) a person shall not stigmatize or discriminate in any manner against any other person on the grounds of such other person’s actual, perceived or suspected HIV/AIDS status (section 31); and (c) a person may not deny any person employment opportunity on the grounds of the person’s actual, perceived or suspected HIV/AIDS status (section 30(c)). ***The Committee asks the Government to provide information on the application in practice of the 2008 Act on HIV and AIDS (Prevention and control) with regard to employment and occupation, and to indicate whether any regulations regarding section 28 of this Act have been made pursuant to section 52(m) and, if so, to provide a copy.***

Articles 1 and 2. Implementation of the provisions concerning the prohibition of discrimination and the promotion of equality of opportunity and treatment. Enforcement. In its previous comments, the Committee requested the Government to provide information on the measures taken to promote and ensure the implementation of the provisions of the Employment and Labour Relations Act, 2004 relating to equality and non-discrimination, and to indicate the number of equality plans that have been registered by employers with the Labour Commissioner under that Act. According to the Government’s report, since the adoption of the Employment and Labour Relations Act and its regulations in 2004 and 2007 respectively, awareness-raising activities have been carried out by the tripartite constituents to promote equal opportunities and eliminate discrimination in all workplaces. The Government also indicates that few equality plans have been registered with the Labour Commissioner and that, to rectify this situation, the supervision of the application of the legislative and regulatory provisions relating to equality has been included in the tools used by labour inspectors to ensure that employers are taking all the necessary measures to comply with the legal provisions concerned. In this regard, the Committee notes that the Government would like to be able to benefit from technical assistance from the ILO to strengthen the capacities and knowledge of labour inspectors with regard to equal opportunity and treatment in employment and occupation and urges the Government to take the necessary steps to obtain that assistance.

Noting this information and, in particular, the Government’s efforts to strengthen the supervision of the application of the legal provisions relating to non-discrimination and equality, the Committee requests the Government to take the necessary measures to encourage employers to draw up and register the plans provided for under the Employment and Labour Relations Act 2004 with the Labour Commissioner as soon as possible, and to continue providing information on the number of equality plans registered as well as their content. The Government is also requested to provide information on:

- (i) the measures taken or envisaged at the national level to combat discrimination on any grounds prohibited by the 2004 Act and to promote equal equal opportunity in employment for the entire population;***
- (ii) the means and tools available to inspectors to ensure supervision of the application of the legal provisions relating to equality and combating discrimination;***
- (iii) the labour inspectorate’s activities involving employers and workers and their organizations (activities relating to the supervision of establishments and advisory activities), violations reported and the outcome of the proceedings initiated;***
- (iv) the steps taken to obtain technical assistance from the Office for the purposes of providing labour inspectors with relevant training.***

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

Tunisia

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1959)

Articles 2 and 3 of the Convention. National policy relating to discrimination on grounds other than sex. The Committee notes with **regret** that the Government has once again failed to provide any details on the measures adopted to combat discrimination on grounds of race, colour, national extraction, religion, political opinion and social origin in the context of a national policy of equality of opportunity and treatment. The Committee notes that the Government reiterates its indication that under article 6 of the Constitution all Tunisians have the same rights and the same duties and are equal before the law. It also notes the Government’s indication that the competent services of the Ministry of Employment and the Vocational Integration of Youth have not reported any case of discrimination based on race, colour, religion, political opinion, national extraction or social origin in relation to employment and occupation, and that no complaints have been registered by the administrative services or the courts.

The Committee once again reminds the Government that constitutional provisions providing for equal protection under law are not sufficient in themselves to ensure the full application of the Convention. Similarly, the fact that the authorities have not received any complaints does not mean that there is no discrimination in the country. The Committee considers that this may on the other hand indicate that the victims either have an inadequate knowledge of the relevant legal provisions and dispute resolution procedures available, or fear possible reprisals by the employer. The Committee also wishes to emphasize once again that *Article 2* of the Convention requires the Government to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating any discrimination in employment and occupation on the basis of the criteria set out in the Convention. ***The Committee requests the Government to:***

- (i) ***consider in the context of a national policy of equality of opportunity and treatment adopting legislation explicitly prohibiting discrimination based on race, colour, national extraction, religion, political opinion or social origin, and to take concrete measures to eliminate such discrimination in practice;***
- (ii) ***take measures to raise awareness in the public and among the social partners of the principles set out in the Convention and the legal provisions relating to equality of opportunity and treatment in employment and occupation;***
- (iii) ***take measures, for example in the form of studies, to evaluate the effectiveness of dispute resolution procedures, including any difficulties of a practical nature encountered by men or women workers in obtaining legal redress for discrimination based on any of the grounds set out in the Convention.***

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

Turkey

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1967)

Training and awareness raising. In its previous observation, the Committee asked the Government to provide information on any measures taken to promote awareness and understanding of the principle of equal remuneration for men and women for work of equal value as set out in the Convention and section 5(4) of the Labour Act, among relevant target groups, including labour inspectors. In its report, the Government provides information on a number of activities and projects aimed at the promotion of gender equality more generally and greater access to employment for women. However, the information does not indicate whether any specific activities were undertaken to promote understanding and awareness of the principles of the Convention. In this context, the Committee notes that according to the Confederation of Turkish Trade Unions (TÜRK-İS), inadequate supervision by the labour administration is one of the reasons for unequal pay between men and women. ***The Committee hopes that the Government, in consultation with the workers' and employers' organizations, will carry out training and awareness-raising activities specifically addressing equal remuneration for men and women for work of equal value among relevant target groups, including labour inspectors, and asks it to provide information on the measures taken in this regard.***

Labour inspection. The Committee notes the Government's indication that there is currently no system for classifying infringements identified by the labour inspectorate according to the related provisions of the labour legislation. However, it indicates that a new system is to be established allowing for such a classification. ***The Committee welcomes this information and hopes that the new system will allow the labour inspectors to establish data on the number, nature and outcome of infringements of section 5(4) with regard to equal remuneration of men and women for work of equal value. The Committee asks the Government to provide information on the number, nature and outcomes of the cases addressed by the labour inspectorate under section 5(4) of the Labour Code, as soon as possible.***

Article 3 of the Convention. Objective job evaluation. The Committee notes that the Government has provided no information in reply to its previous comments on the issue of objective job evaluation. However, it welcomes the information provided by the Turkish Confederation of Employers' Associations (TİSK) on the use of objective job evaluation systems by its affiliates. For instance, the Metal Industry Job Classification System (MIDS) examines jobs on the basis of twelve factors which are classified under four main factors, namely dexterity, responsibility, effort and working conditions. In 2007, the Union of Turkish Metal Industrialists organized seminars for heads of human resources departments in four cities with a view to making the MIDS known, and assessing problems in its application and possible solutions to them. ***The Committee asks the Government once again to provide information on any steps it is taking to promote objective job evaluation as envisaged in Article 3 of the Convention, both in the private and public sectors, including information on any measures taken to ensure that equal remuneration for men and women for work of equal value is made an explicit objective of job evaluation.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1967)

The Committee notes the Government's report, as well as the comments made by the Turkish Confederation of Employers' Associations (TISK) and the Confederation of Turkish Trade Unions (TÜRK-İŞ), which were attached to the report.

Articles 1 and 2 of the Convention. Discrimination based on political opinion. The Committee recalls its previous comments concerning the application of the Anti-Terrorism Act or the Penal Code in cases involving journalists, writers and publishers expressing their political opinions. ***Noting that the Government has provided no information, the Committee requests the Government once again to provide information on the number and outcomes of cases against journalists, writers and publishers, including a brief summary of the facts and specific charges brought. The Committee also requests the Government to provide information on any measures taken, including legislative measures, to ensure that no journalist, writer or publisher is restricted in the exercise of their employment or occupation because of political opinions expressed by them.***

Article 2. Equality of opportunity and treatment of women and men. The Committee notes from ILO statistical data that the rate of economically active women (15 years of age and more) further declined to 24.5 per cent in 2008 (24.8 per cent in 2005). By comparison the activity rate for men was 70.1 per cent in 2008 (72.2 per cent in 2005). The Committee notes that between 2001 and 2008 there was a decline of economic activity of women younger than 20 years of age and of women older than 45 years of age. The decline of economic activity of younger women, which coincides with their increasing participation in education, has translated into some increases of economic activity of women between 20 and 45 years of age. The Committee notes that according to the Government's report the enrolment rate of girls in secondary school was 55.8 per cent in 2007–08, compared to 61.1 per cent for boys for the same period.

The Committee welcomes progress towards equal opportunities of men and women in education, but notes with **concern** the continuing overall low level of participation of women in the labour market, and particularly the decline of the activity rate of women older than 45 years of age. In its previous observation, the Committee requested the Government to provide detailed information on the measures taken to promote equality of opportunity and treatment of men and women in employment and occupation. The Committee notes that the Government's report refers to the equal treatment provisions of the Constitution, the Labour Code and the regulations governing active labour market programmes; that 13,123 unemployed women and 30,418 unemployed men have participated in training courses and integration programs organized by the Turkish National Employment Agency; the preparation of legislative amendments regarding paternity leave which the Committee already noted in 2007; and efforts to analyse the situation of women in the labour market in the context of the European Employment Strategy. The Committee notes that the Government has provided very little information on practical and promotional measures to promote women's equality of opportunity and treatment in practice and that no information was provided on the follow-up to the Women's Employment Summit held in Istanbul in 2006, or any related collaboration with workers' and employers' organizations. The TISK refers to 24 projects to assist unemployed women and youth to acquire vocational skills and experience submitted in April 2008 under a scheme financed by the European Union. The TISK also states that as a corollary to the National Employment Strategy the National Employment Policy for Women needs to be implemented. TÜRK-İŞ considers that the vocational training institutions at the provincial level did not function satisfactorily. ***Noting that overcoming the persisting inequality between men and women in the labour market will require proactive policies and measures, the Committee requests the Government to provide more detailed information on the practical measures or projects implemented to promote women's equal opportunities and treatment in employment and occupation, including specific measures targeting women in rural areas and women over 45 years of age. The Committee requests the Government to provide information on any measures taken to follow up on the 2006 Women's Employment Summit, including the steps taken to cooperate with the social partners. Further, the Committee reiterates its request to the Government to provide detailed statistical information on the situation of men and women in the labour market, including their participation in the various sectors and occupations.***

In its previous comments, the Committee requested the Government to provide an assessment of the impact of the current prohibition for university students to wear head coverings on the participation in higher education of women wishing to wear headscarves out of religious obligation or conviction. In this regard, the Committee asked the Government to provide information on the number of female students expelled from universities for wearing headscarves on university premises. In reply to these comments, the Government indicates that it was not in a position to provide such information. The Committee recalls its previous comments in which it has point out that, while the existing prohibition of head coverings includes all forms of coverings and applies to men and women, this measure may have a discriminatory effect on women with regard to their access to university education. ***The Committee therefore reiterates its request to the Government to obtain and provide information on the number of female students expelled from universities for wearing headscarves on university premises, and to report on the measures taken to assess and review this matter.***

Articles 1, 2 and 3. Legal protection from discrimination in respect of recruitment and selection. The Committee recalls that section 5(1) of the Labour Code prohibits any discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons in the employment relationship. In its previous comments the Committee has concluded that this provision does not prohibit discrimination at the recruitment stage. However, the

Committee has noted that section 122 of the Turkish Penal Code, which entered into force in 2005, provides that a person, practising discrimination on grounds of language, race, colour, sex, disability, political opinion, philosophical beliefs, religion, creed or other grounds, who makes the employment of a person contingent on one of these grounds or who prevents a person from carrying out an ordinary economic activity shall be sentenced to imprisonment for a term of six months to one year or a judicial fine. The Committee notes that as indicated by the Government there has been one case invoking section 122 of the Penal Code. ***Recalling that under the Convention, there is an obligation to address discrimination in respect of access to employment, including recruitment and selection, the Committee requests the Government to continue to provide information on the number, nature and outcome of criminal proceedings under section 122 of the Penal Code to allow the Committee to ascertain whether effective protection from discrimination at the recruitment stage is available under the existing legislation. The Committee also requests the Government to indicate whether persons considering themselves victims of discrimination in recruitment can bring complaints under section 122 of the Penal Code and whether they can obtain compensation or other remedies.***

Enforcement of section 5 of the Labour Code. In its previous comments, the Committee noted that according to trade union comments it had received, discrimination continues to occur in practice, despite the equal treatment clause set out in section 5 of the Labour Code. In reply to the Committee's request for information on the measures taken by the labour inspectorate to monitor compliance with these provisions, the Government generally states that compliance with section 5 is being considered in the context of inspections and that an individual application can trigger an inspection. However, the data provided do not indicate whether any of the inspections carried out or fines imposed involved issues under section 5 of the Labour Code. ***The Committee requests the Government to provide information on whether the labour inspectorate has dealt with any cases under section 5 of the Labour Code and it reiterates its request to the Government to indicate whether the courts have decided any such cases. Please indicate the number, nature and outcome of such cases.***

Articles 1, 2 and 3(d). Application of the Convention in the civil service. The Committee recalls the concerns expressed by the Confederation of Public Employees Trade Unions (KESK) that the legislation covering public employees was lacking non-discrimination provisions, indicating that the general protection against discrimination based on sex available under article 10 of the Constitution was insufficient. The KESK referred to instances of discriminatory job announcements and unequal access of women to managerial positions in the civil service. In reply to the Committee's previous comments regarding this matter, the Government states that civil servants are nominated according to the result of a centralized examination throughout the country. Interviews are only conducted for a limited number of positions, which, in the Government's view, reduce the possibility of discrimination. Further, the Government asserts that there is no gender discrimination as regards appointment to higher level positions. ***While noting this information, the Committee trusts that the Government will take swift action to address any allegations of discrimination in the civil service. It also requests the Government to provide detailed statistical information on the participation of men and women in the examinations for different branches and positions in the civil service, the actual number of appointments made after interviews and the measures taken to promote equal opportunities for men and women, including measures to allow men and women to reconcile work and family responsibilities.***

The Committee further recalls its previous comments in which it expressed concern that security investigations may lead to exclusions from civil service employment contrary to the requirements of the Convention, for instance due to having peacefully expressed political opinions. ***Noting that the Government failed to provide the information requested by the Committee in this regard, the Committee once again requests the Government to assess the extent to which security investigations have led to exclusions from public employment, and indicate the outcome of such assessment. In this context, the Committee requests the Government to indicate the number of administrative appeals filed by persons excluded from public employment on the basis of security investigations and the outcomes of these proceedings.***

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

United Kingdom

Gibraltar

Equal Remuneration Convention, 1951 (No. 100)

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

Articles 1 and 2 of the Convention. Legislative developments. The Committee notes that the Equal Opportunities Act, 2006, entered into force on 1 March 2007. Section 31 provides for equal pay for men and women for like work, equivalent work, or work which is in terms of the demands (for instance under such headings as effort, skill and decision) of equal value. The Committee notes with interest that the provision explicitly incorporates the notion of work of equal value and that pay is defined broadly (section 31(6)(a)), in accordance with the Convention. ***The Committee asks the Government to provide information on the implementation and enforcement of section 31 of the Equal Opportunities Act, including information on any cases brought before the courts and their outcomes. It also asks the Government to indicate measures taken to promote awareness of the Act's equal pay provisions.***

The Committee recalls that the Convention does not limit the application of the principle of equal remuneration for men and women for work of equal value to the level of the enterprise or undertaking. In this regard, the Committee notes that section 31 allows men and women to bring equal pay claims against their employers using comparators employed by the same employer or by any associated employer in Gibraltar in which common terms and conditions of employment are observed either generally or for employees of the relevant classes. Two employers are considered to be associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person has (directly or indirectly) control. In addition, the Committee notes that under section 63 of the Act, terms contained in a collective agreement or any rule made by an employer are void where “the making of the collective agreement is, by reason of the inclusion of the term, unlawful by virtue of this Act” or “the term or rule is included or made in furtherance of an act which is unlawful by virtue of this Act” (section 63(2)(a) and (b)). ***The Committee asks the Government to indicate whether section 63 renders void terms of collective agreements or terms or rules of undertakings that violate the right to equal remuneration for men and women for work of equal value.***

Assessment of the gender pay gap. The Committee notes from the Employment Survey Report published by the Statistics Office in March 2008 that the gender wage gap for October 2007 (average monthly earnings for full-time work) was as wide as 31 per cent. The gender pay gap was wider in the private sector (33.3 per cent) than in the public sector (26.7 per cent). As regards the different industries, the gender pay gap was particularly wide in “financial intermediation” (47.6 per cent). ***The Committee asks the Government to provide updated information on the earnings of women and men that would allow the Committee to assess the progress made in closing the wide gender pay gap. In this regard, the Committee also asks the Government to provide detailed information on the measures taken to analyse and correct the causes of the continuing income gap between men and women and the results achieved by such measures.***

Article 3. Objective job evaluation. Noting that the Equal Opportunities Act’s equal pay provisions refers to the notions of “work rated as equivalent” and “work of equal value” in terms of the demands made on the employee, the Committee asks the Government to provide information on any measures taken or envisaged to promote the development and use of methods for the objective evaluation of jobs, in accordance with Article 3 of the Convention.

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

Uruguay

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1989)

Wage boards and the promotion of the principle of the Convention through collective bargaining. In its previous comments, the Committee noted that according to the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT), wage board decrees still contain discriminatory criteria, such as the female form of names for certain activities, and 85 per cent of these decrees contain no general clauses on equality. It indicated that these are the instruments most often and directly used by workers, in particular at trade union level, and that the incorporation into such decrees of the principle set forth in the Convention would constitute an important means of dissemination and awareness raising. The PIT–CNT also indicated that women are under-represented on the wage boards mentioned.

The Committee notes with ***interest*** the information provided by the Government that steps have been taken with regard to the comments indicated and it notes, in particular, that the Tripartite Commission on Equality of Opportunity and Treatment in Employment (CTIOTE) unanimously decided to include an equality clause in the wage board round. Under this clause, which is included in collective agreements, the parties agree to promote compliance with the ILO Equal Remuneration Convention, 1951 (No. 100), the Maternity Protection Convention (Revised), 1952 (No. 103), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and the MERCOSUR Social and Labour Declaration. According to the report, for the purposes of implementing this clause, a series of conditions have been proposed, including the principle in the Convention of equal remuneration for work of equal value. The Government also indicates that although women are under-represented on the wage boards, each delegation (Government, employers and workers) selects its own representatives and the only delegation which has a majority of women (70 per cent) is the Government. The Government also indicates that the terminology used does not affect the principle of equality but that the government representatives on the wage board will be instructed to modify the terminology which is regarded as discriminatory. The Committee wishes to stress that the use of the female form of names for certain activities may hinder the full application of the principle of the Convention because it contributes to the maintaining of certain stereotypical assumptions regarding the role of women in the labour market. As highlighted by the Committee in its general observation of 2006, this may result in the segregation of women in certain jobs as well as in the undervaluation of the jobs predominantly or exclusively performed by them. ***The Committee therefore asks the Government to take steps to ensure that the discriminatory terminology in the wage board decrees is amended and asks it to provide information in this regard. The Committee asks the Government to provide information on the impact of the inclusion of the equality clause in collective agreements, in particular, with regard to the principle of equal remuneration for men and women for work of equal value. It also asks the Government to continue providing information on the representation of women on wage boards and on any steps taken by the Government and by the social partners to increase the representation of women on wage boards.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1989)***

National gender policy. The Committee notes with *interest* that Act No. 18104 of March 2007 on equality of rights and opportunity between men and women in the Republic provides that the activities directed at equality of rights and opportunity between men and women are of public interest and that the State shall adopt all necessary measures to implement public policies that incorporate a gender perspective. The National Institute of Women is charged with designing the National Plan of Equality of Opportunity and Rights, with wide participation of women's organizations, and in 2007 the first National Plan on the subject was adopted. The Committee also notes that the Tripartite Commission for Equality of Treatment and Opportunity in Employment (CTIOTE) elaborated a Plan of Action 2008. The Committee notes that within the CTIOTE a consensus was reached about promoting the implementation of the Equal Remuneration Convention, 1951 (No. 100), the Maternity Protection Convention (Revised), 1952 (No. 103), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Workers with Family Responsibilities Convention, 1981 (No. 156), as well as the Labour Declaration of MERCOSUR in the framework of collective bargaining. The Government also indicates that, within the Ministry of Social Development, the National Institute of Women is putting in place a gender information system the purpose of which is to highlight the forms of inequality between men and women existing in society. ***The Committee asks the Government to continue to provide information on the implementation and impact of the national policy of equality in employment and occupation.***

Complaints procedures. In its previous comments, the Committee referred to a communication from the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT) in which the PIT–CNT stressed the need to implement a flexible complaints mechanism to resolve labour discrimination disputes and that, in this respect, the burden of proof should be reversed, placing the onus on employers, and protection against reprisals should be afforded to workers who lodge complaints or testify. The Government informs that a unit competent to receive complaints and to provide advice to workers has been established within the General Labour and Social Security Inspection (IGTSS). It also indicates that in 2006 and 2007 all technical staff of the IGTSS was trained on sexual harassment and fundamental rights. The Government also indicates that the IGTSS has a Protocol on proceedings regarding complaints for discrimination. Such complaints are considered as urgent and priority is given to their examination. The Committee also notes the labour inspection's procedures for dealing with complaints regarding sexual harassment. The Committee further notes that the IGTSS has kept a registry of complaints regarding moral and sexual harassment since 2004. The Committee notes that 17 sexual harassment complaints were examined in 2006 and 24 in 2007. ***The Committee asks the Government to provide an assessment on the operation of the existing complaints procedures to resolve discrimination cases, indicating whether these procedures meet the concerns of PIT–CNT concerning the burden of proof and protection against reprisals. The Committee also asks the Government to continue to provide information on the complaints lodged for discrimination and their outcomes.***

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

Bolivarian Republic of Venezuela

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1971)***

The Committee notes the communication of the Confederation of Workers of Venezuela (CTV), dated 28 August 2009, sent to the Government on 16 September 2009.

Discrimination on the basis of political opinion

Tascón list. The Committee recalls that in its 2007 observation, it referred to communications sent in 2004 and 2006 by the National Single Federation of Public Employees (FEDE–UNEP) concerning threats, harassment, transfers, the worsening of working conditions and the dismissal of employees of the Central and Decentralized National Public Administration in response to their participation in the collection of signatures to initiate a referendum to revoke the public offices assigned by popular election, in accordance with the Constitution. According to FEDE–UNEP and the CTV, the names of the workers who signed the proposal for a referendum were published prior to their dismissal on a list on the Internet which was used as a source of information for reprisals. The Committee further recalls that according to a communication received from the CTV in 2007, on 15 December 2005 the President of the Republic recognized the discriminatory use made of the list and stated that the list “should be discarded”. However, the CTV alleged that the discrimination continued and worsened in the public sector.

Petróleos de Venezuela (PDVSA). In its 2007 observation, the Committee referred to the dismissal of 19,500 workers from the PDVSA which, according to the CTV's allegations, were based on political grounds.

The Committee notes that in its 2009 communication, the CTV reiterates that discrimination on political grounds persists in the public sector. The Committee notes that the Government indicates in its report that discrimination on political grounds is non-existent in the Bolivarian Republic of Venezuela, that the national Government does not under any circumstances harass, threaten or harm workers on the basis of their political principles or a lack of support for a given

political ideology or view, and that, on the contrary, national policies in recent years have expanded the possibilities for men and women citizens to obtain an education and decent productive employment. With regard to the PDVSA case, the Government also states that measures were taken against persons who participated in the sabotage of the oil industry. However, the Committee cannot ignore the fact that a different picture emerges from the communications which it continues to receive from the CTV. The Committee also notes with *regret* that the Government has not provided any information on the measures taken to investigate the allegations of discriminatory practices, which it urged the Government to take in its previous observation. ***Consequently, the Committee once again urges the Government to take the necessary measures to investigate the allegations regarding management practices in the public sector, including the PDVSA, that discriminate against employees on the basis of their political opinion, and to put an end to such practices where they are found to exist. The Committee urges the Government to provide detailed information in its next report on the measures taken in this regard.***

The armed forces. With regard to the armed forces, the Committee recalls that in its 2007 observation, it noted the CTV's indication that soldiers and officers are obliged to shout the slogan "Fatherland, socialism or death" and that the President of the Republic has stated that anyone who is not prepared to give voice to this slogan must resign. The Committee notes that the Government refers in its report to the Basic Act on the Bolivarian National Armed Forces, adopted under Decree No. 6239 of 22 July 2008, which establishes the principles governing the organization, operation and administration of the armed forces. The Committee notes that the above Basic Act contains no provisions prohibiting discrimination against members of the armed forces in accordance with the provisions of the Convention. In this regard, the Committee recalls that in its previous observation, after noting that section 7 of the Organic Labour Act provides that members of the armed corps, meaning the armed corps of the national armed forces, the police services and other bodies involved in the defence and security of the nation and the maintenance of public order are excluded from the scope of that Act, the Committee emphasized that, although the Organic Labour Act does not apply to members of the armed corps, they, like other workers, enjoy the protection laid down by the Convention. Furthermore, the Committee once again draws the Government's attention to the fact that, according to paragraph 47 of its Special Survey of 1996 on the Convention, "the general obligation to conform to an established ideology or to sign an oath of political allegiance would be considered discriminatory".

Pressure on public officials. With regard to the allegations made by the CTV concerning the pressure exerted on public officials to join the political party established by the President of the Republic, the Committee notes that the Government once again refers to article 67 of the Constitution with regard to freedom of association. The Committee considers that the reference to this provision in this context is not relevant since, as pointed out in its previous observation, the matters raised do not concern the possibility of forming a political party, but rather the pressure exerted on workers, whether from the public or private sector, to join a given party or face dismissal.

The Committee *regrets* that it has not received specific information on the measures requested in its previous observation and once again emphasizes that threats, harassment, transfers, worsening of working conditions and the dismissal of employees on the basis of their activities expressing opposition to the established political principles, as well as the requirement to conform to a specific ideology constitute discrimination on political grounds within the meaning of the Convention (see General Survey of 1988, paragraph 57, and the Special Survey of 1996, paragraph 47).

The Committee once again expresses *deep concern* at the discriminatory practices on political grounds referred to above. ***The Committee strongly urges the Government to:***

- (i) take all the necessary measures in law and practice to provide redress for the effects of the acts of discrimination concerned and to prevent such situations from recurring;***
- (ii) protect workers in both the public and private sectors from discrimination on the ground of political opinion, in accordance with the Convention; and***
- (iii) provide detailed information on the measures taken in this regard.***

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

Viet Nam

Equal Remuneration Convention, 1951 (No. 100) (ratification: 1997)

Assessment of the gender wage gap. In its previous comments, the Committee referred to the findings of the Viet Nam Country Gender Assessment prepared in 2006 by the World Bank, the Asian Development Bank, the UK's Department for International Development and the Canadian International Development Agency, according to which the gender wage gap existing in the country resulted from sex-based labour market segregation, due, inter alia, to "widespread discrimination against women in recruitment", and the "low value attached to women's work in particular sectors". It urged the Government to take the necessary measures to collect, analyse and provide statistical information on men's and women's earnings that would allow an assessment of the progress made in closing the gender pay gap. The Committee notes the Government's indication that in 2008 the Department of Gender Equality was established under the Ministry of Labour, Invalids and Social Affairs and that the collection of statistical data relating to gender equality has not yet been arranged. The Committee also notes that, according to the data at the disposal of the General Statistical Office, in 2006 the

average monthly income of women in the public sector amounted to 92 per cent of men's remuneration while in the private sector and in the foreign invested sector it accounted, respectively, for 75.9 per cent and 65.5 per cent of men's income. The same source indicates that the gender wage gap in the mining sector was 29.9 per cent, in the processing industry it was 25.1 per cent and in the agriculture, forestry and fisheries sector it was 19.7 per cent. ***The Committee urges the Government to take appropriate measures to reduce the gender wage gap and address its underlying causes and asks it to provide information on the implementation of such measures. It also asks the Government to provide information on the distribution of men and women in the different sectors of economic activity, occupational categories and positions and to continue to supply statistical information on men's and women's remuneration levels in both the private and public sectors.***

Work of equal value. In its previous comments, the Committee noted that section 111 of the Labour Code and section 13 of the Law on Gender Equality fall short of fully reflecting the principle of the Convention and urged the Government to consider giving full legislative expression to the principle of equal remuneration for work of equal value and to report on the steps taken in this regard. The Committee notes the Government's statement that no discrimination between men and women in respect of remuneration is allowed either under the Labour Code or under other legislation. The Committee points out that the provisions of the Labour Code and the Law on Gender Equality provide only for equal remuneration for men and women who perform equal work, while the Convention also requires that men and women performing jobs of a different nature, which are nonetheless of equal value, receive equal remuneration. The Committee draws the Government's attention to its 2006 general observation addressing this matter. It emphasizes once again that comparing different jobs on the basis of objective factors free from gender bias is essential in order to eliminate pay discrimination resulting from the undervaluation of jobs traditionally held by women. ***Noting that by 2010 the Labour Code will be subject to a comprehensive revision, the Committee urges the Government to take the opportunity afforded by the revision process to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, and asks it to provide information on the steps taken in this regard.***

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

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1997)

Equality of opportunity and treatment of men and women. In its previous observation, the Committee noted the adoption of the Law on Gender Equality, sections 13 and 14 of which deal with equal treatment of men and women in employment, training and education, and requested the Government to provide information on its implementation. The Committee notes the Government's indication that no complaints were filed concerning violations of sections 13 and 14 of the Law. It also notes the Government's statement that labour laws and regulations are revised on a yearly basis, including the list of occupations from which women are barred, and that in this context the principle of equality of opportunity and treatment is taken into account. The Committee further notes that the Ministry of Labour, Invalids and Social Affairs is conducting campaigns for the dissemination of ILO Conventions, including Convention No. 111. ***The Committee requests the Government as follows:***

- (i) ***to provide information on the outcome of the yearly revision of labour laws and regulations, and the specific amendments that have been made, as they relate to the application of the principle of the Convention, including those enumerating occupations from which women are barred. Please also provide an updated list of the occupations from which women are barred, and an indication of the justification for such prohibitions; and***
- (ii) ***to indicate the target groups of the information campaigns carried out by the Ministry of Labour, Invalids and Social Affairs and whether similar initiatives have been taken or are envisaged to raise public awareness of the relevant legislation, and the procedures and remedies available in cases of discrimination in respect of employment and occupation. Please also continue to provide information on any judicial or administrative decisions relating to the application of sections 13 and 14 of the Law on Gender Equality and on any violations detected by or brought to the attention of the labour inspection services, the sanctions imposed and the remedies provided.***

Further to its previous request for information on the action taken to address women's inequality in the labour market, the Committee notes the Government's indication that it has created a number of jobs for women in "light industries", including the textile, footwear and traditional handicrafts industries. The Government also implemented the National Target Programme on Poverty Reduction and the National Target Programme on Employment, and adopted preferential policies to enable women to migrate overseas for higher income employment. In addition, the Government facilitated women's access to credit and training. ***The Committee requests the Government to provide information on the specific measures taken or envisaged under the National Target Programme on Poverty Reduction and the National Target Programme on Employment to promote and ensure equality of opportunity and treatment between men and women in respect of employment and occupation. The Committee also requests the Government to take appropriate measures to promote women's access to employment in a wider range of occupations and industries, including through a more diversified choice of educational and training opportunities, and to supply information in this respect. The Committee further asks for statistical data indicating the distribution of men and women in the different sectors of***

economic activity, occupational categories and positions, in both the public and private sectors, as well as information on the percentage of women and men workers migrating overseas.

Discriminatory recruitment practices based on sex. In its previous comments, the Committee noted the existence of widespread discriminatory recruitment practices affecting women, such as giving preference to male job applicants and discouraging female applicants by establishing requirements prohibiting marriage and pregnancy during a certain period following recruitment. The Committee requested the Government to take urgent measures to put an end to these practices. In this regard, the Committee notes that the Government refers to section 111(3) of the Labour Code prohibiting dismissal of a female employee for reasons of marriage, pregnancy, taking maternity leave, or raising a child under 12 months old, and indicates that no complaints were lodged under this provision. The Committee notes that the reported discriminatory practices affect women's access to employment while section 111(3) addresses dismissal on discriminatory grounds. ***The Committee therefore once again requests the Government to take urgent measures to put an end to discriminatory practices affecting women's access to work and to provide full information on the steps taken and the progress made in this regard.***

Sexual harassment. The Committee notes the Government's indication that no cases of sexual harassment were brought to the attention of the competent bodies either under section 111(1) of the Labour Code or under section 121 of the Penal Code. The Committee also notes the Government's statement that it will study the possibility of incorporating sexual harassment provisions in the legislation. ***Recalling its 2002 general observation on this issue, the Committee encourages the Government to take appropriate measures to raise awareness of workers and employers and their organizations about sexual harassment at the workplace, and the relevant procedures and remedies currently available under the legislation. It also encourages the Government to incorporate in the legislation specific provisions defining, prohibiting and preventing sexual harassment at the workplace. Please provide information on any progress made in this regard.***

Equality of opportunity and treatment of ethnic minority groups. In its previous comments, the Committee noted that a number of policies had been adopted with a view to promoting employment and training for persons of ethnic minority origin, including Decision No. 267/2005/QĐ-TTg of 31 October 2005 regarding vocational training for ethnic minority groups and Decision No. 134/2004/QĐ-TTg of 20 July 2004 regarding access of ethnic minority households to land and water, and it sought information from the Government on the implementation of these policies and on the measures taken to consult with the groups concerned in connection with their development and implementation. The Committee notes the Government's indication that under Decision No. 267/2005/QĐ-TTg all ethnic minority graduates from boarding secondary schools or high schools are exempted from school fees and entrance exam fees for boarding vocational schools and that they also qualify for scholarships and social welfare. The Committee notes that by December 2007 only 5.5 per cent of the total number of students enrolling in secondary technical and vocational institutions belonged to ethnic minority groups. The Committee also notes that a special preferential programme to promote ethnic minority students' access to secondary technical schools has been implemented since 2001. According to the Government, ethnic minority workers with secondary technical education are a pool of candidates for recruitment as government employees in ethnic minority areas. ***The Committee requests the Government to provide information on the type of training provided and the kind of occupations and employment promoted under the preferential policies aimed at ethnic minority groups, as well as indications as to the number of ethnic minority workers employed by the Government and in which jobs. It also requests the Government to provide information on the measures taken or envisaged to implement Decision No. 134/2004/QĐ-TTg of 20 July 2004 regarding access of ethnic minority households to land and water. Further, it again requests the Government to provide information on the measures taken to consult with the groups concerned when developing and implementing the abovementioned programmes and policies.***

Discrimination based on political opinion, religion, colour and national extraction. In its previous comments, the Committee noted the Government's statement that discrimination on the basis of political opinion, colour and national extraction did not exist in Viet Nam. It emphasized that combating discrimination is an ongoing process and that the absence of discriminatory provisions in the law and the fact that no complaints have been raised with the authorities are not indications of the absence of discrimination. The Committee also stressed that the application of the Convention is a permanent process that requires continuing vigilance and action to promote and ensure equality of opportunity and treatment in respect of all the grounds enumerated in *Article 1(1)(a) of the Convention*. ***In the absence of the information previously solicited, the Committee again requests the Government to provide information on the measures taken or envisaged to ensure the full application of the Convention in law and practice with respect to equality of opportunity and treatment irrespective of political opinion, national extraction and colour. It also reiterates its request for information on the application of section 8 of Ordinance No. 21/2004/PL-UBTVQH11 which prohibits discrimination on religious grounds, indicating the manner in which it provides protection against religious discrimination in employment, including in respect of persons whose religion does not correspond to any of the religious organizations recognized under section 16 of the Ordinance.***

Measures affecting individuals who are justifiably suspected of, or engaged in, activities prejudicial to the security of the State. In its previous comments, the Committee requested the Government to provide information on the application of section 36 of the Penal Code, pursuant to which a ban from holding certain posts, or bans from practising

certain occupations or doing certain jobs can be imposed when it is deemed that to allow the sentenced persons to hold such posts, practice such occupations or do such jobs, may cause harm to society. The Committee notes the Government's indication that the persons on whom a ban under section 36 has been imposed have the right to appeal the decision within 15 days of the date of conviction. The Committee also notes that the courts have issued various verdicts banning persons from holding certain posts, practising certain occupations or doing certain jobs. ***The Committee requests the Government to indicate the offences in connection with which such bans have been imposed, and the number and nature of the appeals lodged and the outcomes thereof.***

Yemen

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ***(ratification: 1969)***

National policy on equality of opportunity with respect to political opinion, national extraction and social origin. The Committee ***regrets*** to note the Government's failure to reply to the Committee's repeated requests for information on the measures taken to adopt and implement a national policy with respect to all the grounds set out in the Convention. ***The Committee urges the Government to take immediate steps to collect and provide detailed information on all the measures taken or envisaged to ensure that no discrimination on the basis of political opinion, national extraction and social origin occurs in employment and occupation in accordance with Articles 2 and 3 of the Convention.***

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 100** (Angola, Antigua and Barbuda, Armenia, Austria, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Eritrea, Ethiopia, Gabon, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Islamic Republic of Iran, Iraq, Ireland, Jamaica, Kazakhstan, Kyrgyzstan, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malaysia, Malta, Mexico, Republic of Moldova, Montenegro, Mozambique, New Zealand, Nicaragua, Niger, Nigeria, Panama, Papua New Guinea, Paraguay, Peru, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Sudan, Sweden, United Republic of Tanzania, Thailand, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, Uruguay, Viet Nam, Yemen); **Convention No. 111** (Albania, Algeria, Angola, Antigua and Barbuda, Armenia, Austria, Bahrain, Barbados, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, China, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Ecuador, Equatorial Guinea, Eritrea, Gabon, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Iraq, Ireland, Jamaica, Kenya, Lebanon, Lesotho, Liberia, Lithuania, Luxembourg, Malta, Republic of Moldova, Mongolia, Montenegro, Mozambique, Namibia, New Zealand, Nicaragua, Niger, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Serbia, Slovakia, Slovenia, South Africa, Sudan, Swaziland, Sweden, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, Uruguay, Bolivarian Republic of Venezuela, Yemen); **Convention No. 156** (Bolivia, Bulgaria, Ethiopia, Guinea, Niger, Paraguay, Russian Federation).

Tripartite consultation

Algeria

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

Articles 2 and 5, paragraph 1, of the Convention. Consultation procedures and effective tripartite consultations required by the Convention. The Committee notes the brief information provided by the Government in its report received in May 2008. The Government indicates that the reports transmitted to the ILO concerning the application of international labour Conventions, and the replies to the observations of the Committee of Experts, are transmitted by the public authorities to the most representative social partners, and that consultations between the Government and the social partners are held in the context of the meetings of a body that has existed since 1991. The Committee notes the Government's statement that the draft Labour Code will include a clarification of the procedures through which tripartite consultations are ensured on international labour standards. ***The Committee refers to its previous comments and requests the Government to provide detailed and relevant information on the tripartite consultations held during the period covered by the next report on each of the items covered by Article 5(1) of the Convention (questionnaires concerning items on the agenda of the Conference, submission of instruments adopted by the Conference to the National Assembly, ratification prospects, reports to be made on the application of ratified Conventions and the denunciation of Conventions).***

Bangladesh

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)

Tripartite consultations required by the Convention. The Committee notes the information provided by the Government in its report received in August 2009 in reply to its 2007 observation requesting substantive information on the consultations held on matters related to international labour standards. The Committee notes that the replies to questionnaires concerning items on the agenda of the Conference were prepared on the basis of tripartite consultations (*Article 5(1)(a) of the Convention*). The Government indicates that proposals to be made to Parliament were thoroughly considered in the Tripartite Consultative Committee (*Article 5(1)(b)*). The Committee notes that the Government is actively considering the ratification of the Minimum Age Convention, 1973 (No. 138), and others on the basis of the socio-economic conditions (*Article 5(1)(c)*). The Government also indicates that no questions arose with regard to reports to be made on ratified Conventions (*Article 5(1)(d)*). ***The Committee once again requests the Government to provide a report containing more concrete information on the effective consultations held by the Tripartite Consultative Committee on international labour standards. In this respect, the Committee hopes that the next report will also include information on reports or recommendations made as a result of the consultations covered by the Convention.***

Belize

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)

Articles 2, 3 and 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention. In reply to its previous observations, the Government indicates in the report received in September 2009 that the Labour Advisory Board was reactivated on 13 March 2009. The Government further indicates that the Board's membership is comprised of nine individuals: three individuals representing workers, three representing employers and three representing the Government. The Government also indicates that training on the consultative procedures would be beneficial for the participants. The Committee notes that prior to March 2009, in the absence of the Labour Advisory Board, draft reports due under article 22 of the ILO Constitution were forwarded to employers' and workers' organizations for their comments, whereas now they will be submitted to the Board. The Committee notes that one of the functions of the Board is to review all unratified Conventions. The Government indicates that instruments adopted by the Conference in October 1996 and the other 17 sessions held between 1990 and 2007 will be submitted to the Labour Advisory Board for their recommendation to the Minister of Labour and the National Assembly. ***The Committee requests the Government to provide information on the consultations held to re-examine the prospects of ratification of the unratified Conventions, and on any follow-up to recommendations derived from such consultations. The Government is also requested to report on the activities of the Labour Advisory Board concerning each of the other matters set out in Article 5(1) of the Convention.***

Botswana

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

Effective tripartite consultations required by the Convention. The Committee notes the information provided by the Government in its report received in June 2009. The Government indicates that the Labour Advisory Board was established pursuant to section 143 of the Employment Act, and serves as an appropriate forum for consultations amongst the social partners. The Labour Advisory Board meets at least once a year and bears, amongst its functions, the role of advising the Minister of Labour of any proposed legislation, rules, codes, guidelines or model agreements relating to dispute prevention and resolution, and in respect of any matter on which advice or recommendations are required or permitted in terms of the Employment Act or any other labour law. The Committee notes with *interest* the information provided by the Government on the procedures in place to ensure effective consultations on the matters set out in *Article 5(1) of the Convention*. **The Committee invites the Government to give further particulars in its next report on the consultations held on each of the matters set out in Article 5(1) indicating the nature of any reports or recommendations made as a result of the consultations. The Government is also asked to describe any arrangements made for the financing of any necessary training of participants on the consultative procedures.**

Burkina Faso

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation, which read as follows:

Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention. The Government indicated in its report received in September 2007 that discussions had been under way since 2001 to establish a formal framework for tripartite consultations, and that a series of workshops had been planned to this end but have been unable to be held so far owing to budgetary constraints. **The Committee requests the Government to supply information on progress made in the actual establishment of procedures for effective tripartite consultations on international labour standards. It invites the Government to supply detailed information on all the tripartite consultations which occur during the reporting period on each of the matters covered by Article 5(1) of the Convention.**

Article 4. Administrative support and financing of training. The Government stated that members of already formalized consultative bodies, such as the Labour Advisory Committee, receive a flat-rate daily allowance of CFA15,000, covered by the state budget. The Committee noted that further details of administrative support and financial arrangements will be provided when the consultation framework is formalized. **It requests the Government to continue providing information on the progress made regarding administrative support for tripartite consultation procedures, and also regarding arrangements made for the funding of training needed for participants in consultative procedures.**

Burundi

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation, which read as follows:

Article 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention. The Government stated in a brief report received in November 2007 that it has prepared a note on Conventions to ratify or denunciate. This note has been transmitted to the Burundi Employers Association (AEB) and the Trade Union Confederation of Burundi (COSYBU). The result of these consultations will be communicated to the ILO. **Referring to its 2006 observation, the Committee trusts that the Government will be able to provide detailed information on the content and results of tripartite consultations held during the period covered by the report, on questions concerning international labour standards, and in particular on the reports to be made to the ILO as well as the re-examination of unratified Conventions and of Recommendations (Article 5(1)(c) and (d)).**

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

Chad

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)

Articles 2 and 5, paragraph 1, of the Convention. Consultation mechanisms and effective tripartite consultations required by the Convention. The Committee notes the Government's report received in October 2009. The Government refers to a Higher Committee for Labour and Social Security which is tripartite in composition. The Committee notes the Government's statement that no information is available on the consultations held during the period covered by the report on each of the items set out in *Article 5(1)*. The Committee refers to the comments that it has been making since its

examination of the first report and expresses the conviction that the Government and the social partners should endeavour to promote and strengthen tripartism and social dialogue on the matters covered by the Convention. The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization, which reaffirms that “social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards”. ***The Committee therefore hopes that the Government’s next report will contain detailed information on the consultations held on all the items covered by Article 5(1) of the Convention, and on the other points raised in its previous observations in relation to Articles 4 and 6 of the Convention.***

Chile

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)

Effective tripartite consultations. The Committee notes the Government’s detailed report received in November 2009. The Committee recalls its observations of 2007 and 2008 in which it noted the comments made by the National Union of Workers of Chile (UNT), received in June and August 2007. The UNT alleged systematic discrimination, complaining that it was excluded from the meetings convened in accordance with the Convention, particularly meetings to discuss ILO-related matters. The UNT wished to be consulted in accordance with *Articles 2, 3 and 5 of the Convention*. The Committee notes the Government’s replies received in April 2009 recalling the existence of three trade union confederations established in accordance with national law. The Government indicates that, on 10 February 2009, the Single Confederation of Workers (CUT) had a membership of 447,971 workers, compared to the National Union of Workers with a membership of 41,113 workers. According to the Government, the clearly larger membership of the CUT, the fact that it is a national trade union confederation providing general representation of the interests of Chilean workers and the fact that it combines all productive sectors in both the private and public sectors, means that the CUT is indisputably representative for the purposes of *Articles 1, 2 and 5*. The Government maintains that ignoring that representativeness would mean ignoring the will of the workers freely exercising their right to choose the workers’ association which most reflects their right to organize. The Government observes that the procedures for ensuring effective consultations as set out in *Article 5* make no reference to the appointment of delegates for the International Labour Conference in accordance with the provisions of article 3 of the ILO Constitution. In its report, the Government states that the CUT was deemed the only organization having the “representative” nature established in the Convention. The Committee refers to paragraphs 34–38 of its 2000 General Survey on tripartite consultations. In this General Survey, the Committee indicated that although the Convention requires that the most representative organizations of employers and workers participate in consultations, it does not in any way prevent the involvement of representatives of other organizations. The Committee understands that, by using the phrase “representative organizations” in the plural, the Convention invites Governments to include in the procedures those representative organizations which have indicated their interest in participating in the tripartite consultations required by the Convention. The Committee recalls that the Government previously indicated that Chilean workers are organized in three trade union confederations: the Single Confederation of Workers, the Autonomous Confederation of Workers and the National Union of Workers of Chile. ***The Committee therefore requests the Government to examine once again, in consultation with the interested representative organizations, the manner in which it can be ensured that the representative organizations of workers participate in the tripartite consultations concerning international labour standards required by the Convention (Articles 2 and 5 of the Convention).***

Article 5, paragraph 1, subparagraphs (b) and (c). Tripartite consultations required by the Convention. The Committee refers to its observation on the fulfillment of the obligation to submit the instruments adopted by the Conference to the National Congress. ***The Committee once again requests the Government to provide information on the tripartite consultations required by the Convention with regard to this constitutional obligation.***

China

Hong Kong Special Administrative Region

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (notification: 1997)

The Committee notes the Government’s reply to its 2008 observation received in September 2009 and the observations made by the Hong Kong Confederation of Trade Unions (HKCTU) on the Government’s report.

Article 3 of the Convention. Free choice of workers’ representatives. The Government indicates that it has taken into account the views expressed by the HKCTU in 2005 and that the current method of elections for returning representatives to the Labour Advisory Board (LAB) was most suitable to local circumstances and in compliance with the requirements of the Convention as applied to the Special Administrative Region of Hong Kong. It further provides

indications on the activities of the Committee on the Implementation of International Labour Standards (CIILS) under the auspices of the LAB. In its observations, the HKCTU states that a review of the LAB election method had been conducted in 2006 only and that the HKCTU had not been consulted. It also contests that the distribution of voting weights in the LAB was in accordance with the Convention since a union with seven members would have the same influence as a union with 80,000 members. This constituted a systemic distortion of representativeness. Furthermore, the bloc voting method of the LAB would make it possible for the largest single group of trade unions to win every seat and in the previous LAB elections, the five worker representatives always came from the same five unions. The Committee refers to the 2000 General Survey on tripartite consultation in which it indicated that governments should endeavour to secure an agreement of all the organizations concerned in establishing the consultative procedures provided for by the Convention (paragraph 34). It further recalls that the Government and the social partners should establish procedures which ensure effective consultations in a manner that is satisfactory to all parties concerned. ***The Committee asks the Government to keep providing detailed information on the measures taken in order to ensure effective tripartite consultations within the meaning of the Convention, including on the manner in which the representatives of employers and workers for the purposes of the Convention are chosen (Article 3). It further requests the Government to continue to report on the consultations held by the CIILS on each of the subjects listed in Article 5 during the period covered by the next report.***

Colombia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

Strengthening of social dialogue and tripartite consultations. The Committee notes the Government's report for the period ending June 2009. The Government refers to its statement to the Conference Committee in June 2009 during the discussion on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Government indicated that it values spaces for dialogue which make it possible to analyse the situation in the country in an objective manner, including its achievements and difficulties, and propose actions intended to continue strengthening institutional capacities and public policies with a view to making progress in ensuring respect for the rights and well-being of the entire population. It undertook to encourage existing tripartite spaces, improving their procedures and establishing the basis for concluding agreements and achieving tangible results in the medium term. In its previous comments on the application of Convention No. 144, the Committee requested detailed information on any written communications sent to satisfy the requirement for consultations with regard to international labour standards. The Committee also requested clarification as to whether the Standing Committee for Joint Action on Wage and Labour Policy participates in the consultations required by the Convention. The Committee noted the information received from the Single Confederation of Workers of Colombia (CUT), forwarded to the Government in October 2008. Among other matters, the CUT indicated that consultations are not held in a systematic and continuous manner. According to the CUT, the reports due to be supplied to the ILO are dealt with outside the Standing Committee for Joint Action on Wage and Labour Policy. In its reply, received in March 2009, the Government indicates that in practice the Ministry of Social Protection coordinates the tripartite dialogue machinery known as the Standing Committee for Joint Action on Wage and Labour Policy, but does not provide specific information on the consultations held during the period covered by the report on each of the items enumerated in *Article 5(1) of the Convention*. In these circumstances, the Committee once again expresses its conviction that the Government and the social partners should take tangible measures to promote and reinforce tripartism and social dialogue on matters relating to international labour standards covered by the Convention. ***The Committee requests the Government to provide specific information in its next report on the manner in which the Government and the social partners have held "effective" consultations on international labour standards, as required by Convention No. 144 (Article 5(1)(d)). The Committee recalls that the 2008 Declaration on Social Justice for a Fair Globalization identifies Convention No. 144 as one of the most significant instruments from the viewpoint of governance.***

Article 5, paragraph 1(b). Tripartite consultations prior to submission to the National Assembly. The Committee notes that the consultations required by this provision of the Convention have not been held and that the instruments adopted by the Conference have not been submitted to the National Assembly. ***The Committee refers to its observation on the obligation of submission as provided for in article 19, paragraphs 5 and 6, of the Constitution of the ILO in which it notes that 31 instruments adopted by the Conference are still awaiting submission. The Committee requests the Government to provide information on the effective consultations that are held with the social partners on the proposals made to the Congress in relation to the submission of the instruments adopted by the Conference.***

Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1999)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2008 observation, which read as follows:

Article 2 of the Convention. Effective tripartite consultations. In its report received in January 2008, the Government indicates that in compliance with the Convention an Advisory Technical Committee on International Labour Standards, composed of representatives of the administration, unions and employers, was established by Order No. 788 of 6 September 1999. The Committee refers to its previous comments in which it noted the Government's statement that, due to a lack of adequate financial resources, the Advisory Technical Committee was still not operational. ***The Committee therefore requests the Government to provide information on the steps taken to establish the Advisory Technical Committee on International Labour Standards, with a description of the consultation procedures established within the Committee in accordance with Article 2 of the Convention.***

Article 4, paragraph 2. Training. The Government indicates that the necessary training for participants in the consultation procedures is provided by the State. ***The Committee requests the Government to continue providing information on training for persons participating in consultation procedures, with an indication of whether arrangements have been made or are envisaged to finance the necessary training for such participants.***

Article 5, paragraph 1. Tripartite consultations required by the Convention. The Government indicates that the consultations cover general conditions of labour and government replies to questionnaires concerning items on the agenda of the Conference. The Committee recalls that, under the terms of *Article 5(1)*, tripartite consultations also have to be held on the submission to the National Assembly of the instruments adopted by the Conference, the re-examination at appropriate intervals of unratified Conventions and of Recommendations, reports on ratified Conventions and the denunciation of ratified Conventions. ***The Committee refers to its comments on the constitutional obligation of submission and requests the Government to provide detailed information on the tripartite consultations held, including those in the Advisory Technical Committee on International Labour Standards, on each of the issues covered by Article 5(1) during the period covered by the next report.***

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

Côte d'Ivoire

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1987)

Articles 5, paragraph 1, and 6 of the Convention. Effective tripartite consultations required by the Convention. The Committee notes the report provided by the Government for the period ending September 2009. The Government once again indicates that all the matters covered by *Article 5(1)* have on each occasion been brought to the attention of the social partners for information. It adds that the tripartite committee on matters concerning ILO activities was admittedly established by Order No. 061/TFP/DTR of 9 January 2003, but has still not met in view of the crisis affecting the country. The Committee notes that the Government intends to make every effort to ensure that this institution functions normally as soon as possible. The Committee recalls that the 2008 Declaration on Social Justice for a Fair Globalization affirms that "social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards". ***The Committee invites the Government and the social partners to hold the "effective consultations" on international labour standards envisaged by the Convention. It therefore hopes that the next report will enable it to examine precise and detailed information on the effective tripartite consultations held on each of the matters covered by Article 5(1). It reiterates its interest in being able to examine extracts from the summary reports of meetings of the tripartite committee (section 8 of Order No. 061/TFP/DTR of 2003) or the annual report of its activities.***

Article 5, paragraph 1(b). Submission to the National Assembly of the instruments adopted by the Conference. The Government indicates that certain instruments adopted by the Conference between 1996 and 2006 have already been submitted to the competent authorities and that it will endeavour to ensure that this is also done for the others. ***The Committee refers to its repeated observations concerning serious failure to submit instruments to the National Assembly and trusts that the Government will provide precise and detailed information in its next report on the effective tripartite consultations held on the proposals to be made to the National Assembly in relation to the submission of the instruments adopted by the Conference between 1996 and 2007.***

Democratic Republic of the Congo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2001)

The Committee notes with *concern* that the Government has not provided information on the application of the Convention since its first report received in July 2004. Major changes have occurred in the Democratic Republic of the Congo. In recent years, the Democratic Republic of the Congo has received technical assistance from the ILO and has been a recipient of aid from international financial institutions and international donors assisting in the country's transitional process towards political and economic stability. ***The Committee asks the Government to provide up to date and detailed information on the application of the Convention, including information on the manner in which representatives of employers and workers for the purposes of the Convention are chosen (Article 3 of the Convention).***

Articles 2 and 5, paragraph 1. Effective tripartite consultations required by the Convention. The Committee recalls its 2004 observation and notes that no effective tripartite consultations have been held on the matters set out in the

Convention. The Committee further recalls that *Article 2* provides that each Member that ratifies the Convention must undertake to operate procedures which ensure effective consultations with respect to the matters set out in *Article 5(1)* between representatives of the Government, employers and workers. The nature and the form of procedures are to be determined by each country in accordance with national practice, following consultation with the representative organizations, where such procedures have not yet been established. ***The Committee trusts that the Government will provide information on how it gives effect to Article 2 and on the content and outcome of tripartite consultations held on each of the matters listed in Article 5(1).***

The Committee notes that the preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to ensure the effective implementation of the Convention. In this regard, the Government might wish to request further technical assistance from the relevant units of the ILO to address obstacles in reporting on compliance with Convention No. 144.

Fiji

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)

Tripartite consultations required by the Convention. The Committee notes the information provided by the Government in its report received in June 2009. The Government indicates that effect is given to the Convention by the Employment Relations Promulgation 2007, which establishes the Employment Relations Advisory Board. This Board is the peak tripartite body which advises the minister on all matters pertaining to employment relations. The Committee notes with interest that the ratification of the Labour Inspection Convention, 1947 (No. 81), the Nursing Personnel Convention, 1977 (No. 149), the Occupational Safety and Health Convention, 1981 (No. 155), the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and the Safety and Health in Agriculture Convention, 2001 (No. 184), was registered on 28 May 2008. ***The Committee asks the Government to continue to provide information on the consultations held by the Employment Relations Advisory Board on each of the matters set out in Article 5(1) of the Convention, indicating the nature of any reports or recommendations made as a result of the consultations.***

Gabon

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1988)

Effective tripartite consultations required by the Convention. The Committee notes the Government's report, received in October 2009, in reply to the observation of 2007. The Government indicates that the members of the three tripartite bodies – the Labour Advisory Commission, the National Commission for Wage Studies and the Occupational Safety and Health Committee – have been appointed, and that a protocol calling for a 30-month period of social concord was signed in May 2009. The Government also indicates that the protocol, the participation in the 98th Session of the International Labour Conference and also the follow-up to the activities of the programme to promote the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC) were based on tripartite consultations. A training workshop on social dialogue was also held during 2009. ***The Committee requests the Government to communicate further information in its next report on the working of the advisory bodies, particularly the Labour Advisory Commission. It requests the Government to provide updated information on the tripartite consultations held on each of the matters set out in Article 5(1) of the Convention, indicating the frequency of such consultations and the nature of any reports or recommendations relating to international labour standards.***

Guatemala

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1989)

Articles 2 and 5 of the Convention. Effective tripartite consultations. The Government indicates in its report received in August 2009 that the Tripartite Committee for International Labour Affairs has been meeting in a warm and respectful atmosphere. The Government points out that this Committee has been an extremely useful forum for dialogue working on matters of the utmost importance. The Government encloses with its report copies of the communications, attendance lists and minutes of the meetings held between August 2007 and August 2009, which record the opinions exchanged by the social partners. Technical assistance from the ILO was sought on various occasions, in particular with regard to the prospects for the ratification of the Part-Time Work Convention, 1994 (No. 175). The Government indicates that the Tripartite Committee's aim is drafting a specific law governing part-time work, which would provide legal certainty for part-time work, without ratifying Convention No. 175. The possibility of denouncing the Night Work (Women) Convention (Revised), 1948 (No. 89), and ratifying the Night Work Convention, 1990 (No. 171), is also being discussed. Furthermore, the Government provides information on the current tripartite discussions in the Tripartite

Committee on a new legal regime for the imposition of penalties by the General Labour Inspectorate. The Tripartite Committee met with the ILO high-level tripartite mission that visited Guatemala in February 2009. However, the Indigenous and Rural Workers Trade Union Movement of Guatemala indicated that it had not received the reports due in 2009 on which it wished to comment. ***The Committee reiterates its observation of 2008 in which it pointed out that the consultations covered by the Convention will enable the Government and social partners to maintain and strengthen tripartism and social dialogue. The Committee requests the Government to continue providing information on the tripartite consultations held on the matters related to international labour standards covered by the Convention.***

Guinea

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1995)

The Committee notes with *regret* that the Government's report has not been received. It is therefore bound to repeat its previous observations, which read as follows:

Articles 2 and 5 of the Convention. Effective tripartite consultations required by the Convention. In a report received in May 2005, the Government recalled that, with a view to holding tripartite consultations on matters relating to ILO activities, it established an Advisory Committee on Labour and Social Legislation (CCTLS) in 1995. However, the Government recognized that this body has met rarely since its establishment and that there has been no tripartite dialogue on the items on the agenda of the Conference. The Government indicated that this situation is due, among other factors, to the lack of reaction of the social partners. Furthermore, the Government reported that, following a tripartite workshop on international labour standards held in October 2004, the Department of Employment and the Public Service renewed the officers of the CCTLS and relaunched legislative activities. The Committee expresses again the firm hope that the Government will be in a position to provide information in its next report on the measures adopted to ensure effective tripartite consultations on the matters covered by the Convention. ***It requests the Government to provide reports regularly containing detailed information on the consultations held on all the subjects covered by Article 5(1), including precise information on the activities of the Advisory Committee on Labour and Social Legislation.***

Article 4. Financing of training. The Government indicated that there are no specific arrangements for the training of participants. However, when training is initiated at the national level by the competent authority in the context of social consultations, it is generally tripartite in nature. In this respect, the Committee recalls that, where training for participants in the consultations proves to be necessary to enable them to perform their functions effectively, its financing should be covered by appropriate arrangements between the Government and the representative organizations (see the 2000 General Survey on tripartite consultation, paragraphs 125 and 126). It requests the Government to take measures for this purpose and to describe in its next report, where appropriate, the content of these arrangements (*Article 4(2)*). Finally, the Government indicated that a training programme was envisaged in the context of the Regional Programme for the Promotion of Social Dialogue in French-speaking Africa (PRODIAF), but that, in the absence of any reaction by the social partners, it was limited to activities initiated by the Ministry of Employment and the Public Service and carried out at the national level. ***The Committee requests the Government to describe in its next report the training activities undertaken in relation to international labour standards. It also requests the Government to provide information on any progress achieved in the implementation of the PRODIAF programme in relation to the necessary training for participants in the consultation procedures, as required by the Convention.***

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

Guyana

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

The Committee notes that the Government's report has not been received. It hopes that a report will be supplied for examination by the Committee at its next session and that it will contain full information on the matters raised in its previous comments:

Effective tripartite consultations. The Committee notes the brief replies supplied by the Government in May 2006 to its 2003 direct request. It refers to its previous comments and recalls again that certain subjects covered by *Article 5(1) of the Convention* (replies to subparagraphs (a), submissions to the National Assembly (b), reports to be made to the ILO (d)) involve annual consultation, while others (re-examination of unratified Conventions and of Recommendations (c), proposals for the denunciation of ratified Conventions (e)) call for less frequent examination. ***The Committee recalls its interest in any consultations concerning unratified Conventions. Please also supply information on the frequency of consultations and the nature of any reports or recommendations resulting therefrom (Article 5(2)).***

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

Iceland

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)

Effective tripartite consultations. The Committee notes the information contained in the Government's report received in September 2009 in reply to its previous observation which commended the approach of the Government and the social partners in providing that effective tripartite consultation be held on measures taken to promote the implementation and ratification, as appropriate, of Conventions and Recommendations. The Committee notes with **interest** that after detailed studies and having received a letter of clarification from the Office, the Icelandic ILO Committee advised the Government to ratify the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). Iceland's ratification of Conventions Nos 81 and 129 were registered in March 2009. Furthermore, the Government indicates that the main conclusion of a September 2007 report concerning termination of employment was that it was not possible to draft guidelines unless it was based on more detailed political policy-making. This issue has not been further discussed within the Icelandic ILO Committee as the main organizations of employers and workers reached an agreement, as part of their collective agreement signed 17 February 2008, on procedures concerning dismissals. The Committee notes that in October 2008, the Icelandic ILO Committee arranged a meeting with all the major stakeholders which could be affected by Iceland's possible ratification of the Maritime Labour Convention, 2006, and the Work in Fishing Convention, 2007 (No. 188). Some obstacles were detected concerning possible ratification of these two instruments and the question of ratification is currently studied jointly by the Icelandic ILO Committee, the Ministry of Communication, which is responsible for maritime questions, and the Icelandic Maritime Administration. The Government lastly indicates in its report that the Icelandic ILO Committee has studied the possible ratification of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and requested the opinion of the Administration on this issue. The main conclusion is that Icelandic legislation does not meet the requirements of the Convention in respect of collecting data on occupational accidents and diseases. However, possibilities for remedying this situation are being studied. **The Committee invites the Government to continue to report on measures taken to promote tripartite consultations on international labour standards, as required under Convention No. 144.**

Indonesia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1990)

Tripartite consultations required by the Convention and technical assistance from the Office. The Committee notes the information contained in the Government's report received in October 2009 in reply to its previous observation. The Government indicates that Government Regulation No. 46/2008, amending Regulation No. 8/2005, provides that the composition of the Tripartite Cooperation Institution (LKS) will consist of an equal number of members representing the Government, workers and employers. Furthermore, under the new regulation, the education requirement of members was modified from holding a university degree to a senior high school degree. The Committee also notes the LKS activities in 2008 and 2009 include social dialogue and consultation at the provincial level, discussions concerning the global economic crisis, and an audience with the President of the Republic of Indonesia and the Parliament. **In view of the information received, the Committee wishes to draw the Government's attention to the possibility of seeking the Office's technical assistance in order to provide detailed information of such a nature as to demonstrate that the tripartite consultations on international labour standards required by the Convention are actually held in practice. The Committee once again refers to its previous observations and asks the Government to report on the effective consultations held by the LKS as required by Article 5(1) of the Convention.**

Ireland

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1979)

Tripartite consultations required by the Convention. The Committee notes with **regret** that the Government has not provided any information on the application of the Convention since its last report received in October 2005. **The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including particulars of the tripartite consultations held on the matters related to international labour standards set out in Article 5(1) of the Convention.**

[The Government is asked to reply in detail to the present comments in 2010.]

Kuwait

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 2000)

Effective tripartite consultations required by the Conventions. The Committee notes the Government's report, received in September 2009. The Government indicates that, in the context of the application of the principle of tripartite consultation, sections 92 and 93 of Act No. 38 of 1964 concerning the Labour Code for the private sector refer to a labour affairs advisory commission, which comprises representatives of the Ministry of Social Affairs and Labour and other ministries and also representatives of employers' and workers' organizations. This commission is responsible for issuing advisory opinions on labour legislation. The Ministry of Social Affairs and Labour is responsible for the publication of decrees regulating the composition of this commission and also its working methods. The Government has not supplied any information on the setting up of the advisory commission provided for by the Labour Code, or any other information on the tripartite consultations relating to international labour standards required by the Convention. ***The Committee requests the Government to supply a report containing detailed information on the consultations held on each of the matters relating to international labour standards set out in Article 5(1) of the Convention, stating their object and frequency, and also to indicate the nature of any reports or recommendations made as a result of the consultations.***

Article 6. Working of consultative procedures. The Government indicates that the Ministry has not received any report but that it will take account of the recommendation to draw up an annual report on consultative procedures. ***The Committee requests the Government to keep it informed of any new developments in this respect.***

Lesotho

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1998)

Tripartite consultations required by the Convention. The Committee notes the Government's report containing detailed information received in November 2008. In reply to the 2006 observation, the Government included reports of the five meetings held in 2006 and the four meetings held in 2007 by the National Advisory Committee on Labour (NACOLA). The Committee notes that NACOLA approved the ratification of the Collective Bargaining Convention, 1981 (No. 154). The Employer members expressed concern in the NACOLA over whether the Government had sufficient capacity to comply with its reporting obligations and considered that ratifying more Conventions would add more pressure on the Government. Due to the high staff turnover in the National Advisory Council on Occupational Health and Safety, the consultation on ratifying the Safety and Health in Mines Convention, 1995 (No. 176), was not completed. The Committee also notes that the NACOLA discussed questions arising out of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee notes with *interest* that progress has been achieved within NACOLA on the matters related to international labour standards covered by the Convention (*Article 5(1) of the Convention*). ***The Committee invites the Government to report regularly on the consultations held within NACOLA on matters set out in Article 5(1), including information on other steps taken towards the ratification of Conventions Nos 154 and 176.***

Madagascar

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

Articles 2 and 5, paragraph 1, of the Convention. Effective tripartite consultations required by the Convention. In its observation of 2008 the Committee noted that the Malagasy Workers' Conference (CTM) indicated that the ministries responsible for drafting laws relating to conditions of work in export-processing zones ignored the principle of consulting the National Labour Council, even though the latter is the tripartite consultation body within the meaning of the Convention provided for by section 184 of the Labour Code. The Government pointed out in its reply received in December 2008 that it had supported the adoption by the Malagasy Parliament of a legislative framework which was favourable to the creation and development of productive investments. It also stated that regulations concerning night work had been amended. Accordingly, the Committee notes with interest the ratification by Madagascar, on 10 November 2008, of the Night Work (Women) Convention (Revised), 1948 (No. 89), and its Protocol of 2002, and also the Night Work Convention, 1990 (No. 171). The Government states that their respective implementing regulations are currently before the tripartite National Labour Council for examination. This could lead subsequently to the adoption of other international instruments, in an ongoing quest for greater flexibility in the domestic labour standards in force and, in particular, for a new perception of night work. It also states that the aim is to harmonize the promotion of investment and the development of the private sector with the promotion of decent work, while respecting the principle of the acquired rights of workers. ***The Committee requests the Government to continue to supply information on the content and outcome of the tripartite consultations held within the National Labour Council on the matters covered by the Convention.***

Article 6. Working of consultation procedures. The Government indicates in a report received in August 2009 that the representative organizations will be consulted with regard to the production of an annual report on the working of the procedures covered by the Convention, once these procedures have been established. ***The Committee requests the Government to include in its next report any relevant new information on this matter.***

Nicaragua

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1981)

Article 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention. The Government indicates in a report received in January 2009, that, once the National Labour Council has been set up, the Committee will be informed of any opinion formulated by that body on the consultations required by *Article 5(1)* of the Convention. The Committee recalls that, in its observation of 2006, it noted with interest that Act No. 547 of August 2005 had established the National Labour Council which would serve as a consultative body with a view to the application of Convention No. 144. The Committee understands that the National Labour Council has not yet been set up.

The Committee refers to the 2008 Declaration on Social Justice for a Fair Globalization which states that “social dialogue and the practice of tripartism between governments and the representative organizations of workers and employers within and across borders are now more relevant to achieving solutions and to building up social cohesion and the rule of law through, among other means, international labour standards”. ***The Committee therefore repeats its invitation to the Government to hold “effective consultations” on international labour standards as required by Convention No. 144, which is most significant from the viewpoint of governance. The Committee looks forward to examining detailed information on the consultations held on each of the matters covered by Article 5(1).***

Article 5, paragraph 1(d). Transmission of draft reports. The Committee observes that in the reports received, the Government indicates that, in accordance with article 23, paragraph 2, of the ILO Constitution, copies of the reports have been transmitted to the social partners. The Committee recalls that the obligation to consult the representative organizations on the reports to be made concerning the application of ratified Conventions, under the terms of *Article 5(1)(d)*, of the Convention, must be distinguished from the obligation to communicate reports under article 23, paragraph 2, of the ILO Constitution. The tripartite consultations required by the Convention have to be held during the process of preparing reports. Where consultations are held in writing, the Government should transmit a draft report to the representative organizations in order to gather their opinions before preparing its definitive report (paragraph 92 of the General Survey of 2000). ***The Committee requests the Government to provide information on the manner in which its practice has developed with regard to the consultations required when preparing draft reports on the application of ratified Conventions.***

Nigeria

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes with ***regret*** that the Government has not provided any information on the application of the Convention since its last replies in relation to the Committee’s 2004 direct request. ***The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee’s 2008 observation, which sets forth the following matters.***

Consultations with representative organizations. The Committee noted that the Nigeria Employers Consultative Association (NECA) and the Nigeria Labour Congress (NLC) are consulted at the National Labour Advisory Council (NLAC) level with regard to some matters covered by the Convention. The Government further indicated that the National Labour Institutions Bill, which makes provision for the NLAC, was before the National Assembly. The Committee reminds the Government that it is important for employers’ and workers’ organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. ***It asks the Government to report on the results of the legislative reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under this Convention.***

Tripartite consultations required by the Convention. The Committee recalls that the tripartite consultations covered by the Convention are essentially intended to promote the implementation of international labour standards and concern, in particular, the matters enumerated in *Article 5(1)* of the Convention. ***The Committee therefore requests the Government to provide full and detailed information on the tripartite consultations dealing with:***

- (a) the Government’s replies to questionnaires concerning items on the agenda of the International Labour Conference and the Government’s comments on proposed texts to be discussed by the Conference; and***
- (b) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the Organization.***

Prior tripartite consultation on proposals made to the National Assembly. The Committee notes that the instruments adopted at the 95th Session of the Conference were submitted to the National Assembly for noting on 21 August 2006. The Government further stated that there was no tripartite consultation as there was no request for their ratification. The Committee points out that, for those States which have already ratified Convention No. 144, effective prior consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (*Article 5(1)(b)*). Even if the Government does not intend proposing the ratification of a Convention, the social partners must be consulted sufficiently in advance for them to reach their opinions before the Government finalizes its decision. ***The Committee trusts that the Government and the social partners will examine the measures to be taken with a view to holding effective consultations on the proposals made to the National Assembly when submitting the instruments adopted by the Conference, as required by the Convention.***

Operation of the consultative procedures. ***The Committee once again requests the Government to indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the outcome of these consultations.***

[The Government is asked to reply in detail to the present comments in 2010.]

Norway

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1977)

Effective tripartite consultations required by the Convention. The Committee notes the Government's report received in December 2008, which included comments provided by the Norwegian Confederation of Trade Unions (LO–Norway), which were supported by the Norwegian Confederation of Vocational Unions (YS), and the Norwegian Confederation of Unions for Professionals (UNIO). The Committee notes the concerns expressed by LO–Norway about the manner in which social partners are involved in providing comments on the Government's reports on ratified Conventions. In this regard, LO–Norway states that, while it is satisfied with the agreements reached between the Government and social partners on the reporting procedures, in practice, social partners receive the reports far too late to be able to present satisfactory comments. LO–Norway urges the Government to keep the schedule presented to them by the ILO. The Government indicates that it continues to consider, in consultation with the Norwegian Tripartite ILO Committee, means to improve methods with regard to reporting and other issues concerning the functioning of that Committee. The Government indicates that it is working to improve the time allocated for social partners to give their comments on the Government's reports on Conventions and Recommendations before the reports are sent to the ILO. ***The Committee invites the Government and the social partners to re-examine the effectiveness of the consultative procedures in place for consultations on questions arising out of reports to be prepared under article 22 of the Constitution (Article 5(1)(d) of the Convention).***

Article 5, paragraph 1(c). Prospects of ratification of unratified Conventions. The Committee notes with interest the ratification of the Maritime Labour Convention, 2006, in February 2009. LO–Norway indicates that, on several occasions, it has asked for a stronger ratification policy with regard to the Maternity Protection Convention, 2000 (No. 83), but this has not led to any initiatives from the Government. The Committee also takes note of the explanations provided by the Government about the difficulties it faces in ratifying Convention No. 183. ***The Committee invites the Government to continue to report on the measures taken to promote tripartite consultations on international labour standards, as required under Convention No. 144, in particular, on the outcome of consultations held to re-examine the prospects of ratification of unratified Conventions, and on any follow-up to recommendations derived from such consultations.***

Pakistan

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

Effective tripartite consultations. The Committee notes that the report requested and replying to the matters raised in its 2008 observation was not received. It further notes the comments submitted by the Pakistan Workers' Federation (PWF) in July 2009. The PWF refers to the principle set out in the Convention which provides that tripartite consultations are carried out with the most representative organizations of workers and employers. The PWF indicates that it has the largest membership of workers in the country and is duly registered and certified by the National Industrial Relations Commission. The PWF also maintains that the most representative organization of workers in terms of their membership may not be excluded from tripartite consultations and their views should be taken into consideration. The PWF notes that the Government has recently constituted two national tripartite boards for two important federal institutions – the Workers Welfare Fund and the Old-Age Benefits Institution. The PWF urges the Government to review the selection process of the representatives of workers in those tripartite boards in order to comply with the Convention. ***The Committee recalls its 2008 observation and once again asks the Government to supply information on the progress made towards the***

establishment of the Tripartite Consultation Committee. Taking into account the concerns of the PWF, the Committee asks the Government to also provide detailed information on how Articles 1, 2, 3 and 5 of the Convention are applied, so as to ensure that the most representative organizations of workers participate fully in the tripartite consultations required by the Convention.

[The Government is asked to reply in detail to the present comments in 2010.]

Philippines

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1991)

Article 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention. The Committee notes the information provided in the Government's report received in May 2009. The Committee notes that, as a result of the adoption of the second Decent Work Country Programme and the Consultative Tripartite Conference on Decent Work in February 2005, subcommittees were established in the context of the Tripartite Industrial Peace Council (TIPC) to identify concerns, gaps, obstacles, strategies and the time frame and mechanisms to facilitate the ratification or denunciation of ILO Conventions which are predetermined as priorities under the Decent Work Country Programme. In this regard, the plenary of the TIPC adopted a revised functional structure which highlights the inclusion of the Committee on Decent Work, as well as four standing committees which form the pillars of decent work. The Committee notes with interest that the Philippines ratified the Migration for Employment Convention (Revised), 1949 (No. 97), in April 2009. The Government also indicates that support was gathered in the TIPC to promote the ratification of the Home Work Convention, 1996 (No. 177). *The Committee requests the Government to continue to provide information on the consultations held to examine the prospects of ratification of the unratified ILO Conventions, and on any follow-up to recommendations derived from such consultations. The Government is also invited to continue to report on the consultations held by the TIPC on matters set out in Article 5(1).*

Article 3. Selection of representatives of employers and workers. The Committee recalls that, in its 2008 direct request, it noted that the Public Services Labour Independent Confederation (PSLINK) considered that there was no genuine mechanism for tripartite consultations in the Philippines as the Government determines the most representative workers' organizations through appointments made by the executive. The Government indicates in its report that representatives of the labour and employer sectors are appointed by the President of the Philippines, upon nomination by their respective sectors and the Labour Secretary. *The Committee asks the Government to provide further specific information on the manner in which the representatives of employers and workers are nominated, for the purposes of the Convention, specifically on how it is ensured that they have been freely chosen by their representative organizations.*

Sao Tome and Principe

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1992)

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

Mechanisms for tripartite consultations and the consultations required by the Convention. In a brief report received in March 2007, the Government refers to the tripartite consultations carried out through the National Council for Social Dialogue. The Government also indicates that the National Council meets regularly. *The Committee refers to its previous observations and once again invites the Government to indicate in its next report the manner in which the National Council is involved in the consultations required by the Convention and to provide particulars of the consultations held on each of the matters on international labour standards referred to in Article 5(1) of the Convention, including information on the reports or recommendations made on international labour standards as a result of such consultations.*

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

Sierra Leone

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1985)

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

Effective tripartite consultations. The Committee notes the Government's report supplied in June 2004 indicating its commitment to promote tripartite consultation throughout the country as well as supporting the tripartite delegation to the International Labour Conference. It recalls that, at its 90th Session (June 2002), the Conference adopted a resolution concerning tripartism and social dialogue in which it emphasized that social dialogue and tripartism have proven to be valuable and democratic means to address social concerns, build consensus, help elaborate international labour standards and examine a wide

range of labour issues in which the social partners play a direct, legitimate and irreplaceable role. *The Committee hopes that the Government and the social partners will examine how the Convention is applied and that the Government's next report will contain indications on any measures taken in order to implement effective tripartite consultation in the sense of the Convention (Articles 2 and 5 of the Convention).*

The Committee recalls that the Office has the technical capacity to help strengthen social dialogue and support the activities that governments and employers' and workers' organizations undertake for the consultations required by the Convention.

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

Slovakia

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1997)

Tripartite consultations required by the Convention. In reply to the Committee's previous comments, the Government reported in November 2008 that the Economic and Social Council was established in 2007 as a body for consultations and consensus building amongst the social partners at the national level. The Government further indicates that matters covered by the Convention fall within the competence of the Economic and Social Council. The Committee notes with *interest* that the proposal of the Confederation of Trade Unions of the Slovak Republic to ratify Conventions Nos 135 and 154 as well as Conventions Nos 81 and 129, were accepted by the Government by virtue of Resolution No. 1092 of 19 December 2007 and that the legislative procedure is being followed towards achieving the process of ratification (*Article 5(1)(c) of the Convention*). The Government also provided information on the tripartite consultations held on the other matters covered by the Convention. *The Committee hopes it will continue to receive information on the content and outcome of the consultations held on matters related to international labour standards set forth in the Convention.*

United Republic of Tanzania

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

Articles 2, 3 and 5, paragraph 1, of the Convention. Tripartite consultations required by the Convention. In reply to its previous observation, the Government indicates in the report received in September 2009 that the members of the Labour, Economic and Social Council (LESCO) are appointed by the minister responsible for labour matters. The Council consists of an equal number of members representing the Government, workers and employers. Prior to appointing a member of the Council, the Government indicates that the minister, by notice in writing, invites nominations from the trade unions and employer associations. In this regard, members of the Council are nominated on merits, with transparency and full participation of the constituents. The Government further indicates that the Council has been very useful in advising it on issues relating to the promotion of economic growth and social equity, economic and social policy, labour market policy, labour laws, and other matters concerning employment relations. The Committee notes with *interest* the information provided in the Government's report. *The Committee invites the Government to provide information on the consultations held on the matters concerning international labour standards set out in Article 5(1) of the Convention. Furthermore, the Committee requests specific information on the subject, frequency and nature of any reports or recommendations resulting from the consultations held by the tripartite bodies such as LESCO on the issues covered by the Convention.*

Article 4. Administrative support and training. The Government indicates that it makes staff available from the Ministry of Labour, Employment and Youth Development to serve as a secretariat of the Council. The Government also indicates that participants in tripartite consultations received training in mediation and arbitration, and that the newly elected members have been informed on their roles and functions. A plan is under way to train members on social dialogue and negotiation skills. *The Committee invites the Government to continue providing information on the training provided to members of LESCO, more specifically on training of participants on the consultative procedures required by the Convention.*

Togo

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1983)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in September 2004. *The Committee trusts that the Government will be able to provide a report, including information in reply to the points raised in the Committee's 2004 observation, which set forth the following matters:*

Consultation procedures. The Committee noted the project to create a national task force on standards to be responsible for “consensus-based management of relations with the ILO essentially in matters pertaining to constitutional obligations and ongoing promotion of social dialogue”. ***It requests the Government to provide information on the effect given to this project.***

Tripartite consultations required by the Convention. The Government supplied information on the activities of the National Labour Council. The Committee noted that the information was not specific enough to enable it to assess the effect given to this Convention. ***The Committee asks the Government to provide information on the consultations held on each of the matters set out in Article 5(1) of the Convention, specifying their purpose, and frequency, and the nature of any reports or recommendations resulting from the consultations.***

The Government stated that the main difficulty is finding funds for the activities of the bodies that conduct social dialogue and that extra assistance would be essential to strengthen such dialogue, which is becoming increasingly indispensable. The Committee hopes that the Office will be able to furnish its advice in response to the Government’s request so that effective consultations can be held on the subjects covered by the Convention.

[The Government is asked to reply in detail to the present comments in 2010.]

Turkey

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1993)

Effective tripartite consultations. The Committee notes the Government’s report for the period ending May 2008 and the detailed contributions provided by the Turkish Confederation of Employer Association (TİSK), and the Confederation of Turkish Trade Unions (TÜRK-İŞ). The Committee notes that the Tripartite Consultative Committee established under the Labour Act to ensure effective tripartite consultations met several times between 2004 and 2007. In this connection, the Committee notes the TÜRK-İŞ’s concern that the Tripartite Consultative Committee has not been consulted on important labour law amendments. The Committee also notes the activities carried out by a tripartite working group on social dialogue established by the Ministry of Labour and Social Security to evaluate mechanisms established in the country and to elaborate recommendations, taking into consideration the experience of the EU countries. ***The Committee invites the Government to continue reporting on the content and outcome of consultations in the Tripartite Consultative Committee, and other tripartite bodies, on matters related to international labour standards covered by Article 5 of the Convention.***

Uganda

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (ratification: 1994)

The Committee notes that the Government has not provided any information on the application of the Convention since its last replies in relation to the 2004 direct request. ***The Committee trusts that the Government will be able to provide a report, including information in reply to the following points raised in 2004:***

The Government indicated that the application of this Convention continues to depend on active tripartite participation, and that consultations were undertaken particularly at the time of revision of the national labour legislation. It also stated that training on the procedures and content of international labour standards might increase the effectiveness of tripartite consultation. The Government stated that it has received technical and financial assistance from the ILO to hold seminars and workshops on consultative procedures. ***The Committee invites the Government to report on any progress achieved in the field covered by the Convention, following the assistance received from the Office.***

Tripartite consultations required by the Convention. ***The Committee requests the Government to provide details on the consultations regarding international labour standards covered by the Convention (Article 5(1)).***

Article 5, paragraph 1(c) and (e). The Committee recalls that the ILO Governing Body has invited States which are parties to certain Conventions that Uganda has ratified to contemplate ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and denouncing Conventions Nos 50, 64, 65 and 86. States parties to the Underground Work (Women) Convention, 1935 (No. 45), were invited to contemplate ratifying the Safety and Health in Mines Convention, 1995 (No. 176). ***Please indicate if tripartite consultations are envisaged on this matter.***

Article 6. ***The Committee again requests the Government to indicate whether the representative organizations were consulted with regard to the production of an annual report on the operation of the procedures covered by the Convention and, if so, to state the outcome of these consultations.***

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 144** (*Albania, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Bosnia and Herzegovina, Central African Republic, China, Costa Rica, Czech Republic, Djibouti, Dominica, Ecuador, Egypt, El Salvador, Iraq, Jamaica, Jordan, Kazakhstan, Liberia, Malaysia, Namibia, Netherlands: Aruba, San Marino, The former Yugoslav Republic of Macedonia, Zambia*).

Labour administration and inspection

General observation

Labour Inspection Convention, 1947 (No. 81)

However advanced it may be, a country's labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it, not only in law, but also in practice.

Articles 10, 20 and 21 of the Convention. Availability of basic information essential to evaluate the implementation of the Convention in practice; statistics of industrial and commercial workplaces liable to labour inspection and of the number of workers covered. When examining annual reports on the work of the labour inspection services provided in accordance with *Article 20* of the Convention by a growing number of countries, the Committee often has occasion to express regret at the lack of statistics on industrial and commercial workplaces liable to inspection and the number of workers employed therein (*Article 10(a)(i) and (ii) and Article 21(c)*). At the national level, the absence of such data represents an insurmountable obstacle for any assessment of the rate of coverage by labour inspection services in relation to their scope, as defined in national legislation. As a consequence, the budgetary resources allocated to this public function rarely meet its duly justified and quantified needs, either for the determination of the appropriate number of labour inspectors, the necessary material resources for the discharge of their functions (*Articles 10, 11 and 16*) or the provision of training (*Article 7*). At the international level, it is extremely difficult for the ILO supervisory bodies to evaluate the effect given in practice to the Convention.

The Committee emphasized in paragraph 326 of its General Survey of 2006 on labour inspection the essential character of the availability of a register of workplaces and enterprises liable to inspection containing data on the number and categories of men and women workers employed therein, and it called on governments to make a particular effort to establish and update such a register. It welcomes the significant progress made in many countries including developing countries in this regard. It also welcomes the significant increase in the requests for ILO technical assistance for this purpose and the importance given to this aspect in the recommendations drawn up following audits of labour inspection services in several countries.

The Committee strongly encourages Members to endeavour to establish registers of workplaces liable to inspection or to improve existing registers. It has observed that the more detailed the information in registers, the greater their impact on the effectiveness of labour inspection activities. Part IV of the Labour Inspection Recommendation, 1947 (No. 81), in Paragraph 9(c), indicates some criteria which may serve as a basis for the disaggregation of this information. However, it is possible to define other pertinent criteria as a function of the respective quantitative and qualitative objectives and the available resources.

Continuing inter-institutional cooperation between the labour inspection services and other government bodies and public or private institutions in possession of relevant data (tax services, social security bodies, technical supervisory services, local administrations, police, judicial authorities, occupational organizations, etc.) is particularly desirable to ensure that the register of workplaces and enterprises meets the expected objectives.

The Committee wishes to emphasize that, in addition to providing the central labour inspection authorities with the data essential for preparing the annual report, the publication and communication to the ILO of which is required by *Article 20*, the register of workplaces can be an important tool for assessing the effectiveness of external services and their personnel. The central authority can therefore assess the relationship between the activities carried out and the resources available, especially for the development of a human resources policy that takes into account merit and motivation.

The Committee asks governments to take measures rapidly to foster inter-institutional cooperation for the establishment or improvement, as appropriate, of a register of workplaces liable to labour inspection. It asks them to ensure that the register also contains, in so far as possible, data that are useful to improve the coverage of the labour inspection system and its effectiveness.

The Committee asks governments to provide information on any measures taken for this purpose and their impact, and on any difficulties encountered and the solutions envisaged.

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

However advanced it may be, a country's labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it, not only in law, but also in practice.

Articles 14, 26 and 27 of the Convention. Availability of basic information essential to evaluate the implementation of the Convention in practice; statistics of agricultural undertakings liable to inspection and of the number of workers covered. When examining annual reports on the work of the labour inspection services provided in accordance with *Article 26* of the Convention by a growing number of countries, the Committee often has occasion to express regret at the lack of statistics on agricultural undertakings liable to inspection and the number of workers employed therein (*Article 14(a)(i) and (ii) and Article 27(c)*). At the national level, the absence of such data represents an insurmountable obstacle for any assessment of the rate of coverage by labour inspection services in relation to their scope, as defined in national legislation. As a consequence, the budgetary resources allocated to this public function rarely meet the duly justified and

quantified needs, either for the determination of the appropriate number of labour inspectors, the necessary material resources and transport facilities for the discharge of their functions (*Articles 14, 15 and 21*) or the provision of specific training (*Article 9*). At the international level, it is extremely difficult for the ILO supervisory bodies to evaluate the effect given in practice to the Convention.

The Committee emphasized in paragraph 326 of its General Survey of 2006 on labour inspection the essential character of the availability of a register of agricultural undertakings liable to inspection containing data on the number and categories of men and women workers employed therein, and it called on governments to make a particular effort to establish and update such a register. It welcomes the significant progress made in certain countries in this regard and the relevant recommendations drawn up following audits of the labour inspection services carried out by the ILO in several developing countries.

The Committee strongly encourages Members to endeavour to establish registers of agricultural undertakings liable to inspection or to improve existing registers. It has observed that the more detailed the information in registers, the greater their impact on the effectiveness of labour inspection activities. *Part IV of the Labour Inspection Recommendation, 1947 (No. 81), in Paragraph 9(c)*, indicates some criteria which may serve as a basis for the disaggregation of this information. However, it is possible to define other pertinent criteria as a function of the respective quantitative and qualitative objectives and the available resources.

Continuing inter-institutional cooperation between the labour inspection services and other government bodies and public or private institutions in possession of relevant data (tax services, social security, technical supervisory services in agriculture, local administrations, police, judicial authorities, occupational organizations, etc.) is particularly desirable to ensure that the register of agricultural undertakings meets the assigned objectives.

The Committee wishes to emphasize that, in addition to providing the central labour inspection authorities with the data essential for preparing the annual report, the publication and communication to the ILO of which is required by Article 26, the register of undertakings can be an important tool for assessing the effectiveness of external services and their personnel. The central authority can therefore assess the relationship between the activities carried out and the resources available, especially for the development of a human resources policy that takes into account merit and motivation.

The Committee asks governments to take measures rapidly to foster inter-institutional cooperation for the establishment or improvement, as appropriate, of a register of workplaces liable to labour inspection. It asks them to ensure that the register also contains, in so far as possible, data that are useful to improve the coverage of the labour inspection system and its effectiveness.

The Committee asks governments to provide information on any measures taken for this purpose and their impact, and on any difficulties encountered and the solutions envisaged.

Algeria

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

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

The Committee notes the information contained in the Government's report on the developments which have occurred in the organization and functioning of the general labour inspectorate with the implementation of Decree No. 05-05 of 6 January 2005 and also on their results in practice. It notes the redistribution of its functions among the central bodies and the restructuring of the decentralized labour inspection bodies with a view to adapting to the new realities of the working environment. In particular, the Committee notes the provisions of the above Decree relating to: the formulation, implementation and evaluation of annual and multi-annual training plans for labour inspection staff (section 13 respecting the functions of the training and documentation subdirectorates); the formulation and implementation of a prevention and monitoring strategy in occupational health, safety and medicine, and also the implementation of cooperation between the labour inspection services and the partners and institutions concerned in the various areas of enforcement of labour standards (section 5 respecting the functions of the directorate of occupational relations and monitoring of working conditions); the formulation of a development strategy for the computerization and compilation of statistics and the establishment of a system for the collection, processing and consolidation of all statistical information in relation to the work of labour inspectors (sections 10 and 14 respecting the functions of the administration and training directorate and the computerization and statistics subdirectorates, respectively); the establishment and updating of the register of enterprises (section 9 respecting the functions of the standardization and methodology subdirectorates); and the periodic assessment of offences reported by the labour inspectorate and the evaluation of follow-up action taken by the competent authorities (same section). With reference to its observation of 2007, the Committee also notes that the *wilaya* labour inspectorate (the decentralized inspection body at the departmental level) is responsible for monitoring the procedures and actions instituted by the labour inspectorate in the courts and for keeping the hierarchical authority informed (section 24).

The Committee also notes the adoption of the texts implementing the above Decree, namely: the Inter-ministerial Orders of 16 August 2005 concerning the organization and territorial competence of (i) labour inspection offices, and (ii) regional labour inspectorates, and also concerning the organization of labour inspection at the *wilaya* level; and the Inter-ministerial Order of 18 January 2006 establishing the office structure of the general labour inspectorate.

Articles 20 and 21 of the Convention. Publication and communication of an annual inspection report. Improvements to labour inspection statistics and dissemination of other information on labour inspection activities. The Committee notes, further to its repeated requests, the communication by the central labour inspection authority of two reports including information on

developments in the working of the labour inspection system, statistics on inspection activities relating to the subjects covered by *Article 3(1)(a)*, of the Convention, and on their results for 2007 and the first six months of 2008. The statistics cover the enforcement of the relevant legal provisions (*Article 21(d) and (e)*) and also the information and advice provided to employers and workers at their request or through planned activities (*Article 3(1)(b)*).

The statistical summaries for inspections are disaggregated by sector of the economy (public and private), type of inspection (routine, follow-up and special) and branch of activity (agriculture, industry, construction and public works, services). Statistics of the offences reported by the labour inspectorate are disaggregated by the number of reported warnings issued and written comments.

The Committee also notes that the construction sector has been the subject of particular vigilance on the part of the inspection services and that advice has been given by the inspectorate to strengthen observance of the legal provisions relating to safety and health. The reports also refer to the celebration for the fourth consecutive year of the World Day for Safety and Health at Work, organized by the National Institute for the Prevention of Occupational Risks, at the headquarters of the National Oil Well Services Company (ENSP), at the Hassi-Messaoud oilfield. Apart from communications on the management of occupational risks, particularly concerning a key aspect of the safety and health culture at the workplace, namely the principle of the use of personal protective equipment, reference was also made to the relevant ILO Conventions and Recommendations. Similarly, the World Day against Child Labour, with the participation of the ILO representative, provided an opportunity for the chief labour inspector to present occupational safety and health measures, and particularly the establishment of a national commission responsible for coordinating action by the ministerial departments concerned. The Day was celebrated by seven regional labour inspectorates (Annaba, Oran, Constantine, Batna, Tired, Ouargla and Bechar).

The Committee also notes the inclusion in the reports published by the general labour inspectorate of technical, legislative and practical information for use by inspectors and employers and workers on issues related to conditions of work and the protection of workers. For example, the 2007 inspection report dealt with methods for preventing chemical hazards in industry and the role of the labour inspectorate in prosecuting breaches of the legislation respecting remuneration.

Article 7. Further training of labour inspectors, particularly through knowledge transfer (dissemination programme). The Committee notes that internal further training programmes for inspectors covered a variety of subjects during the reporting period, for example the exercise of the right to organize, home work, investigation and monitoring techniques, the establishment of contracts covering the employment relationship and the organization of the prevention of occupational risks. The Committee also notes that senior inspectors who attended training programmes abroad are given the task of transferring knowledge and competence thus acquired to other labour inspectors. It also notes that, in the context of its training programme, the Ministry of Labour, Employment and Social Security organized training on the treatment of psychological and social problems related to work, entitled the "SOLVE Programme".

Article 11. Improving the conditions of work of labour inspectors. The Committee also notes the information in the Government's report and the general labour inspectorate's reports concerning the adoption of specific financial measures taken by the Government to reinforce the operational resources of the inspectorate and enhance its credibility.

Labour inspection buildings (offices and staff housing). The Committee notes the completion of buildings housing the new labour inspection headquarters in several wilaya capitals and other local inspection services (Oum El Bouaghi, Adrar, Illizi, Ouenza), and also the detailed information on the progress made on other building projects across the country, which are due to be completed in 2009. It notes that a total of 43 projects are being undertaken for the construction of new inspection headquarters, the extension and equipment of other inspection offices, and the creation of official housing for each inspectorate.

Office equipment and transport facilities. The inspection services have more than 912 computers, or one per inspector, as they are considered an essential tool for the development of management and communication methods. It should be noted that, in the context of special programmes, 15 wilayas in the High Plateau region and five wilayas in the south of the country have been the recipients of office furniture, computers and copying equipment, and also 12 vehicles, including nine four-wheel drive vehicles, out of the 128 new vehicles purchased by the general labour inspectorate in 2006 and 2007.

The Committee hopes that adequate financial resources will be allocated so that the legal and organizational measures taken will be given effect in practice and will lead to a substantial improvement in the effectiveness of labour inspection activities in accordance with the objectives of the Convention. The Committee also hopes that relevant information will continue to be supplied by the Government in its report on the application of the Convention.

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

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

Angola

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes the Government's report, the comments by the National Union of Angolan Workers–Trade Union Confederation (UNTA–CS), received at the ILO on 17 November 2008. It also notes with *interest* the annual inspection report for 2008 in the form of a publication, as required by *Article 20 of the Convention*, and containing instructive information on the organization and working of the General Labour Inspectorate (IGT).

Legislation. Noting that the Government has not sent the information requested on the measures to develop, in consultation with the social partners, regulations to implement certain provisions of the law, the Committee requests the Government to take these measures and to keep the Office informed. It reminds the Government that it may seek assistance from the ILO for this purpose.

Article 3, paragraph 1(b), Article 17, paragraph 2, and Article 21(e) of the Convention. Practical instructive measures to prevent risks of occupational accidents and punishment of negligent employers. The Committee notes that, having declined in 2007, the number of occupational accidents again climbed to a high level in 2008. The reason appears to be a significant increase in the number of industrial and commercial workplaces (from 15,722 in 2006 to 18,555 in

2008) and of workers. In this connection, the Committee notes with *interest* the preventive measures taken such as: (a) the planning of inspection visits targeting activities that traditionally expose workers to a high risk of accidents (particularly civil and industrial construction and transport); (b) significant development in technical information activities; (c) various information campaigns on occupational safety and health, one of which, launched in 2007, is a standing programme on the prevention of occupational accidents and diseases in the construction sector; (d) establishment of a World Day for Safety and Health at Work; (e) dissemination in the press and audiovisual media of information on the IGT's role in occupational safety and health, the Committee on the Prevention of Industrial Accidents in the Hydrocarbons Sector, standards concerning noise at work, occupational safety and health in the diamond mining sector; and (f) the creation of enterprise safety and health committees and accident prevention committees. ***The Committee would be grateful if the Government would continue to provide information on the activities carried out by inspectors to introduce an occupational risk prevention culture, and on progress made in this area (statistics on occupational accidents and cases of occupational disease, contraventions of the relevant legislation). The Committee also asks the Government to indicate the policy applied by the labour inspectorate regarding employers that are reluctant to heed its technical advice and warnings.***

Article 10. Adapting the labour inspectorate's human, material and logistical resources to the expansion of industry and commerce. The Committee notes with *interest* that the staff of the inspectorate has been increased (99 inspectors in 2005, 114 in 2006, 120 in 2007 and 138 in 2008) in order to cope with the continued growth in the number of workplaces subject to inspection. ***The Committee requests the Government to indicate how the budget for the IGT is determined, and in particular the share of the resources earmarked for annually programmed visits to workplaces by inspectors (technical equipment, transport facilities and reimbursement of duty travel expenses, for example).***

The Committee also asks the Government to provide information on any outside financial support obtained in order to reinforce the labour inspection system, and to report on any progress made in this area.

Article 3, paragraph 2, and Article 5(a). Cooperation between the labour inspection services and other public bodies and institutions. According to the Government, the feasibility of establishing a forum for cooperation in the IGT, following a proposal by the UNTA-CS, is currently under study by the National Committee on ILO-related matters. The Government also indicates that joint inspections are carried out by the control services of the provincial governments, health inspectors and financial authorities. The Committee wishes to draw the Government's attention to the need to ensure that any cooperation between the inspection services and other public bodies or institutions should not target objectives that conflict with those of the Convention, but should contribute to improving the working of the labour inspectorate. ***The Committee invites the Government to refer in this connection to the Committee's comments on this subject in its General Survey of 2006 on labour inspection (paragraphs 75–78 and 150–162), and asks the Government to provide information on the objective of the above joint inspections and on the measures taken to ensure that these do not adversely affect the duty of the labour inspectorate to protect workers.***

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

Antigua and Barbuda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

Article 5 of the Convention. Cooperation between the labour inspection services and other Government services or public institutions and collaboration with employers' and workers' organizations. The Committee notes that no progress has been made since 1997 in promoting cooperation between the labour inspectorate and the Ministry of Health despite the Government's commitment to this end. ***The Committee is therefore once again bound to request the Government to supply detailed information on the practical measures taken or envisaged to establish and develop this cooperation (for instance, through the regular exchange of information and data, common training seminars or conferences, etc.) and on the results achieved or any difficulties encountered. It also asks the Government to provide the information requested previously on the contents and modalities of the cooperation in question.***

The Committee notes that the collaboration with trade unions, announced by the Government in its 2006 and 2008 reports, is very limited, merely consisting of the trade unions informing the Labour Department of violations of legal provisions in workplaces. The Committee therefore wishes to refer the Government once again to Part II of the Labour Inspection Recommendation, 1947 (No. 81), on examples of measures that might be taken to encourage collaboration between labour inspectors and both workers and employers, such as the organization of conferences or joint committees, or similar bodies to provide a space for discussions on safety and health issues. ***The Committee requests the Government to inform the ILO of the measures taken to encourage collaboration between the labour inspectorate and the social partners, and the results achieved in the areas covered.***

In addition, noting the information communicated by the Government on the application of Occupational Safety and Health Convention, 1981 (No. 155), on the existence of a Labour Advisory Board with a tripartite structure, the Committee asks the Government to indicate the matters discussed within this body and to provide the ILO with copies of relevant documents.

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

Australia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1975)

The Committee notes the Government's report and the information provided in reply to its previous comments. It also notes the comments made by the Australian Council of Trade Unions (ACTU) in a communication dated 1 September 2008, as well as the Government's response to these comments. The Committee finally notes the adoption of the Fair Work Act 2009 (No. 28, 2009) (FWA) which establishes Fair Work Australia, a new statutory body with a wide range of functions including an inspectorate – the Fair Work Ombudsman and its Office – which has responsibility for monitoring and enforcing compliance with industrial laws.

Impact of legislative development on the functioning of labour inspection. In a previous direct request the Committee had noted comments communicated by the ACTU with regard to a change in orientation of the labour inspectorate which, instead of focusing on its traditional task of recovering wages owed to workers, had begun to use aggressive methods of investigation in order to determine whether trade unions and workers were in breach of the legislation which applied prior to the adoption of the FWA (i.e. the Workplace Relations Act 1996 (WR Act)) and which had itself been found by the Committee to be contrary to other international labour standards.

The Committee takes note of the Government's reply which was communicated prior to the adoption of the FWA. The Government provides information on the activities of the Workplace Ombudsman who preceded the recently established Fair Work Ombudsman. The Workplace Ombudsman had commenced on 1 July 2007 on the basis of Part 5A of the WR Act. According to the Government, it had established itself as a strong, effective and independent regulator having finalized over 45,000 investigations, having recovered in excess of 52 million Australian dollars (AUD) on behalf of employees, and having commenced 123 court proceedings for breaches of the WR Act. The courts imposed over AUD2 million in penalties against employers as a result of the Workplace Ombudsman's work. Furthermore, the Workplace Ombudsman performed targeted compliance and education campaigns, as a result of which it audited more than 9,500 businesses and recovered more than AUD14 million on behalf of over 15,000 employees.

The Committee also notes that in the meantime, the WR Act was replaced by the FWA and the Workplace Ombudsman ceased operations on 30 June 2009, all of its functions having been assumed by the Office of the Fair Work Ombudsman. It also takes note of the statement of the Chairperson of the ACTU to the 98th Session of the International Labour Conference (Geneva, June 2009) according to which "[i]n July [2009], the Fair Work Act will begin operation, re-establishing a decent safety net for all working Australians, restoring unfair dismissal rights, placing collective bargaining at the centre of industrial relations, and restoring the powers of the independent umpire with Fair Work Australia". (*Provisional Record* No. 9, page 44)

The Committee takes note of this information with *interest*. ***It requests the Government to provide in its next report information on the activities of the Fair Work Ombudsman, with statistical information in particular on the number of violations found and prosecutions initiated.***

The Committee also notes that in its comments, the ACTU raised the issue of provisions in the WR Act which restricted the right to access of trade unions to workplaces, effectively preventing them from performing inspection functions. The ACTU indicated that under the Australian industrial relations system, trade unions had historically played a key role in overseeing the enforcement of awards and agreements. In recent years, however, the WR Act, as amended by the Work Choices Act, had severely restricted the capacity of union officials to enter the workplace to investigate a suspected breach of industrial obligations and to hold discussions with employees. The ACTU strongly regretted that the new Government had indicated its intention to retain the existing restrictions.

The Committee notes that the WR Act has now been replaced by the FWA, Part 3–4 and in particular sections 481–483E which enable union representatives to enter premises and investigate suspected contraventions of the FWA or a term of a fair work instrument (i.e., a "modern award", "workplace determination" or order issued by Fair Work Australia, or an enterprise agreement (section 12)) that relates to or affects a member of their organization. However, the exercise of this right is subject to certain conditions concerning the right of entry aimed at maintaining a balance between the right of organizations to investigate suspected contraventions and the right of occupiers of premises and employers to go about their business without undue inconvenience (as stipulated in section 480 of the FWA). Moreover, trade union representatives are not entitled to exercise general inspection functions under the FWA. According to section 152(b) of the FWA, a "modern award" must not include terms that require or authorize an official of an organization to enter premises to inspect any work, process or object. Moreover, the conditions under which trade union representatives have right of entry to carry out inspections of suspected contraventions, cannot be modified by enterprise agreement, as provided in section 194 of the FWA.

The Committee observes that these provisions place certain restrictions on the wide powers traditionally conferred upon trade unions to ensure enforcement of awards and agreements. The power to enforce legal entitlements has now been transferred to a public authority, namely, the Fair Work Ombudsman while trade unions maintain the power to investigate suspected contraventions which relate to or affect one of their members.

The Committee recalls that, according to *Article 4 of the Convention*, so far as is compatible with the administrative practice of the Member, labour inspection shall be placed under the supervision and control of a central authority. At the

same time, the Committee notes that according to *Article 5(b)*, the competent authority shall make appropriate arrangements to promote collaboration between officials of the labour inspectorate and employers and workers or their organizations. The Committee notes that in its report, which antedated the adoption of the FWA, the Government referred to the measures taken to ensure that the Workplace Ombudsman (now replaced by the Fair Work Ombudsman) was as accessible as possible to the Australian community: the agency investigated all complaints and allegations of breaches of workplace relations law from any source, including employer and employee industrial associations, individuals, Commonwealth and state territory agencies, state and federal members of Parliament, and the media. Members of the public could access the Workplace Ombudsman and information regarding compliance rights and obligations through the post, the telephone, in person or online. In addition to this, key stakeholders including union and employer associations were contacted prior to the commencement of compliance and education campaigns and provided with the opportunity to both comment on and participate in the educational phase of the campaigns. Furthermore, the Workplace Ombudsman had a good general working relationship with peak union and employer associations such as the ACTU and the Australian Chamber of Commerce and Industry (ACCI).

While taking due note of this information, the Committee emphasizes that possible arrangements for collaboration with the social partners normally go beyond the right to communicate complaints to the Ombudsman and can take various forms, ranging from tripartite bodies, to cooperation agreements at various levels (national, regional, sectoral and enterprise) (see General Survey of 2006 on labour inspection, paragraphs 163–71). The Committee also recalls that Recommendation No. 81 provides specific guidance on possible forms and methods of collaboration in the area of occupational safety and health. The Committee notes that it does not have recent information at its disposal to enable it to evaluate whether the collaboration with employers' and workers' organizations has been further developed after the creation of the Fair Work Ombudsman. ***The Committee requests the Government to provide further information in its next report on arrangements made or envisaged in order to promote collaboration between the Fair Work Ombudsman and employers' and workers' organizations.***

Specific impact of new legislation on labour inspection in the building and construction sector. The Committee finally notes that in its comments dated 1 September 2008, the ACTU refers to the Australian Building and Construction Commission (ABCC), established on the basis of the Building and Construction Industry Improvement (BCII) Act, 2005. The ACTU raises serious concerns about the conduct of the ABCC, in particular, its unbalanced approach in favour of employers in relation to the selection of matters for prosecution, its refusal to prosecute employer breaches of industrial instruments and its failure to observe reasonable standards of prosecutorial fairness in the conduct of litigation against unions and workers. The ACTU emphasizes that according to the ABCC's annual report for 2006–07, trade unions were the subject of 73 per cent of investigations and employees the subject of 11 per cent (a total of 84 per cent). At the same time, the total number of employers prosecuted by the ABCC since October 2005 for failure to pay minimum lawful entitlements was zero; the total number of employers referred to other statutory agencies for such breaches was four. This was the case although the Workplace Ombudsman had ranked the construction industry as having the fourth highest rate of non-compliance with minimum standards by employers. According to the ACTU, the ABCC had apparently adopted a policy position not to investigate or prosecute such matters.

The ACTU adds that the BCII Act contains provisions which give the ABCC wide-ranging coercive powers akin to an agency charged with investigating criminal matters and a harsh regime of financial penalties for acts which constitute regular trade union activity. Among other things, the BCII Act imposes the penalty of imprisonment for failing to appear and answer questions or provide documents to the ABCC. As of May 2008, the overwhelming majority of individuals who had been served with notices under section 52 of the BCII Act compelling them to attend and answer questions, were workers as opposed to management representatives. The total amount of financial penalties imposed from 1 October 2005 to May 2008 was AUD1.2 million, including AUD883,200 imposed on 107 individual employees in a single prosecution in Western Australia. Finally, on 2 June 2008, a trade union officer in Victoria was prosecuted and faced imprisonment simply for failing to attend and answer questions as required by a notice issued by the ABCC (section 52(6) BCII Act) without being the subject of any investigation.

According to the ACTU, since the election of the new Government in 2007, the BCII Act has continued to apply without amendment and the ABCC has continued to operate with the same powers, with undiminished resources and unaltered policy direction. Despite having the capacity to do so under section 11(1) of the BCII Act, the incoming minister has not issued any directions to the ABCC specifying the manner in which the ABCC should exercise or perform the powers or functions it has under the Act. The new Government announced that the ABCC would be retained until 31 January 2010, and after that date, responsibilities would transfer to a specialist division within Fair Work Australia. The ACTU objects to the creation of a specialist division on building and construction.

The Committee notes the Government's reply to these comments, according to which the ABCC will be retained until 31 January 2010, after which time it will be replaced with a specialist building and construction division of the inspectorate of Fair Work Australia. The Government has engaged a former judge of the Australian Federal Court to consult and report on matters related to the creation of the specialist division and to report to the Government in 2009. A report will be provided to the Committee of Experts once the Government has had the opportunity to consider the recommendations of this inquiry.

The Committee recalls that under *Article 3* of the Convention, the functions of the system of labour inspection shall be to secure the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work; any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers. The Committee considers that the prosecution of workers does not constitute part of the primary duties of inspectors and may not only seriously interfere with the effective discharge of their primary duties – which should be centred on the protection of workers under *Article 3* of the Convention – but also prejudice the authority and impartiality necessary in the relations between inspectors and employers and workers. This is even more so when the laws on the basis of which the workers are prosecuted have been repeatedly found by this Committee to be contrary to other international labour standards, notably Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The Committee hopes that the above issues will be fully resolved in the framework of the formal inquiry into the regulatory arrangements to replace the ABCC and the establishment of a specialist building and construction division in Fair Work Australia. ***The Committee requests the Government to communicate the results of this inquiry and to indicate in its next report the measures taken or envisaged to ensure that labour inspectors in the building and construction division of Fair Work Australia focus on enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work and that any further duties which may be entrusted to them are not such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.***

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

Bahrain

Labour Inspection Convention, 1947 (No. 81) (ratification: 1981)

The Committee notes the Government's report for the period ending in September 2008 and the annual reports published by the labour inspection authority and the occupational safety and health authority on their respective inspection activities in 2006 and 2007. The Government has provided, as indicated in its previous report, at the request of the Committee, information and documentation allowing an assessment of the operation of the labour inspection system in practice, the progress made and the prospects for progress in the application of the following provisions of the Convention.

Article 3, paragraphs 1 and 2, and Article 20 of the Convention. Transfer of competence for the enforcement of the legislation on the employment of foreigners and content of the annual report on labour inspection activities. According to the preamble to the annual report of the labour inspection section for 2007, competence for the enforcement of the legal provisions relating to the employment of foreign workers will soon be transferred from the Ministry of Labour to the body responsible for regulating the labour market. The Committee can only firmly encourage such an initiative, which should have the effect of refocusing inspection activities on working conditions and the protection of both national and foreign workers while engaged in their work. In its 2004 direct request, the Committee noted with regret the incomplete nature of the statistical tables contained in the annual inspection report of the Division for Safety in the Workplace for 2003 and the lack of information on inspection activities relating to general conditions of work, such as hours of work, holiday, wages and the employment of women, young persons and children. It once again notes that the annual report of the labour inspectorate for 2006 mainly contains information and statistics relating to the activities carried out in the context of labour market supervision. The report also indicates that joint campaigns have been conducted with the immigration and passport police to search for illegal foreign workers and that it is regrettable that such campaigns, which result in the arrest of these persons, are not conducted as frequently as is necessary to combat the growing phenomenon of illegal immigration. According to the report, the limited prison capacity and the high cost of accommodating and repatriating workers are the main obstacles to conducting such campaigns more frequently. It therefore seems clear that labour inspectors participate in operations which are not only outside the remit of the labour inspectorate under the Convention, but also obviously contrary to the objective of the Convention of enforcing the application of legal provisions relating to conditions of work and the protection of workers while engaged in their work. ***The Committee requests the Government to keep the ILO informed of the progress made in transferring competence for the monitoring of the work permits of foreigners to the authority responsible for regulating the labour market so that labour inspectors are no longer involved in monitoring activities performed in workplaces aimed at arresting, imprisoning and then repatriating illegal workers. It requests the Government to provide copies of any relevant text or document.***

The Committee would be grateful if the Government would ensure that future annual reports of the labour inspection authority provide information on inspection activities mainly aimed at enforcing the application of the legal provisions relating to conditions of work (wages, hours of work, holiday, weekly rest, night work by women, the employment of children and the disabled, etc.) and the protection of workers while engaged in their work (non-discrimination, social security, representation of workers, etc.), without consideration of the legal situation of workers employed in the workplaces inspected.

Reminding the Government of the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), concerning the level of detail useful in respect of the information required by Article 21, the Committee requests the Government to provide information in its next report on the application of the Convention on any measures implemented to improve the content of the reports relating to inspection activities, as well as on any difficulties encountered.

Article 14. Notification of industrial accidents and cases of occupational disease. Further to its previous comments on this matter, the Committee notes with **interest** that henceforth, under Order No. 1 of 2006, industrial accidents and cases of occupational disease shall be notified by the employer not only to the Social Insurance Fund and the competent police station, in accordance with Act No. 24–76 on social insurance, but also to the Ministry of Labour. It notes that the preamble to the Order refers to the present Convention. It trusts that, in accordance with **Article 14** of the Convention, the labour inspectorate will receive relevant information which will be dealt with by the central inspection authority with a view to developing a policy on prevention focusing on high-risk occupations (construction, the chemical industry, the energy sector, work involving the operation of heavy machinery, activities involving overexposure to the sun, etc.). ***The Committee would be grateful if the Government would provide details on the notification procedure for industrial accidents and cases of occupational disease and on the action taken in response to such notifications in practice. It requests it to provide a copy of any relevant legal texts or documents.***

Article 20. Impact of the publication of annual reports of the labour inspectorate and the occupational safety and health authority. ***The Committee would be grateful if the Government would provide information on the reactions (criticism, praise, proposals for the improvement of the inspection system, etc.) to the information published in the above annual reports by employers, workers or their representative organizations, as well as other public authorities concerned. The Government is also requested to indicate the impact of these reactions on the operation and the means of action of the labour inspection system (allocation of resources, focus of activities, inter-institutional cooperation, etc.).***

Belgium

Labour Inspection Convention, 1947 (No. 81) (ratification: 1957)

The Committee notes the Government's detailed report received by the ILO on 26 September 2008, accompanied by statistics for 2007 and 2008 on the activities and results of the inspection services, and the annual reports on the activities of the social inspection services for 2005 and 2006. The numerous legal texts received by the ILO on 15 October 2009 will be examined together with the Government's next report.

Article 2 of the Convention. Scope of the competence of the labour inspection services. The Committee notes with **interest** that the inspection functions not only cover establishments and enterprises located in Belgium, but also foreign employers not covered by Belgian social security in respect of workers detached in the country.

Article 3, paragraph 1(a) and (c). Extension of the legislative fields covered by the inspection services. In its previous comment, the Committee noted that action to combat cross-boundary fraud had been given priority among the objectives of the labour inspectorate in 2006. It noted that the system to combat trafficking in human beings rested on a difficult compromise between, on the one hand, the wish to protect victims and offer them prospects for the future and, on the other, the need to combat networks effectively. According to the Government, in addition to the fact that the various types of fraud related to unlawful work are endangering the very financing of the social security system and creating unfair competition with employers that are in compliance with the rules, they prejudice the workers, who are often taken on without any social protection. Furthermore, in many cases, this type of engagement may even be associated with a form of trafficking in human beings in the broader sense. Consequently, inspectors responsible for supervising conditions of work may, in the context of action to combat trafficking in human beings and economic exploitation, deduce that there is a case of economic exploitation where, in practice, they are confronted with situations characterized by such factors as: a wage that is manifestly unrelated to the very large number of hours of work performed, possibly without a rest day; the provision of unpaid services; remuneration levels below the minimum monthly average income established in a collective labour agreement; and the engagement of one or more workers in a working environment that is manifestly not in conformity with the standards set out in the law. The Committee notes with **interest** that the vulnerability of the victim is an aggravating circumstance in relation to the offence of trafficking in human beings, as set out in section 433septies of the Penal Code, and that consequently the penalty for any person committing such an offence is greater, particularly where the victim is in an unlawful or precarious administrative situation. According to the definition provided in section 433quinquies of the Penal Code, the offence of trafficking in human beings is constituted by the act of "recruiting, transporting, transferring, lodging, receiving a person, giving up or transferring control over such a person, with a view ... to causing such person to work or allowing such a person to be put to work under conditions inconsistent with human dignity". The Government indicates that the social inspection services of the Federal Public Service (SPF) for social security systematically ensure that the work performed by workers "intercepted" at a workplace is, even in the event of unlawful employment, fully and correctly declared to the National Social Security Office so that they can be guaranteed the provision of the related social benefits. With reference to the reasoning given for the Bill relating to the Act of 10 August 2005, the Government emphasizes that the objective is not merely to combat "illegal work", but rather economic

exploitation and that there is a significant difference between “illegal employment under social legislation and economic exploitation”. In cases in which the social inspection services of the SPF for social security identify the existence of an irregularity, they systematically proceed to regularize the situation by submitting a specific form to the National Social Security Office containing certain data on the employer, the worker and their labour relationship in practice, namely the date of the beginning and the end of the worker’s engagement, the remuneration received in relation to the level that should have been paid taking into account the occupation, the number of days worked, etc. The National Social Security Office may at its own initiative draw up or correct this declaration on the basis of legal requirements. It then proceeds to undertake an automatic registration and to calculate and claim from the employer the amount of social contributions evaded based on the illegal employment, and accordingly to guarantee the worker concerned the social entitlements deriving from the work (health insurance, unemployment benefits, pensions, employment accident and occupational disease benefits, family allowances and annual holidays). The employer then pays the amount that is due in social contributions, under penalty of the application of civil financial penalties (an increase in the rate of the contributions and the interest due for delayed payment, and administrative penalties) and/or penal sanctions (imposed by the courts).

The Government adds that, in the context of supervisory activities targeting unlawful or clandestine employment, as well as those carried out to combat trafficking in human beings, the inspection services devote their energies not only to identifying violations relating to unlawful or clandestine employment, but also to ascertaining compliance with laws and regulations respecting conditions of work from the viewpoint of health and safety and of labour regulations (compliance with the wage scales applicable in the sector, working hours, public holidays, etc.).

The Committee however observes that, taking into account the types of fraud related to illegal work to which the Government refers, “undeclared work by foreign workers in an illegal situation”, in view of the wording, would appear to imply that the person committing such fraud is the worker her or himself and not, as in the other types of fraud, the employer. According to the information provided by the Government, a “*pro justitia*” (report of a violation) or a report of a criminal offence is always forwarded to the judicial authorities where the worker concerned by the contravention of the legislation on the employment of foreign nationals is in a situation of unlawful residence. ***The Committee would be grateful if the Government would specify whether the absence of a declaration by the worker is an offence attributable to the employed worker and indicate in any event the penalties incurred by this specific type of violation and the procedure applicable in this respect in relation to the employer and the workers concerned, where the latter are employed persons.***

The Committee also requests the Government to indicate the manner in which it is ensured that foreign workers engaged in an employed labour relationship, but whose situation in respect of the rules relating to residence is unlawful, benefit from the same protection as other illegal workers. The Government is requested to provide information on the procedure applicable for this purpose and on the role of the inspection services in relation to foreign workers who are subject to being taken back to the frontier or to expulsion.

Noting that an ethical code common to the four federal social inspection services is due to be adopted, following the opinion of the Federal Committee to Combat Illegal Work and Social Fraud, the Committee would be grateful if the Government would provide a copy to the ILO immediately or, if it is not adopted during the period covered by the next report, to provide clarifications on the matters that it covers.

Article 5(a) and (b). Developments in the collaboration between the labour inspection services and other government services and public institutions, on the one hand, and the social partners, on the other. The Committee notes the composition of the two bodies of the Department of Research and Labour Information to combat social fraud and illegal work, established by the Framework Act of 27 December 2006, namely the General Assembly of the Partners and the Federal Guidance Office, which include representatives of the Office of the Attorney-General and of the four inspection services, as well as other public social security institutions, the National Pensions Office, the National Institute for Sickness and Invalidity Insurance, the National Family Allowances Office for Employees, as well as representatives of employers and workers’ unions. ***The Committee would be grateful if the Government would indicate the role of the inspection services in these structures and its impact on the discharge of inspection functions, as determined in Article 3(1) of the Convention.***

Specific cooperation with judicial bodies. Educational and information exchanges. In reply to the 2007 general observation, the Government indicates that training for all supervisory personnel provided by an alternate judge of the court of Brussels was organized in September 2006. It covered issues relating to the powers of labour inspectors, penal repression, penal referral, the setting aside of cases and administrative penalties, the organization of judiciary enforcement and, particularly in the context of penal labour law for civil action, time limits, etc. The Government adds that a circular issued by the College of Prosecutors General in courts of appeal, dated 18 January 2007, recalling the general principles of prosecution and intended to harmonize judicial practices, recommends that labour auditors (representatives of the Office of the Attorney General in social jurisdictions) ensure joint training in their districts for labour inspectors and police officers with a view to improving knowledge sharing. ***The Committee notes this information with interest and would be grateful if the Government would continue to provide information on exchanges between the labour inspection services and judicial bodies with a view to enabling labour inspectors to describe to professionals in the judiciary tangible cases illustrating the gravity of the human, social and economic consequences of failure to comply with or deliberate violations of the legal provisions covered by the Convention.***

Communication of the judicial action taken on cases referred by labour inspectors. The Committee notes with **interest** that, as envisaged in section 14 of the Act of 16 November 1972 respecting labour inspection, labour inspectors are already informed, at their request, of the action taken on the violations reported by them to judicial bodies, and that such communication will be compulsory and automatic as from 2012 through access to the information technology systems recording court decisions. It also notes with **interest** that, in practice, the directorate for administrative penalties already systematically transmits rulings to the inspection services which identified the violation. **The Committee would be grateful if the Government would indicate the practical impact of the measures to provide systematic access by the labour inspection services to judicial decisions on the matters resulting from their action, in terms of the credibility and effectiveness of the labour inspection services.**

Article 15(c). Confidentiality of the source of any complaint and of any link that may exist between a complaint and a visit of inspection. While noting that, as indicated by way of example by the Government, a labour inspector may decide to conduct a general investigation even where a complaint only covers the failure to provide holiday pay, the Committee nevertheless observes that the investigation may be “confined” to the subject of the complaint where a general investigation has already been undertaken in the specific enterprise in the previous five years. **The Committee requests the Government to indicate the manner in which it is ensured in such cases that, as envisaged in Article 15(c) of the Convention and with a view to protecting the complainant from any reprisals, the inspector shall treat as absolutely confidential the source of any complaint and shall give no intimation to the employer or his or her representative that a visit of inspection was made in consequence of the receipt of a complaint.**

Articles 17 and 18. Progressive decriminalization of violations of certain provisions of the labour legislation. The Committee notes that, under the terms of the circular of 18 January 2007 referred to above, labour auditors are invited to give preference to the referral of matters to the administrative fines service, where this is envisaged, with prosecution in the criminal courts being reserved for more serious offences, cases in which no action is taken to regularize the situation, manifest bad faith, repeat offences or the non-payment of the proposed remedial measure. **The Committee would be grateful if the Government would provide information on the impact of this decriminalization of violations on compliance with the legislation concerned and if it would provide specific examples of cases of violations referred to criminal jurisdictions and the corresponding decisions.**

Bolivia

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee notes with **concern** that the Government’s report has not been received for the fourth time. It is therefore bound to renew its reiterated observation, which read as follows:

Further to its previous comments, and referring in particular to the information available to the ILO, the Committee notes the launching of the multilateral technical cooperation project ILO/FORSAT, financed by the Ministry of Labour and Social Affairs of Spain and covering other countries in the region, with the objective of strengthening labour administrations. It notes that labour inspection is one of the important components of the project and that cooperation and assistance activities should be undertaken for the definition of a legal and structural framework and the determination of working methods and procedures with a view to the development of an effective inspection system. **The Government is requested to provide detailed information in its next report on any measure adopted in the context of this project and on the results achieved in relation to the objectives established, as well as in relation to the matters raised in the Committee’s comments of 2003.**

Part V of the report form and article 23, paragraph 2, of the ILO Constitution. **Recalling the obligation to communicate to the representative organizations of employers and workers, in accordance with this article of the Constitution, copies of the information and reports communicated, particularly under article 22 of the ILO Constitution, to the Director-General of the ILO, the Committee would be grateful if the Government would indicate the precise reasons which might provide an explanation for the failure to comply with these provisions in the case of the present Convention.**

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1977)

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

Referring to its observation under Convention No. 81, the Committee notes that, owing to the economic crisis, the Government is encountering economic and financial restrictions which affect in particular the implementation of monitoring functions relating to the application of labour legislation and occupational safety standards in the agricultural sector. The Committee notes, however, that despite these difficulties a pilot project has been implemented by the Ministry of Labour in the regions of Bermejo, Yacuiba, Villamontes and Riberalta and that the officials operating in these regions are doing their utmost to perform their duties in accordance with the provisions of the General Labour Act, its implementing decree and other connected standards.

The Committee also notes that the Government hopes that, when the labour inspection system is reorganized as a result of the ILO/FORSAT multilateral cooperation project, of regional scope, to strengthen the labour administrations, the functioning of this system will be able to be extended to the agricultural sector. The Committee recalls that the ratification of the present Convention implies de jure obligations whose aim is the coverage of needs specific to agricultural undertakings by the inspection services with respect to monitoring of the legislation concerning conditions of work and worker protection. **The Government is therefore requested to take measures promptly to ensure the implementation of such obligations, without prejudice to any**

improvement expected from the overall reorganization of the inspection system which is under way, and to communicate to the ILO all available information requested in the report form according to the provisions of the Convention.

The Committee also requests the Government to provide further information on the activities undertaken and the results obtained by the inspection services involved in the implementation of the abovementioned pilot project.

Part V of the report form and article 23(2) of the ILO Constitution. Recalling the obligation to communicate to representative organizations of employers and workers, under the abovementioned article of the Constitution, copies of reports and information transmitted to the ILO Director-General, particularly under article 22 of the ILO Constitution, the Committee would be grateful if the Government would indicate the precise reasons which might explain the failure to implement these provisions in relation to the present Convention.

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

Burundi

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

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

The Committee takes note of the little information contained in the Government's report and further clarifications received in the ILO on 4 September 2006.

Primary duties of labour inspectorates. In its previous comments the Committee had observed that labour inspectorates' activities focused mainly on dispute resolution issues, instead of activities aiming at the enforcement function provided for by *Article 3(1) of the Convention*. Its appreciation was based on the reports on 2000 and 2001 first-quarter labour inspection activities, showing also the performing of a huge amount of administrative tasks. The Committee notes that five out of the nine inspectors are entrusted with collective dispute resolution issues, only three others dealing with control of conditions of work, though all of them have participated in a seminar organized by the Programme for promoting social dialogue in African French-speaking countries (PRODIAF) on proceedings relating to labour dispute resolution, during the first quarter of 2006. This information confirms that labour inspection continues to be taken off its main role to be put on labour dispute resolution missions.

According to the Government, the absence of a special status, the lack of means of transport, of qualifications and of technical equipment seem to have lead to a lack of confidence from the employers towards labour inspectors.

The Committee once again stresses that it is necessary for labour inspectors to focus on the enforcement of legal provisions on labour conditions and protection of workers while engaged in their work (*Article 3(1)*) and that any further duties entrusted to them should not interfere with the effective discharge of their primary duties or prejudice in any way the authority and impartiality which are necessary in their relations with employers and workers (*paragraph 2*). It also recalls the Government's obligation of the competent authority to take measures to make available to labour inspectors the necessary means, such as transport facilities where no appropriate public transport facilities exist and reimbursement of any travelling and incidental expenses which may be necessary for the performance of their duties (*Article 11*). It expresses the hope that appropriate financial support will soon be granted through international cooperation to this end. *The Committee would be grateful if the Government would indicate any steps taken and any progress achieved in this regard and communicate in the nearest future any available report on labour inspection activities in industrial and commercial workplaces, concerning the application of legal provisions on conditions of work and protection of workers.*

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

Cape Verde

Labour Inspection Convention, 1947 (No. 81) (ratification: 1979)

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

The Committee notes the Government's report for the period ending 1 September 2005 and the elements of information that it contains in reply to its previous comments, as well as the comments made by the Commercial, Industrial and Agricultural Association of Barlavento (ACIAB), the National Union of Workers of Cape Verde – Trade Union Confederation (UNTC-CS) and the Cape Verde Confederation of Free Trade Unions (CCSL), which were forwarded by the Government. *It requests the Government to provide detailed information in its next report on the following points.*

Means of action of the labour inspectorate. The Committee notes that, in the view of the CCSL, the labour inspectorate is not functional due to the lack of material and human resources. The low number of inspectors means that it is not possible to exercise effective supervision in all the islands of the country and travel by inspectors is infrequent due to the lack of transport facilities. In this respect, the UNTC-CS considers that the Government should allocate greater resources to ensure effective labour inspection. The Government indicates that it is planning to take measures to establish new inspection services in islands where employment has grown the most over recent years. The Committee also notes that the Government is proposing to organize the recruitment by competition of new labour inspectors and their training in the near future with the support of Brazilian cooperation. *The Committee requests the Government to continue providing detailed information on any further measures taken to ensure that inspectors are sufficient in number to secure the effective discharge of their duties (Article 10 of the Convention), that they have the necessary material resources and transport facilities (Article 11) and receive adequate initial and further training (Article 7).*

Functions and duties of inspectors. The Committee notes the Government's indication in its report that new mediation and conciliation functions are to be attributed to labour inspectors by the draft Labour Code that is currently being adopted. It also notes that the Government plans to revise the general conditions of service of the labour inspectorate. *With reference to its*

previous comments, the Committee is confident that the Government will ensure that the new functions which may be entrusted to labour inspectors are not such as to interfere with the effective discharge of their primary duties (Article 3(2)). Furthermore, the Committee notes the Government's assurances that the revision of the general conditions of service of the labour inspectorate will take into account the need for provisions prohibiting inspectors from revealing, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties, in accordance with *Article 15(b) of the Convention*.

Notification of cases of occupational disease. The Committee notes the view of the ACIAB that it is important for the labour inspectorate to be notified not only of industrial accidents, but also of cases of occupational disease so that it can compile statistics on occupational risks, take preventive action and ensure the appropriate coverage of the victims. The Committee notes that, in reply to its previous comments on this subject, the Government provides assurances that account will be taken, in the context of the adoption of the new Labour Code, of the need to supplement the legislation so that it establishes the obligation to notify the labour inspectorate of cases of occupational disease, in accordance with *Article 14 of the Convention*.

Publication of an annual report. The Committee notes the reports from the various inspection offices of the inspections carried out during the years 1999 to 2005, which were transmitted by the Government with its report. The Committee observes that these are reports submitted to the central inspection authority, in accordance with *Article 19 of the Convention*; they cannot replace the annual report which, under the terms of *Article 20 of the Convention*, has to be published by the central inspection authority and transmitted to the ILO within a reasonable period. *With reference to the comments that it has been making for many years on this subject, the Committee trusts that the Government will take the necessary measures in the near future to ensure that an annual report on the matters set out in Article 21 of the Convention is published within the required time limits.*

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

Chad

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

Further to its previous comments, the Committee once again notes with *concern* that the information sent by the Government is the same as that already received in April 2005 and 2006, and that the reports on the work of the inspectorate and the local inspection offices announced time and again in the Government's reports as being attached have still not been sent. Consequently, while noting that between 2005 and 2009 the number of labour inspectors rose from 15 to 23, the Committee is bound to draw the Government's attention once again to the commitments it made when it ratified the Convention, and accordingly to urge it to provide the Office with up to date information on the legislative and practical measures taken or envisaged to apply the Convention, and on any difficulties encountered.

Legislation. *The Committee once again asks the Government to take steps for the adoption of texts giving effect to the provisions of the Labour Code on the powers and duties of labour inspectors and controllers and for the enactment of the draft decree issuing regulations governing labour inspectors and controllers to which the Government has been referring for many years. Please report any progress made in this regard.*

Article 10 of the Convention. *Increasing the numbers and qualifications of the labour inspectorate.* *The Committee requests the Government to specify the context in which the number of labour inspectors was increased and to indicate whether measures have been taken or are envisaged for the training of the staff of the inspectorate, either to update their skills or to give them further training to enable them to perform their duties effectively. Please describe any such measures and indicate their impact in terms of the achievement of the objectives of labour inspection.*

Articles 11 and 16. *Material resources and transport facilities made available to labour inspectors for the performance of their duties.* *Noting the information contained in an earlier report about possible financial support in the context of international cooperation, the Committee would be grateful if the Government would provide information on any developments in this matter in recent years and on any progress made in providing the labour inspection services with material resources for their work, particularly transport facilities, so that they are able to implement workplace inspection programmes. If the Government has been unable to obtain financial support, the Committee asks it to indicate the obstacles encountered and the measures envisaged for this purpose.*

Articles 20 and 21. *Publication and communication to the International Labour Office of an annual report on labour inspection activities.* *Further to its previous comments, the Committee once again urges the Government to take the necessary steps to ensure that the central labour inspection authority publishes and sends to the ILO an annual report, in accordance with these provisions of the Convention and with section 469 of the Labour Code, and to provide information in this respect.*

While aware of the financial difficulties that are preventing the strict application of the relevant provisions of the Convention, the Committee requests the Government to provide all the information and documentation that is currently available on the legislation covered by the Convention (Articles 2, 3(1)(a) and 21(a)) and on the work of the inspectorate and the results achieved (Article 21(c)–(g)), to enable the Committee to assess the situation and provide useful recommendations for the progressive application of the requirements of the Convention.

The Committee hopes that the Government will do its utmost to take the necessary steps in the very near future.

China

Hong Kong Special Administrative Region

Labour Inspection Convention, 1947 (No. 81) (notification: 1997)

The Committee notes the Government's report for the period 1 June 2006 to 31 May 2008 in reply to its previous comments. It also notes the annual reports of the Labour Department for 2006 and 2007 which contain detailed information and figures on labour inspection activities and results. The Committee notes with *interest* in particular the activities and results achieved in the framework of the Safety and Health at Work programme in the most hazardous activities, such as industry, construction, boilers, etc. Detailed information on the subject is available through the web site link at www.labour.gov.hk/eng/osh/content.htm.

Article 3, paragraph (a) and (b), Articles 14 and 18 of the Convention. Enforcement and educational activities aimed at ensuring the application of legal provisions relating to work conditions of work. The Committee notes with *interest* that, according to the annual report for 2006, a key element in the enforcement of the occupational safety and health legislation is the provision of advice on accident prevention. Among other activities, special promotional visits were undertaken to encourage employers to adopt a self-regulatory approach to the management of risks at the workplace and regular enforcement inspections were carried out to various workplaces to monitor whether those responsible have observed all the related statutory requirements set out in safety legislation. Television and radio announcements, leaflets, posters, newspapers, the departmental homepage and seminars on the Compensation Ordinance were used to strengthen the promotion of the timely reporting of work accidents by employers. Promotional activities have focused on the statutory obligation of employers to take out insurance policies covering their liability for injury at work in respect of their employees. The Committee notes with *satisfaction* that blitz operations targeting various high-risk work activities were conducted not only on normal working days, but also at night and during holidays, to detect and clamp down on offending contractors. The annual report also indicates that establishments with a poor record of safety performance are still under close surveillance, which has resulted in significant improvements.

Similar territory-wide blitz operations and inspections were conducted to detect wage offences and resulted in various penalties, including custodial sentences in three cases in 2006. The annual report for 2007 indicates that seven custodial sentences were imposed during territory-wide inspection campaigns launched with the collaboration of trade unions and targeted at offence-prone trades for the non-payment of wages through an early warning system. The Committee notes with *interest* the indication in the annual report that vigorous inspections have been carried out of workplaces in which government service contractors employ non-skilled workers with a view to protecting their statutory rights and benefits. As a result of the concerted efforts of the Labour Department and procuring departments through increased monitoring and enforcement, the annual report indicates that there has been a great improvement in compliance with labour laws.

Article 3, paragraph 2, and Article 17. Additional functions entrusted to labour inspectors. Objectives of the Convention. In its previous comments, the Committee noted in the Annual Report of the Labour Department for 2005 that joint operations were carried out by the labour inspectorate, the police and the Immigration Department, leading to the arrest of 538 illegal workers and 237 employers suspected of employing illegal workers. The Committee also noted that such operations had led to the imprisonment of foreign workers who do not possess the necessary residence authorization. It noted in the annual report an illustration of suspected illegal workers being arrested, sitting on the ground with their faces to the wall. The Committee expressed its concern that the exercise by labour inspectors of duties related to the monitoring of the illegal immigration of workers could be a serious obstacle to the discharge of their duties of supervising conditions of work and the protection of workers. Referring to paragraph 78 of its General Survey of 2006 on labour inspection, it asked the Government to take measures aimed at re-establishing the primary duties of the labour inspectorate, and limiting its role in the enforcement of the legislation respecting the illegal immigration of workers to the extent necessary for the prosecution of employers who are in breach of the rules and for the protection of the workers concerned.

The Committee notes that, according to the Government, enforcement actions, such as the arrest and detention of illegal workers suspected of breaches of the Immigration Ordinance were carried out by officers of other law enforcement authorities, such as the police and the Immigration Department. The Government further indicates that the role of labour inspectors in combating illegal employment has not posed any obstacle to the discharge of their duties in enforcing legislative provisions on conditions of work and the protection of the workers. However, the Committee is bound to note that, according to an illustration in the annual report of the Labour Department for 2006, subtitled "labour inspectors and the police detecting suspected illegal workers in a joint operation" the Government's statement is not in accordance with reality. The purpose of the joint operation was clearly contrary to the objective of the protection of the worker shown in the photograph referred to above. The worker appears to have both hands tied behind his back and two men are pushing him forward with another figure preceding them who is clearly a labour inspector. Such a situation is not acceptable, as the Convention provides for the protection by the labour inspection system of workers engaged in their work, regardless of their status in relation to immigration laws. The fact that the role of the labour inspector consists, on the one hand, of targeting in the workplace workers suspected of being "illegal" and, on the other hand, of witnessing their mistreatment is

in total contradiction with the protective function entrusted to labour inspectors by the Convention. Noting in the annual report for 2007 that 170 further similar operations were undertaken with the police and the Immigration Department, the Committee is bound once again to draw the Government's attention to the fact that any cooperation of the labour inspectorate with immigration authorities should be carried out cautiously, bearing in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions (paragraph 161 of the General Survey on labour inspection). *The Committee therefore once again urges the Government to take the necessary measures as soon as possible to ensure that labour inspectors are no longer involved in joint operations which, by granting the police and immigration authorities access to workplaces, allow them to arrest workers on the grounds of their illegal residence situation. The Government is also asked to ensure that the collaboration of labour inspection officers with the said authorities is limited to legal proceedings against employers found to be in violation of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, and to inform the ILO of the action taken to this end and the results achieved.*

Congo

Labour Inspection Convention, 1947 (No. 81) (ratification: 1999)

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

The Committee notes the information provided by the Government in its report for the period ending September 2007, which was received in the Office in January 2008.

Article 11 of the Convention. Working conditions of labour inspectors. The Committee notes with interest that the staff of the labour inspectorate has been strengthened during the period since the report sent by the Government in 2004. However, it notes that no measures have been taken to improve the working conditions of inspectors and that they do not benefit from the transport facilities necessary for the discharge of their duties, nor the full reimbursement of their travelling and incidental expenses. *The Government is requested to take the necessary measures to ensure that effect is given to the provisions of the above Article of the Convention and to provide information in its next report on any progress achieved in this respect, on the difficulties encountered and the solutions envisaged to overcome them.*

Articles 19, 20 and 21. Reporting obligations on the inspection activities. With reference to its previous comments concerning information relating to the application in practice of the legal provisions giving effect to the Convention, the Committee notes that, contrary to the Government's indication in its report received in 2004, no regional inspection report has been provided to the ILO. Furthermore, no annual report, as required by *Articles 20 and 21* of the Convention, has been transmitted to the ILO. The Committee does not therefore have available the information that is essential on the operation of the labour inspection system in practice to allow it to monitor developments and provide support to the Government for its improvement in relation to the requirements of the Convention. The material and logistical situation described by the Government gives grounds for fearing, despite legislation that is in conformity on many points with the provisions of the Convention, that there is a significant gap between the extent of the needs for the supervision of conditions of work and the level of coverage that the inspection services are able to ensure. *The Committee hopes that, so that it can fulfil its responsibilities, the Government will provide in its next report all the information available allowing it to assess the level of application of the Convention more than a decade after its ratification. This information should cover, among other matters: (i) the geographical distribution of the public officials responsible for inspection functions as defined in Article 3(1) of the Convention (the schedule announced by the Government in its report was not attached); (ii) the geographical distribution of workplaces liable to inspection or, at the least, those for which the Government considers that the conditions of work require specific protection from the labour inspection services and the judiciary on the basis of the violations reported by the labour inspectorate; (iii) the frequency, content and number of participants at the training courses provided for labour inspectors during their career; (iv) the level of remuneration and conditions for career progression in relation to other public officials with comparable responsibilities; (v) the proportion of the national budget allocated to the public labour inspection services; (vi) a description of the cases in which inspectors travel to enterprises, the procedure followed and the transport facilities that they use for this purpose, the activities that they carry out and their outcome; and (vii) the proportion of supervisory activities carried out by inspectors in relation to their conciliation duties.*

The Government is also requested to indicate the nature of the obstacles or difficulties (of a financial, structural, political or other nature) encountered in the implementation in practice of its legislation respecting labour inspection and to describe the measures adopted or envisaged to resolve them (for example, seeking international financial cooperation, inter-institutional cooperation within the country, collaboration with the social partners; the adoption of specific conditions of service for labour inspectors, rationalization of the way in which the resources of the labour administration are used).

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

Labour Administration Convention, 1978 (No. 150) (ratification: 1986)

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

With reference to its previous comments, the Committee takes note of the Government's report. It notes Decree No. 2003-219 of 21 August 2003 to organize the Ministry of Labour, Employment and Social Security, and Decree No. 2000-29 of 17 March 2000 on the composition of the National Technical Committee on occupational safety and health and occupational risk prevention.

Financial obstacles to the implementation of the Convention. The Committee notes that, although financial constraints have prevented adoption of special regulations for the management and staff of the labour administration and any meetings of the abovementioned Technical Committee, the Government welcomes the benefits drawn from the technical seminars organized with

support from the ILO and the African Regional Centre for Labour Administration (CRADAT), and would like this type of training to be continued.

Organization and working of the administration system. The Committee would be grateful if the Government would provide further information on the current working of the labour administration system; provide a copy of the Decree setting out the powers of the new Ministry; indicate the number, types and terms of reference of any tripartite consultative bodies reporting to the Ministry; describe the bodies comprising the Ministry both at central level and in external departments; indicate any other bodies accountable to the Ministry; provide copies of any legal texts, reports or other documents pertaining to the composition, terms of reference and working of the bodies comprising the labour administration system (*Articles 1, 4, 5 and 6*).

The Government is requested also to provide information on the composition of the Technical Advisory Committee on international labour standards and all the matters on which consultations were held in the Technical Committee (*Article 8*).

Financial resources for meeting the obligations of the Convention. Noting with concern that the working of the labour administration is still severely affected by a lack of resources and that, despite technical assistance from the ILO, no new resources have been assigned to it, the Committee requests the Government to consider seeking further financial assistance through international cooperation with a view gradually to covering the human, material and logistical resources the labour administration needs in order to carry out its functions, as defined in *Article 6*. It would be grateful if the Government would keep the Office informed of any steps taken to this end and on any measures taken or envisaged to apply the provisions of the Convention in law and in practice, and to provide copies of any relevant texts.

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

Costa Rica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

The Committee notes the Government's 2008 report, which was received too late to be examined at its previous session. It also notes the comments made by the Confederation of Workers Rerum Novarum (CTRN) and the Labour Union of the National Bank of Costa Rica (SEBANA) dated 25 May 2009, on the application of the Convention, which were forwarded by the ILO to the Government on 30 July 2009. The Committee recalls that its 2006 observation referred to previous comments made by the CTRN and the Union of Employees of the Ministry of Labour and Social Security (AFUMITRA) and that, after noting the information provided in reply by the Government, the Committee asked it to supply further information relating to certain provisions of the Convention.

Article 3, paragraphs 1(a) and 2, of the Convention. *Labour inspection in the context of the economic and financial crisis.* In their comments received in May 2009, the CTRN and SEBANA refer to a Bill supported by the Government and Costa Rican entrepreneurs for the protection of employment in times of crisis, which they consider to be "irreconcilable" with the Decent Work Programme and the ILO's 1998 Declaration on Fundamental Principles and Rights at Work. They qualify it as unilateral and unacceptable, as it was drafted without any consultation with the social partners, particularly with regard to the right of employers to reduce the wages of workers.

Furthermore, the National Directorate of the General Labour Inspectorate issued Directive No. 004-009 on 4 March 2009, the text of which was supplied by the CTRN and SEBANA, by virtue of which employers may accumulate and/or reduce working days, reduce wages or take any other measures affecting workers' rights for a period of up to six months. The workers' organizations consider this Directive to be in violation of the Convention, as well as of article 56 of the national Constitution and section 88 of the Framework Act of the Ministry of Labour and Social Security. They add that Directive No. 004-009 violates not only the fundamental principles, guarantees and rights of workers established in the Constitution, such as the right to work and dignity, the right to a minimum wage and the protection of wages, but also the inalienable rights of workers set out in law, as well as *Article 2 of the Convention*, under which the system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors. In the view of the CTRN and SEBANA, the Directive implies that the labour inspectorate is relinquishing the powers conferred upon it by the Constitution as a public authority. The Committee notes that, under the terms of section 4 of the Directive, where an application is received from an employer to obtain authorization to accumulate or reduce a working day, modify the wages of workers or take other measures deemed necessary to minimize the effects of the crisis, a labour inspector shall be designated to ascertain whether the request is supported by all the workers, examine the documentation and other matters relating to the financial situation of the enterprise and any other element that may serve to ascertain the facts. The labour inspector then has to submit a report to the regional chief, who transmits it to the National Directorate of the Labour Inspectorate, so that a decision can be taken in accordance with the law and the directives issued for that purpose by the Higher Administration of the Ministry.

The Committee notes with **concern** that the provisions of Directive No. 004-009 are contrary to the objectives of the Convention, which are to ensure the enforcement of the legislation relating to the conditions of work and the protection of workers while engaged in their work. The measures allowed by the Directive appear to be part of a strategy intended to help diminish the risk of unemployment in the context of the current global financial crisis. However, the Committee observes that these measures do not appear to have been negotiated with the social partners, and particularly with the representative organizations of workers, even though the workers are the ones whose rights are the most directly and immediately threatened. It also notes that one of the criteria to be taken into account in the treatment of the request

submitted by employers in the context of Directive No. 004-009, namely whether or not the measures requested are supported by all workers, is not clear as to its impact on the decision to be taken.

Noting that the Government has not replied to the allegations made in May 2009 by the CTRN and SEBANA, the Committee urges the Government to keep the ILO informed of the procedure relating to the draft Bill for the protection of employment in times of crisis which is criticized by the CTRN and SEBANA, to indicate in particular whether employers' and workers' organizations were consulted in the process of its formulation, and to clarify how the implementation of the respective provisions is intended to help attain the outcome expected by the Government and the employers. Referring to its previous observation under Article 5, in which it noted the allegations of the CTRN and AFUMITRA concerning the lack of interest of the public authorities in collaboration with the social partners, the Committee would be grateful if the Government would also indicate whether the National Advisory Council was called upon to examine the measures to reduce the effects of the global financial crisis. If so, it requests the Government to indicate the views expressed by the members of the National Advisory Council.

Article 10. Criteria for the determination of the number of labour inspectors. With regard to the size of the inspection staff, according to the communication of the CTRN of 12 September 2008, the number of inspectors continued to fall, reaching 90 in 2008 compared to 105 in 1997, which the CTRN considers to be insufficient in light of their very broad and diverse workload. Moreover, the CTRN indicates that 75 per cent of labour inspectors spend 40 per cent of their time providing conciliation services, which constitutes a significant obstacle to them discharging their primary duty of inspection. According to the union, as the staff responsible for providing conciliation, consultancy and administrative services is not sufficient, labour inspectors also have to provide these services. However, the Government indicates that 29 new positions have been created with effect from the beginning of 2009 and that 32 new positions are expected to be created later in 2009 in order to increase the number of labour inspectors. *The Committee would be grateful if the Government would indicate the total number and geographical distribution of labour inspectors following the adoption of the above measures. It also asks it to take the necessary measures to ensure that labour inspectors spend most of their working time discharging their primary functions, as set out in Article 3, paragraph 1, of the Convention.*

Article 12, paragraph 1(a). Right of free access by inspectors in workplaces liable to inspection. Noting that the Government has not replied to its previous request under this provision of the Convention, the Committee asks it once again to provide information on the manner in which the technical inspection is carried out of plant and machinery that is idle in workplaces operating during the day and on the manner in which inspectors check whether any night work is being performed unlawfully.

Article 12, paragraph 2. Notification of presence on the occasion of an inspection visit. Efficiency of the control. According to the Government, the adoption of specific measures is not yet envisaged to empower labour inspectors not to notify the employer or his or her representative of their presence on the occasion of an inspection visit where such notification may be prejudicial to the performance of their duties. *The Committee asks the Government once again to consider this issue seriously, to take all the necessary measures in the very near future to grant labour inspectors this right and to keep the ILO duly informed.*

Article 16. Measures aimed at increasing the number of inspection visits. The CTRN indicates that, because of the excessive number of tasks assigned to labour inspectors, they are not able to inspect workplaces as regularly and thoroughly as is necessary in accordance with the Convention. According to the CTRN, by September 2008, the average annual coverage of workplaces was not much higher than in 2003, when it was around 55 per cent of the total. The CTRN adds that labour inspectors spend a significant amount of time on the administrative aspects of grievance procedures. The Government indicates that the adoption of the Plan of Transformation and of Regulation No. 28578-MTSS has resulted in a better organization of the respective procedures and the acceleration of their investigation, thereby allowing inspectors more time to discharge their primary duties. *The Committee would be grateful if the Government would inform the ILO of the measures taken to ensure that workplaces are inspected as regularly and thoroughly as required under the Convention.*

Articles 5(a), 20 and 21. Measures aimed at promoting effective cooperation between labour inspection services and the justice system. According to the Government, the National Directorate of the Labour Inspectorate holds regular meetings with the judicial authorities and the discussions have focused on various themes, including labour infringements. The Government also expressed its readiness to strengthen links between the judicial and administrative authorities. *The Committee would be grateful if the Government would provide the ILO with more detailed information on the content and results of the above meetings and discussions, their impact on labour inspection activities and any subsequent efforts made to strengthen dialogue between the administrative and judicial authorities. Moreover, the Committee requests the Government to provide the ILO with detailed information on the impact of the measures taken to accelerate the treatment of the complaints lodged by workers and labour inspectors and to ensure the right of workers to prompt justice, and on any further measures that are expected to be taken.*

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1972)***

The Committee notes the Government's 2008 report, which was received too late to be examined at its previous session. It also notes the comments made by the Confederation of Workers Rerum Novarum (CTRN) and the Labour Union of the National Bank of Costa Rica (SEBANA), dated 25 May 2009, on the application of the Convention, which were forwarded by the ILO to the Government on 30 July 2009.

Since the Government's report and the comments from the unions relate to both the present Convention and the Labour Inspection Convention, 1947 (No. 81), the Committee draws the Government's attention to its observation under Convention No. 81, and would be grateful if the Government would communicate any comments it may deem appropriate on the issues corresponding more specifically to labour inspection in agricultural undertakings.

Côte d'Ivoire

Labour Inspection (Agriculture) Convention, 1969 (No. 129) ***(ratification: 1987)***

The Committee notes that the Government's report does not refer to any positive developments with regard to the application of the Convention.

The Committee's previous request referred to the question of training of labour inspectors in agriculture (*Article 9 of the Convention*), the material resources available for the performance of their duties, especially office and transport facilities and the reimbursement of labour inspectors' travel costs related to their work in agriculture (*Article 15*), and preventive controls in agricultural undertakings, as envisaged in *Article 17*.

In an observation to the Government in 1999, the Committee drew attention to the fact that no annual report on the work of the labour inspection services had been sent to the ILO.

In its 2002 report relating to the application of the Convention, the Government announced, however, in relation to *Articles 14 and 15*, that since 2001 the training of labour inspectors working in agricultural areas had resumed at the National School of Administration in Abidjan and that additional staff were expected, namely seven labour administrators, ten labour attachés and 12 labour controllers. In its observation of 2003, the Committee requested the Government to supply information on any steps taken towards the establishment of an inspection system in agriculture and on any progress made, and it also requested the Government to supply documentation and information of a practical nature on inspection activities undertaken in the area of combating child labour.

The Government's report received in 2004 indicated that there were still no specialist labour inspectors in agriculture. Not only were there insufficient material resources to meet the professional requirements of inspectors working in agricultural areas, but also the inadequately equipped labour inspection offices were located without taking into consideration the geographical distribution of agricultural enterprises.

With reference to the report made in relation to the Labour Inspection Convention, 1947 (No. 81), received in 2008, in which reference is made to a substantial reinforcement of labour inspection staff and structures, the Committee notes with **concern** that, according to repeated statements by the Government in 2006 and 2009, no progress has been made in the application of the present Convention. It is therefore bound to remind the Government that, in ratifying the Convention, it undertook to take the necessary steps to implement it in law and in practice, particularly by establishing, in accordance with *Article 6(1)*, a system of labour inspection whose functions would be: (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of agricultural workers while engaged in their work; (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions; and (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions and to submit to it proposals on the improvement of laws and regulations. In view of the large numbers of workers occupied in the agricultural sector in the country (men, women and children), especially in coffee, cotton, banana, oil palm and cocoa plantations and other agricultural undertakings, and also in view of the specific occupational risks to which these persons are exposed because of pesticides and other toxic substances handled and used in their environment, the Committee considers that there is an urgent need for the Government to meet its commitments deriving from the ratification of this Convention. In its General Survey of 2006 on labour inspection, the Committee emphasized in its final remarks that the priority nature of labour inspection should be reflected in the level of resources allocated and that a strong and effective labour inspectorate provides not only better protection, but also better prevention and productivity at work, to the benefit of everyone (paragraphs 371–374).

The Committee urges the Government to take all necessary steps to ensure the application of this Convention, particularly through the training of sufficient numbers of qualified inspection staff in the area of the occupational safety and health of agricultural workers, and equipping these staff with sufficient resources to meet the requirements of inspection in agricultural undertakings (appropriate office and transport facilities, technical equipment needed for the analysis of products and substances handled and used, etc.).

The Committee also requests the Government to ensure that information on inspection activities in agricultural undertakings included periodic reports which are sent to the central authority so that the latter can include the information in an annual report which is published and a copy of which is sent to the ILO, as provided for in Articles 26 and 27. Until such time as the conditions exist for the publication of such a report, the Committee urges the Government to keep the Office informed of the inspection activities carried out in agricultural undertakings and the results achieved during the period covered by the next report.

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

Cuba

Labour Administration Convention, 1978 (No. 150) (ratification: 1980)

*Article 6, paragraph 2(b), of the Convention. Improvement in the performance of the labour administration in the fields of employment, social protection and occupational safety and health. The Committee notes with **interest** the detailed information provided concerning the positive developments in the operation of the labour administration system during the period covered by the report.*

The Government indicates that at the end of 2008, as a result of the improvement of employment capacities and the continuous training of human resources, vocational adaptation courses and other specific programmes, the unemployment rate was reduced to 1.6 per cent. The programme of assistance to young persons is reported to have promoted the integration of a large number of persons in work, with the action being undertaken in cooperation between the Ministry of Labour and Social Security, training institutes and other public bodies through various employment arrangements (direct employment, partial employment, on-the-job training and employment rehabilitation courses).

The level of minimum pensions is also reported to have been increased over recent years and, under the terms of Act 105 of December 2008 respecting social security, the annuities and benefits provided by the social security system have been extended to cover 100 per cent of workers, with entitlement to total or partial invalidity pensions being guaranteed.

The Government adds that greater vigilance in the implementation of occupational safety and health measures has resulted in a reduction in the number of employment accidents. *The Committee would be grateful if the Government would indicate whether it is planned to examine and find solutions for the issue of the unemployment of certain categories of workers, such as women and persons with disabilities, and if it would provide information and documentation on this subject.*

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

Democratic Republic of the Congo

Labour Administration Convention, 1978 (No. 150) (ratification: 1987)

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

Re-establishment of the exercise of the right to organize. The Committee notes that the work of the National Labour Council in 2004 gave rise to the adoption, among other regulatory texts on workers' right of representation, of Ministerial Order No. 12/CAB/MIN/TPS/VTB/053/2004 of 12 October 2004 lifting the suspension of trade union elections in enterprises and establishments of all types. The Committee would be grateful if the Government would provide information on the impact of this Order on industrial relations.

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

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

Denmark

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

*Article 5(a) and (b) of the Convention. Cooperation and collaboration with a view to improving the protection of agricultural workers and their family members against risks to safety and health in agricultural undertakings. The Committee notes with **satisfaction** the information supplied by the Government in its report received in November 2008, on the initiatives taken by the Danish Working Environment Authority with the National Centre of the Danish Agricultural Advisory Service to improve occupational safety and health and reduce the number of accidents in agricultural undertakings since the beginning of 2006, in particular to reduce the number of fatal accidents occurring in the sector. During the first half of 2008, the Danish Working Environment Authority organized meetings with stakeholders in the sector to evaluate and continue to focus on these initiatives.*

The Sector Working Environment Council *BAR Jord til Bord* was established under the Working Environment Act to contribute to solving safety and health problems in the agricultural sector and to support safety and health measures at

the sectoral and enterprise levels. Among the Council's activities, the Government draws attention to the following activities focusing on safety and health in the agricultural sector, which are described on its web site (www.barjordtilbord.dk/):

- A survey of all work processes in order to obtain a total outline of initiatives, which may help to improve safety and health at work in the potato production process was prepared in cooperation with the United Federation of Danish Workers, the Market Garden, Agricultural and Forestry Management Employers' Association and the National Centre of the Danish Agricultural Advisory Centre ("Safety and health at work in handling potatoes").
- A national campaign focusing on traffic, machinery, children and accidents due to falls, as the most important causes of serious accidents in the agricultural sector.
- Numerous articles on industrial injuries caused by large animals have been written under the Health and Safety Committee of Farming, in the context of the Sector Working Environment Council *BAR Jord til Bord*. These articles can be downloaded from the Council's web site.
- The Safety and Health Committee of Agriculture has revised "The Sector Guidelines on children and young persons' work in agriculture", approving and prohibiting tasks, working and rest periods for children and young persons, including trainees and children and young persons in family farming. The rules on young persons driving tractors and working with substances and materials are also being reviewed.
- The Safety and Health Committee of Agriculture has worked together with the Silkeborg State Forest Region on preparing tools tailored for agriculture, including material on the completion of the statutory workplace assessments (WPA), with a survey on the psychosocial working environment and job satisfaction.

With references to its 2008 observation, in which it welcomed the screening procedures established to assess the status of enterprises in relation to occupational safety and health legal requirements, the Committee notes that all agricultural enterprises with employees are subject to screening within the period 2005–11 by the general inspection services of the Danish Working Environment Authority. The screening is an unannounced visit and lasts for an average of two hours during which safety and health at work is reviewed, the aim being to identify enterprises with serious safety and health problems and to select these for more thorough inspection. On the occasion of screening activities in 2005, 2006 and 2007, the Danish Working Environment Authority issued a number of stop notices (13, 15 and 15, respectively) and improvement and immediate improvement notices (265, 338 and 222, respectively), while guidance was given in 166, 169 and 55 cases, respectively, primarily linked to risks of accidents, the effort required, ergonomic safety and health problems, and chemical and biological risks.

Dominica

Labour Inspection Convention, 1947 (No. 81) (ratification: 1983)

The Committee notes that the Government's report received in March 2009 contains no information in reply to its direct request formulated in 2007 and repeated in 2008. It notes that, despite the reminder sent to it by the ILO in May 2009, the Government has not supplied the required information. The Committee is therefore bound to repeat its previous direct request on the following points:

Given that for many years the Government has not supplied a detailed report on the manner in which effect is given in law and in practice to the Convention and that the most recent annual report on the work of the labour inspectorate transmitted to the ILO concerns 1996, the Committee would be grateful if the Government would take all the necessary steps to ensure that the next report pursuant to article 22 of the ILO Constitution contains the level of detail required by the report form. It requests the Government to ensure that the information available on each of the subjects listed in Article 21 are included in its report pending the publication of the next annual report on the work of the labour inspectorate.

Articles 3, 6, 10, 12, 13, 15, 17 and 19 of the Convention. Duties, status, numbers, rights, obligations and powers of labour inspectors. In reply to the Committee's previous comments, the Government indicates that the staff of the Labour Department consists of four officials, namely the Labour Commissioner, his deputy, and two agents. According to the Government, these officials perform all the duties allocated by the Labour Department. Although they possess the necessary qualifications for providing high-quality advice to employers and workers, the staff of the Labour Department are, however, insufficient in number and also faced with a lack of equipment aggravated by the austerity measures imposed by the International Monetary Fund, making it difficult to undertake advisory activities. Nevertheless, the Government expresses the hope that recommendations resulting from a study of the situation undertaken by a former ILO expert may be implemented. The Committee, however, notes that a copy of the report on this study has not been transmitted to the ILO, despite a written request dated 19 March 2007.

In reply to the Committee's requests concerning the way in which it is ensured that labour inspectors abide by the code of ethics relevant to their duties, as defined by *Article 15(a), (b) and (c)* of the Convention, the Government has supplied information on the legal provisions concerning the general obligations of all officials. The Committee would like to emphasize that these provisions are insufficient in relation to the requirements of the Convention. There has to be the strictest possible observance of ethical principles by inspectors to counterbalance the extensive powers and prerogatives which, in accordance with the Convention, have to be accorded exclusively to labour inspection officials in the performance of their duties. *The Committee would be grateful if the Government would refer to its General Survey of 2006 on labour inspection with regard to: (i) the prohibition on labour inspectors to have "any direct or indirect interest" in enterprises liable to inspection (paragraph 227); (ii) the scope of the obligation of professional secrecy (paragraphs 229–232); and (iii) the obligation of confidentiality with respect to the source of any complaint and the connection that may exist between an inspection visit and a complaint (paragraphs 235–237). The Committee requests the Government to take steps to ensure that the legislation is supplemented in*

the light of these clarifications with regard to the duties and obligations of labour inspection officials. It further requests the Government to keep the Office informed of all progress in this respect and to send copies of any relevant draft or final texts.

Necessity for adequate penalties. Article 18. The Committee notes the Government's statement that the amount of fines which can be imposed on persons who contravene the legislation enforceable by the labour inspection officials has not been revised since 1990 and section 32 of the Act on labour standards provides that anyone contravening the provisions of sections 28 and 29 (concerning the powers and prerogatives of labour inspectors) is liable to a fine, the amount of which is fixed at 75 dollars and multiplied by the number of days for which the contravention continues. However, the Committee notes that section 13 of the Act of 1983 on occupational safety (Chapter 90:08) provides that the amount of the fine applicable for a violation of its provisions is 5,000 dollars, with the possible addition of imprisonment for one year. *The Committee would be grateful if the Government would clarify whether the staff responsible for monitoring enforcement of the Act on occupational safety are the same as the staff of the Labour Department, who are also responsible for monitoring the legislation concerning other conditions of work and protection of workers, and to supply a list of the provisions establishing penalties for violations of the provisions relating to conditions of work and the protection of workers and the contraventions to which they apply. The Committee also requests the Government to send a copy of any document describing specific cases of convictions of employers involving the imposition of a fine and/or imprisonment.*

In addition, the Committee requests the Government to provide a copy of the study carried out in 2007 on the situation of the labour administration system, together with information on the follow-up measures taken by the Government in relation to the recommendations contained in the study.

Finland

Labour Inspection Convention, 1947 (No. 81) (ratification: 1950)

The Committee notes the Government's report received in October 2008 containing replies to its previous comments, in particular on the points raised by the Central Organization of Finnish Trade Unions (SAK) and the Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), as well as a copy of Act No. 1233/2006 on the contractor's obligations and liability when work is contracted out.

The Committee also notes the new comments made by the above organizations and the Finnish Confederation of Professionals (STTK), which were included in the Government's report with its reply.

Articles 10 and 16 of the Convention. Matching the number of labour inspectors to the scope and complexity of their duties. In its previous report, the Government indicated, in reply to the comments of the SAK and AKAVA on the stagnation of the number of inspectors and the decreasing coverage of the labour inspectorate in certain sectors of activity, that the amalgamation of occupational health and safety districts had been conducted satisfactorily and that the new units were fully operational. The Government further provides figures showing the substantial increase of labour inspection activities in 2007 and draws attention to the new performance agreements (framework agreements) signed with occupational safety and health inspectorates for 2008–11, according to which the number of officially mandated inspections should be further significantly increased. The Committee also notes that on 16 July 2008 the Rsurssi II working group, set up by the Ministry of Social Affairs and Health with a view to improving the efficiency of occupational safety and health oversight and developing operating approaches for OSH inspectorates, should submit a proposal on the allocation of health and safety administration resources. Nevertheless, the SAK, STTK and AKAVA fear that the Government's productivity programme and the reform project for regional state administration, which will run until 2015, will compromise the OSH inspectorate framework agreement for 2008–11, under which a tripartite agreement was concluded on the development of inspectorate operations in such a manner that resources would be allocated to address key problems in the workplace and inspections would increase by 50 per cent by 2012. The above organizations emphasize that, under the Council of State developmental decision, approximately 100 posts would be eliminated from OSH inspectorates, which would not only compromise the quality of OSH, but would also fail to meet the requirements of the Convention. *Noting that the Government did not supply the information requested in its previous observation in this regard, the Committee asks it once again to indicate the number, content and results of labour inspections in the various categories of workplaces liable to inspection, including in commerce, services and the construction industry. It would also be grateful if the Government would provide a copy of Decree No. 1035 of 2003.*

It requests the Government to indicate the proposal made by the Rsurssi II working group with regard the allocation of health and safety administration resources and the measures taken in this respect.

Articles 14 and 21(f) and (g). Improvement of the system for the reporting of industrial accidents and cases of occupational disease. The Committee notes with *interest* the detailed information on the mechanisms, involving a number of public bodies and institutions, the most representative employers' and workers' organizations and the Finnish Association of Occupational Health Physicians (STLY), established under the Department of the Advisory Board on Occupational Health Care to ensure the proper functioning of the occupational disease diagnostics system and, in the event that an occupational disease is suspected, to ensure that the patients concerned are given the proper medical attention, regardless of the sector, occupation or location. This information seems to match in quite large measure the concern expressed by the SAK and AKAVA as to the need to promote the prevention and diagnosis of work-related illnesses and occupational diseases. The organizations nevertheless still observe that statistics released by the Finnish Institute of Occupational Health show an increase in the number of occupational diseases during the reporting year, and deplore that occupational safety and health inspectorates do not maintain physicians or experts who would possess the necessary

medical expertise to prevent occupational diseases and work-related illnesses. The organizations also refer to studies conducted by the Finnish Institute of Occupational Health, according to which occupational diseases have increased and under-diagnosis become more common, whereas the Confederation of Finnish Industries considers that the health-care situation of workers is satisfactory, that Finland has the world's largest per capita centre for occupational health care which not only provides nationwide training of occupational health-care staff, but also studies all controversial cases of suspected occupational diseases. The Government indicates in this regard that the purpose of the "Prevention Programme for Work-related Illnesses and Occupational Diseases: Action and Project Plan" is to provide explanations for regional differences in diagnosis, and that the directive on the identification of work-related accidents and occupational diseases by the inspectorate has been amended with a view to improving and standardizing examinations. ***The Committee would be grateful if the Government would provide a copy of the directive, as amended, and information on the findings of the prevention programme referred to above and the action taken in this respect.***

Articles 20 and 21. Annual report on the work of the safety and health services. According to the Government, annual reports and joint statements prepared by the Ministry concerning inspectorates were made available on the Occupational Safety and Health Inspectorate web site (www.tyosuojelu.fi). This information is proposed under *Article 19* of the Convention. The Government also indicates that the organizations are not aware the existence of reports prepared in compliance with *Articles 20 and 21* of the Convention. ***The Committee would be grateful if the Government would take the necessary measures to ensure that an annual report containing the information set out in Article 21 and elaborated in accordance with the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), is published and communicated in the very near future. It hopes that the Government will not fail to keep the ILO informed of any progress made in this respect or any difficulty encountered.***

Labour Administration Convention, 1978 (No. 150) (ratification: 1980)

Article 1(a) of the Convention. The focusing of labour administration on labour-related issues. The Committee notes with **satisfaction** that, following the changes made in the organization of the Government's structures by Act No. 970/2007 to amend the Government Act, since the beginning of 2008, the overall coordination of immigration and integration issues lie within the competence of the Ministry of the Interior, while the Ministry of Employment and the Economy (replacing the former Ministry of Labour and the former Ministry of Trade and Industry) and its administrative services continue to be responsible for promoting the employment of immigrants and for the implementation of work-related immigration policy.

In this respect, the Committee recalls that functions related to refugees, including refugee quotas, and the integration of immigrants, as well as issues related to emigration and return migration previously entrusted to the former Ministry of Labour, are not primarily labour matters within the meaning of the Convention and cannot therefore be considered as public administration activities in the field of national labour policy, in accordance with *Article 1(a)* of the Convention.

Gabon

Labour Inspection Convention, 1947 (No. 81) (ratification: 1972)

The Committee notes the Government's report which was received by the ILO on 18 December 2008, too late for it to be examined at the Committee's previous session, and for this reason it repeated its previous comments. However, it notes that the information supplied constitutes only a partial reply and is therefore bound to ask the Government once again to provide additional information on the following points.

Article 18 of the Convention. Proceedings in respect of violations of the legal provisions enforceable by labour inspectors and the obstruction of labour inspectors in the performance of their duties. ***The Committee would be grateful if the Government would provide a copy of any court decisions given against employers guilty of violations of legal provisions enforceable by labour inspectors or, in pursuance of sections 227, 228, 229 and 249 of the Labour Code, acts involving the obstruction of the performance of inspection duties.***

Article 19. Periodical reports by the inspection services. ***Noting that, according to the Government, each year, at the request of the General Labour Directorate, quarterly and annual activity reports are prepared by the inspection services, the Committee would be grateful if the Government would provide copies of these reports.***

Articles 20 and 21. Annual report on the work of the inspection services. In reference to the Government's commitment to do its utmost to attenuate the difficulties in applying the Convention, the Committee once again emphasizes that in order to do this, measures must be taken to centralize the information required under *Article 21* with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. The Committee once again reminds the Government of the possibility of requesting technical assistance from the ILO, as well as international financial aid, with a view to establishing the material and institutional conditions necessary for the publication of such a report. In its 2004 direct request, the Committee urged the Government to make the necessary efforts to implement measures designed to enable the central inspection authority to discharge its obligation in this respect and pointed out that the annual inspection report should be as detailed as possible and contain precise information on human, logistical, practical or other difficulties explaining deficiencies in the services. ***Since the Government has not reported any progress in this area, the Committee requests that it quickly takes the necessary measures and keeps the Office duly informed in this respect.***

Monitoring of child labour and publication of an annual inspection report. The Government's report does not provide any information in reply to the Committee's previous comments on the delicate aspects of procedures for removing children from the workplace under Decree No. 000031 of 8 January 2002. ***The Committee would be grateful if the Government would provide***

information on the measures taken, on the one hand, to adopt the texts necessary for the implementation of Decree No. 000031 such as are referred to in its section 6, and, on the other hand, to provide the labour inspectors who participate in operations to remove children from the workplace with appropriate and specific technical and psychological training. It would be grateful if the Government would supplement this information with copies of any relevant texts.

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

The Committee hopes that the Government will do its utmost to take the necessary measures in the very near future.

Germany

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

The Committee notes the Government's report, the annual reports on the situation with regard to occupational safety in each Land, the activity reports on work in mines and the report of the Federal Government on occupational safety and health. It notes with *interest* the communication by the Government of the links to Internet sites on which many documents and much information are available on the subjects covered by the Convention.

Further to its previous comments on the matters raised by the Union of Technical Officials, Employees and Labourers (BTB) in its 2004 and 2006 observations, the Committee notes the additional information provided by the Government concerning the effects of the restructuring of the labour inspectorate in Baden-Württemberg.

Article 4 of the Convention. Organization of the labour inspection system. Duality of structures and risk of a diversity of approaches to enforcement in each Land. According to the Government, the organization of labour inspection services lies within the sovereign competence of the Länder and can only be influenced to a limited extent. However, it specifies that uniformity of treatment in relation to the objectives of occupational safety is guaranteed at the federal level by the Committee of the Länder for Occupational Safety and Health (LASI), which is specifically responsible for examining the fundamental aspects of the subject from a unified approach. The representatives of the higher labour inspection authorities of the Länder take decisions in the LASI with regard to the implementation of the relevant regulations, with the object of adopting an identical approach in all Länder. Moreover, the LASI examines legal issues relating to occupational safety and health with a view to the harmonized application of the legislation, both with regard to substantive issues and organizational matters inherent to its implementation (strategy, organization, personnel, reporting and information mechanisms and procedures, continuous training and education, the exchange of experience). The Government considers that, despite the diversity of the administrative structures, this guarantees a consistent approach beyond the frontiers of the Länder. It adds that, in the context of the joint strategy developed by the federal Government, the Länder and the employment injury insurance institutions throughout the country, the Länder endeavour to optimize their cooperation with injury insurance providers, which has the effect of improving the cooperation between the Länder themselves. The Government refers by way of illustration to the implementation of the federal labour programmes and the harmonization of advisory and inspection strategies in various ways.

According to the BTB, the fragmentation of inspection functions between the various services, municipal authorities and rural districts of the Land of Baden-Württemberg is also reducing the impact of state control to the mere supervision of compliance with the law. The explanations provided in this respect by the federal Government, and the government of Baden-Württemberg, show that the distribution of functions between the various urban and rural districts is specific to that Land. The territory of the Land is very great and its population is over 10 million. Its administrative structure is divided into three levels and functions in respect of labour inspection are divided, at the lower administrative levels, between an exceptional number of urban and rural districts. In the view of the government of Baden-Württemberg, the number of authorities at the lower administrative levels is balanced and appropriate, both in terms of effectiveness and of response to the expectations of citizens. It considers that, contrary to the allegations of the union, the fact that inspection functions are divided between four government offices and 44 urban and rural districts does not have the effect of diminishing the quality of inspections. The government offices and the lower administrative authorities provide both ministries with relevant data on their respective supervisory activities, which have to be approved by the offices and the authorities, are covered by a report on the activities of the inspection services (TS-GWA) and are published in the annual report on these services. Each year, in addition to providing statistics and data, the services are responsible for addressing a list of subjects related to priority fields of action according to predetermined approaches and, based on the instructions provided to them, on the manner in which functions of particular topical interest should be addressed.

The government of Baden-Württemberg emphasizes that regular meetings are held covering all the fields of activity of the labour inspectorate and that they include the participation of representatives of government ministries and offices, as well as those of lower level offices and administrative authorities. It adds that the introduction of new supervisory mechanisms has made it possible to conclude targeted agreements in the Land of Baden-Württemberg, in the context of collaboration between government ministries and intermediate-level offices. These agreements, which constitute one of the aspects of the current administrative reform, are likely to multiply, also at the lower levels of the administrative structures of the Land, which will make it possible for government offices to conclude such agreements with the structures for which they are responsible.

Consequences of the diversity of structures responsible for labour inspection on the communication of information. According to the BTB, another cause for concern lies in the use by each structure responsible for labour inspection of different information technology systems, resulting in difficulties in the communication of information. The Government affirms that the labour inspection services in the Länder use standard information technology systems and that there is no difficulty in the exchange of information and data by electronic mail. It considers that technological progress means that it is possible to exchange data between different systems without the risk of data loss. It adds that the relevant data are compiled in 12 Länder using a common programme (the IFAS Information System for Labour Inspection Administrations), that the Land of North Rhine-Westphalia, which currently uses its own programme, is envisaging the introduction of IFAS, and that the system used in Hamburg is compatible with IFAS. According to the Government, although the exchange of operational data between the Länder is limited by the legislation on data privacy, taking into account the territorial competences of the Länder, the direct exchange of information between Länder is not necessary. With regard to issues relating to labour inspection, the Government considers that the data should be compared with those of the systems of injury insurance providers. It indicates in this respect that the Internet portal established for this purpose is at the pilot stage and that it will be federal in scope as an integral part of the joint strategy on safety for Germany.

The Committee further notes the provision by the Government, appended to its report, of a report prepared by the government of the Land of Baden-Württemberg (publication No. 14/1740 of the Parliament of Baden-Württemberg of 18 September 2007), indicating that the experience acquired in the field of labour inspection should serve as a basis for the adoption of legislation on the continued reform of administrative structures, planned for 2008.

The Committee observes that the comments made by the BTB focus on the absence of a central inspection authority within the meaning of *Article 4* of the Convention. It recalls that, under the terms of *Article 4(2)*, the central authority under the control and supervision of which labour inspection has to be placed may be either the federal authority, or a central authority of a constituent federated entity. It observes that the situation described by both the union and the Government differs in this respect, as several structures that are independent of each other are responsible at the federal, Land and municipal levels for inspection functions. Although the explanations provided by the Government show that efforts are being made to ensure a certain uniformity in the discharge of inspection functions by each of these structures, the Committee finds that progress still needs to be made to achieve the objective of the Convention equally throughout the territory of the federation. ***The Committee requests the Government to indicate in its next report the measures taken to give effect in so far as possible to the letter and spirit of the Convention in relation to the need for a labour inspection system operating on the basis of common principles of organization, methods of action and the allocation and management of human and financial resources.***

Articles 7 and 10. Number and qualifications of inspection personnel. According to the BTB, for several years a dispersal of competence for the recruitment of inspection personnel has led to a decrease in the number of new recruits and therefore a considerable loss of expertise. In addition, the large number of authorities responsible for training in the various structures is resulting in a managerial imbalance in this respect.

The Government indicates in its report that in Baden-Württemberg, Hessen, Lower Saxony, North Rhine-Westphalia and Rhineland-Palatinate, competence for supervision of the legal decisions of labour inspectors and for the general performance of labour inspectors charged with functions relating to safety at work are exercised by different ministries, but that in all Länder the distribution of competences is clearly defined in respect of the recruitment of new personnel. While recognizing that the number of inspectors is decreasing, it indicates that this trend is the result of the general policy of a reduction of the number of public officials, in accordance with the austerity plans of the governments of the Länder. The Government confirms that, in most Länder, departures for retirement and for other reasons have resulted in a considerable loss of technical expertise. However, it reports rare opportunities for recruitment in the Länder of Baden-Württemberg and Lower Saxony and, out of a concern for uniformity and to make up for the loss of expertise, that training and further training for inspectors are subject to centralized control at the level of the Länder.

Expressing its concern at the consequences of the policy to reduce the numbers of public officials on the size of the labour inspection staff and recalling the eminently important socio-economic role of inspectors, the Committee would be grateful if the Government would take the necessary measures to ensure that the numbers of labour inspectors are determined in each Land on the basis of the criteria set out in Article 10 and that their training is adequate, as envisaged by Article 7, and adapted to the new technologies and conditions of work prevailing in industrial and commercial workplaces. It requests the Government to keep the ILO informed of any progress achieved in this respect.

Article 5(a). Cooperation between the inspection services and other government services and public or private institutions engaged in similar activities. Cooperation in the field of occupational safety. The Committee notes that the Federal Government, the Länder, which under the federal safety system are responsible for supervising occupational safety, and insurance institutions have developed a joint safety strategy for Germany. This strategy involves the establishment of common occupational safety and health strategies and the determination of common fields of action and work programmes, in the context of a harmonized procedure and the sharing of competences between the authorities responsible for occupational safety and accident insurance institutions. For the period 2008–12, the objectives are to:

- reduce the number and seriousness of occupational accidents;

- reduce musculoskeletal stress and related pathologies; and
- reduce the number and gravity of skin diseases.

The Government indicates that this strategy is implemented by a “National Occupational Safety Conference” (NAK), supported by the federal Government, the Länder and accident insurance institutions.

Specific cooperation between the labour inspectorate and judicial bodies. The Committee notes with **interest** the detailed information provided by the Government in reply to its general observation of 2007, according to which cooperation between the labour inspectorate and judicial bodies occurs, in compliance with the constitutional principles of the distribution of powers and the independence of the judiciary, at three levels:

- (i) at the level of administrative tribunals which, in the view of the Government, usually rule competently in cases of legal appeals against the imposition of an administrative fine by the competent labour inspection authority;
- (ii) at the level of the Office of the Public Prosecutor, in respect of which the Government considers that effective cooperation would be desirable to ensure compliance with occupational safety legislation. In particular, it deplores the fact that, due to the absence of feedback, particularly where an investigation does not result in prosecution, the labour inspectorate cannot use its authority to impose administrative fines. For example, particularly in cases of serious or fatal accidents, procedures have been set aside on the grounds of the responsibility of the victim of the accident (human error), without the question of the attribution of any part of the responsibility to hierarchical superiors being suitably examined, as only the direct cause was taken into consideration. The Committee nevertheless notes with **interest** that the inspection services are endeavouring to strengthen communication with public prosecutors with a view to improving their knowledge of the responsibilities of employers in relation to occupational safety rules, such as risk evaluations and general and specific technical instructions, etc. Certain Länder report regular meetings (Hamburg and Rhineland-Palatinate), or information and training sessions, as well as seminars (Hamburg, Lower Saxony and Saxony-Anhalt) with the offices of public prosecutors;
- (iii) at the level of local courts, in the case of minor infringements, in cases where the employer appeals, the competent court rules on the legality of the decision and the amount of the fine. The courts hand down their rulings in full independence in accordance with the Constitution. The Government therefore considers that effective cooperation between the inspection services and the judiciary consists of presenting the material facts in the best possible way, as well as the specific point concerned.

The Committee notes with **interest** that the labour inspection authorities at the federal level and in the Länder have access to the judicial information technology system, which contains data on the rulings handed down and the applicable legal provisions, administrative regulations and European directives, thereby providing them with relevant guidance in their activities.

Nevertheless, according to the Government, court decisions relating to occupational safety are generally handed down in contexts that are too specific to be addressed in accordance with statistical concepts. Moreover, in view of the very long periods before they become available, their inclusion in the annual report would not be relevant to the period described in the report. ***The Committee requests the Government to continue to keep the ILO informed of the progress achieved in the cooperation between the inspection services and the judiciary and on its impact on the level of compliance with legal provisions relating to conditions of work and the protection of workers while engaged in their work.***

Article 5(b) Collaboration between the labour inspectorate and the social partners. The Committee notes with **interest** that the social partners are consulted in the context of the NAK in relation to the determination of priority fields of action and the principal aspects of the implementation of the programmes of action determined by the Federal Government, the inspection authorities in the Länder and accident insurance institutions. Moreover, there is constant dialogue between the social partners and the various bodies concerned with occupational safety issues in the context of the Occupational Safety Forum, the views of which are examined by the National Occupational Safety Committee. ***The Committee would be grateful if the Government would indicate the fields in which it has been possible to achieve progress in the operation and outcomes of labour inspection under the influence of the social partners in the context of the NAK and the Occupational Safety Forum, with an indication of their scope in practice at the level of the Länder.***

Labour Administration Convention, 1978 (No. 150) (ratification: 1981)

Article 7 of the Convention. Extension of labour administration functions to self-employed workers (category of workers who are not, in law, employed persons). The Committee notes with **satisfaction** that, since 1 February 2006, in accordance with section 28a of Book III of the Social Code (SGB III), self-employed workers have had the possibility of concluding an unemployment insurance contract which entitles them to unemployment benefits. They also qualify for supplementary benefits under the SGB II.

Article 10. Qualified staff within the employment services. The Committee notes with **interest** the establishment in September 2006 of the higher education college for labour market management which offers students three-year bachelor degree courses in labour market management and employment-oriented counselling and case management. The courses are designed to improve the qualifications of employment services staff with regard to placement and integration into the labour market, benefits, resource management and career counselling and guidance.

Ghana

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

The Committee notes the Government's report covering the period ending in September 2008 and the attached statistical data on the number of inspections conducted in 2007 and the first quarter of 2008, and of workers covered by these inspections.

Article 12, paragraph 1(a), of the Convention. Right of labour inspectors to enter freely workplaces liable to inspection. In its previous comments, the Committee pointed out that section 124(1)(a) of the 2003 Labour Act, which limits the timing of workplace inspections to "working hours", is not compatible with *Article 12(1)(a)* of the Convention. It notes the Government's indication that the above provision of the Labour Act is sufficient to uncover clandestine moves by employers. Referring to its General Survey of 2006 on labour inspection (paragraphs 268–271), the Committee wishes to recall that the conditions for the exercise of the right of free entry to workplaces laid down by the Convention are intended to allow inspectors to carry out inspections, where necessary and possible, to enforce the application of legal provisions relating to conditions of work. The protection of workers and the technical requirements of inspection should be the primordial criteria for determining the appropriate timing of visits, for example to check for violations such as abusive night work conditions in a workplace officially operating during the daytime, or to carry out technical inspections requiring machinery or production processes to be stopped. It should be for the inspector to decide whether a visit is reasonable and inspections should only be carried out at night or outside working hours where this is warranted. ***The Committee once again requests the Government to take the necessary measures to remove the restriction on the right of labour inspectors to enter freely workplaces from section 124(1)(a) of the Labour Act of 2003 and to keep the ILO informed.***

Article 3, paragraph 1, and Articles 17 and 18. Inspection duties. Enforcement of legal provisions relating to the conditions of work and the protection of workers. Legal proceedings and provision of adequate penalties for violation of legislation. In its previous report, the Government indicated that it wishes to encourage compliance with legal provisions through the promotion of a social partnership attentive to the mutual interests of employers and workers, rather than through legal proceedings against employers who have committed a violation. The Committee requested the Government to provide practical information on any mechanisms established to that effect and to specify the role of labour inspectors in this regard. It notes that, in its report of 2008, the Government only reaffirms that it wishes to promote partnership and compromise between employers and workers. The report provides no information on the findings of the labour inspectors during the visits that they conducted in workplaces throughout the country in 2007, nor on any actions undertaken following such inspections. The Committee would like to draw the Government's attention to paragraph 280 of its General Survey, in which it emphasizes that, even if the credibility of any inspectorate depends to a large extent on its ability to advise employers and workers on the most effective means of complying with the legal provisions within its remit, it also depends on the existence and implementation of a sufficiently dissuasive enforcement mechanism, the functions of enforcement and advice being inseparable in practice.

The Committee requests the Government to take appropriate measures to ensure that legal provisions relating to the conditions of work and the protection of workers are effectively enforced through legal proceedings where necessary. It further requests the Government to provide information on the violations reported by labour inspectors and the fines imposed to employers in accordance with section 38 of the Labour Regulations adopted in 2007, during the reporting period, and to specify the value of a "penalty unit" and the manner in which such value may be revised to remain dissuasive in the event of monetary inflation. The Government is also requested to indicate the measures taken to ensure that such penalties were effectively enforced.

Articles 19, 20 and 21. Periodical reports and annual report on the work of the labour inspection services. While noting the information on the number of inspections carried out in 2007 and during the first quarter of 2008, the Committee emphasizes that, by virtue of the ratification of the Convention, the Government undertook to ensure that practical measures would be taken to centralize information required under *Article 21*, with a view to preparing an annual labour inspection report, the main purpose of which is to serve as a basis for the periodical assessment by the central inspection authority of the adequacy of the available resources in relation to needs and, consequently, to determine priority areas of action. ***The Committee requests the Government take measures rapidly to establish the conditions in which the central labour inspection authority can collect data on the activities of the services under its control with a view to publish an annual report on the work of the inspection system containing information on the following subjects:***

- (a) *relevant laws and regulations;*
- (b) *staff of the labour inspection services (including the number, geographical location and distribution of inspectors by gender and by category);*
- (c) *statistics of workplaces liable to inspection (number and geographical distribution) and the number of workers employed therein (men, women, young persons);*
- (d) *statistics of inspection visits (unannounced, scheduled and follow-up visits, visits following a complaint, etc.);*
- (e) *statistics of violations and penalties imposed (number of violations reported, legal provisions concerned, types of sanctions imposed, etc.);*

- (f) *statistics of industrial accidents (number of fatal and non-fatal accidents); and*
- (g) *statistics of cases of occupational disease (number and causes by industry and occupation).*

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

Greece

Labour Inspection Convention, 1947 (No. 81) (ratification: 1955)

Article 20 of the Convention. Publication of the annual labour inspection report. The Committee notes with **satisfaction** that the Government published the annual labour inspection report for 2007 less than 12 months after the end of the year to which it related, and communicated it to the ILO by September 2008. ***The Committee would be grateful if the Government would ensure the continuation of this practice, in accordance with Article 20 of the Convention.***

Article 21. Content of the annual labour inspection report. The Committee notes with **interest** the detailed information and statistics contained in the annual report for 2007 on labour inspection visits by branch of activity, industrial accidents, the establishments and workers covered, the violations found and the penalties imposed. The Committee however notes that, while Article 21 refers to statistics of cases of occupational disease, such statistics are still not reflected in the annual report. ***The Committee would be grateful if the Government would indicate whether and in which manner statistics on occupational diseases are being collected and whether their publication in the annual report is envisaged.***

The Committee would also be grateful if the Government would indicate or transmit to the ILO any comments made by employers' and/or workers' organizations on the work of the labour inspection services.

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

Guatemala

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes the Government's report for the period ending 1 September 2008 and the numerous documents attached, sent to the ILO on 25 September 2008. It also notes the comments made on 31 August 2008 by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) concerning the application of the Convention, sent to the Government by the ILO on 17 September 2008. Referring to its 2007 observation concerning in particular the comments made by the Trade Union Confederation of Guatemala (UNSITRAGUA) in 2004, the Committee also notes the Government's replies to these comments, the content of the collective agreement on conditions of work ("the collective agreement") concluded between the Ministry of Labour and Social Security (MTPS) and the trade union of employees of that Ministry (SIGEMITRAB), approved by MTPS resolution No. 078-2008 of 9 April 2008, as well as the analysis of the situation relating to labour inspection carried out by the ILO in September 2008 at the request of the MTPS, and the action plan drawn up in November 2008 for the implementation of the recommendations arising from the analysis.

The Committee notes that the comments made by the MSICG largely echo those made by UNSITRAGUA and concern the precarious status, conditions of service and conditions of work of labour inspectors, as well as the impact of this precariousness on the conduct of labour inspectors when performing their duties in relation to their obligations.

The MSICG also reports pay inequalities between inspectors in the category of "professional assistant" and those in the category of "chief technician" to the detriment of the latter; the non payment of overtime; the lack of transport facilities available to labour inspectors and the failure to reimburse their travelling expenses; the lack of human resources within the inspectorate and the confinement of certain inspectors to administrative tasks and measures prohibiting them from performing certain inspection duties defined by law; the lack of initial training and subsequent training in the course of employment for inspectors; and the derisory size of the labour inspectorate's budget and the number of inspections it carries out.

The Committee notes with **interest** that the collective agreement and the action plan drawn up between the Government and the ILO to improve the labour inspection system provide for measures designed to address to a large extent the concerns expressed by UNSITRAGUA and the MSICG, particularly those relating to the structure of the labour inspectorate and its tripartite aspect; the composition and qualifications of labour inspectors, as well as their conditions of service; the inspection methods; the procedure for taking legal action in the case of violations and the application of penalties; and the exchange of information for the purpose of preparing registers for use by the labour inspectorate.

Articles 4, 5(a) and 19 of the Convention. Structure of the labour inspectorate and tripartism. The Committee notes that, with a view to ensuring better coordination of labour inspection, the action plan drawn up by the Government and the ILO envisages that the services responsible for supervising general conditions of work and occupational safety and health will be merged and integrated into a single service under the supervision of the General Labour Inspectorate (IGT). It is recommended that this body should strengthen its role as a central authority, in particular by planning labour inspection activities across the entire territory and ensuring that inspections are no longer carried out solely in response to

a complaint but are programmed in a proactive manner. It is also envisaged that the distribution of duties between inspectors will be reviewed, in particular supervisory duties and those related to conciliation in labour disputes, and that inspectors will be relieved of those duties which interfere with the effective discharge of those defined in *Article 3(1)* of the Convention. The reforms envisaged also include developing the tripartite nature of labour inspection. Under the action plan, this should be achieved through the consultation of the social partners within the Tripartite Committee on International Affairs and, in particular, through the creation of a national information campaign on the role of the labour inspectorate.

Articles 7, 9 and 10. Composition and qualifications of inspection staff. The above action plan and the collective agreement provide for the establishment of a specific selection procedure for candidates for the occupation of labour inspector based on minimum technical conditions and a system of career progression and classification. Furthermore, with a view to the rational redistribution of duties among inspectors, the action plan envisages the gradual strengthening of inspection staff assigned to enforcing the legislation on conditions of work and the protection of workers while engaged in their work. With regard to training, according to the Government, in the majority of cases, the training of inspectors depends on the opportunities offered for training. As an example it mentions the training sessions offered by the ILO Subregional Office and the regional and international cooperation agencies. The Government indicates that the MTPS is responsible for providing training for its officials for the purposes of carrying out their duties and applying the principles relating to public labour policy and that the action plan provides for initial training programmes and subsequent training in the course of employment to be agreed upon with technical institutes and universities to update the technical skills of inspectors, including by means of distance learning. A programme dealing specifically with occupational safety and health is to be created. The Committee notes a provision in the collective agreement designed to encourage MTPS officials to develop their skills on a voluntary basis by providing for the continued payment of wages for up to 40 days in the case of training (section 34.1 of the agreement).

Article 6. Conditions of service of labour inspectors and professional code of ethics. Like UNSITRAGUA in 2004, the MSICG heavily criticizes the disciplinary and dismissal procedures applied in the event of professional misconduct under the Civil Service Act. The organizations allege unilateral decisions relating to suspension or final dismissal, the arbitrary nature, in practice, of the definition of professional misconduct by the competent authority and the denial of the presumption of innocence and call for the establishment of a defence mechanism providing for the right to appeal against verbal or written warnings as well as guarantees protecting labour inspectors from the immediate effects of dismissal decisions through the right to reinstatement and payment of wages.

The Committee notes that the collective agreement contains numerous provisions on the administrative career system, the selection and promotion conditions, the conditions relating to transfers, the reassessment of posts and the duties and salaries of all public servants. Its implementation should result in an adjustment of the conditions of service of labour inspectors and all other public servants employed within the Ministry. The provisions relating to the disciplinary rules seem to address the concerns of the trade union organizations relating to the presumption of innocence and the right of defence and appeal by providing, in particular, for the participation of the SIGEMITRAB Executive Committee in the defence procedure for the public servants concerned.

Furthermore, the collective agreement provides for the granting of advances to cover the professional travelling expenses incurred by labour inspectors and their reimbursement. The Committee notes that a specific recommendation to that end is also included in the action plan. Given the period of validity of the collective agreement, the wage increase provided for under section 37 of the agreement for public servants employed within the Ministry of Labour should have started to take effect in April 2009 with a view to full implementation the following year.

In reply to the allegations of UNSITRAGUA concerning the lack of probity of certain labour inspectors, the Government indicates that the supervision of the conduct of labour inspectors has been strengthened, including in their carrying out of inspections, by means of a supervisory programme targeting regional and subregional inspection offices. It points out that directors have been given instructions to strengthen the supervision of labour inspectors and mentions the preparation of an information and dissemination campaign targeting the public in general and workers in particular, the aim of which is to encourage people to report any suspicion of public servants of the Ministry of Labour having a direct or indirect interest in the matters within their remit and to allow the application of the disciplinary procedures provided for under the Civil Service Act and the collective agreement.

Article 12, paragraph 1, Articles 13, 15(c), 16 and 19. Method and performance of inspections. The Committee notes that the action plan provides for the planning of activities at the national level and cooperation to that end with the Guatemalan Social Security Institute (IGSS). Furthermore, it provides for the preparation of procedural manuals and technical manuals, checklists, registers, inspection report forms and the use of notifications. The performance of programmed inspections will ensure the presence of inspectors in workplaces no longer solely in response to complaints (which is the case in 90 per cent of inspections according to the analysis), but also in the interests of prevention and dissuasion, while preventing untimely inspections of the same workplace by different units. This will ensure better respect of the obligation of confidentiality relating to complaints since the visit of an inspector in a workplace will no longer be systematically perceived by the employer as the result of a complaint. The Committee also notes that, in the context of the “*Cumple y Gana*” project, a practical guide to inspection procedures was published in October 2008. This guide covers, in particular, the ethical principles of inspection.

Articles 17 and 18. Legislation relating to the prosecution of violations and the application of penalties. Referring to its previous observation in which it mentioned the point of view expressed in 2005 by the former World Confederation of Labour (WCL) concerning the power of inspectors to impose administrative sanctions on those responsible for violations, the Committee notes the documents provided in reply by the Government (including a copy of the documentation relating to legal proceedings initiated by a labour inspector against an enterprise which had committed a violation and settled by an appeal body pursuant to a ruling of the Constitutional Court), as well as the provisions of the action plan concerning the future developments in this regard. The Committee notes that, as previously pointed out by the Government, following ruling Nos 898-2001 and 1014-2001 of the Constitutional Court, the provision of Decree No. 18-2001 which authorized the General Labour Inspectorate to impose fines directly on employers who have committed a violation has been repealed on the grounds that it is unconstitutional and that this power is assigned to the courts under articles 103 and 203 of the National Constitution and section 135 of the Act on the judicial system.

The Committee notes that one of the recommendations arising from the analysis of labour inspection is to envisage the possibility of defining, by means of consultations held within the Tripartite Committee on International Labour Standards, an administrative procedure allowing the General Labour Inspectorate to impose penalties subject to a right of appeal for employers. The action plan includes this recommendation but mentions the consultation of the Constitutional Court on the legal point raised rather than the consultation of the social partners. This solution would have the merit of speeding up the implementation of rulings and strengthening the authority and credibility of the labour inspectorate. Furthermore, in many cases, the immediate application of a fine would be more effective than lengthy proceedings in encouraging compliance with the legal provisions. It is also envisaged that the legislation will be supplemented with a legal provision defining the specific offence of obstruction of labour inspectors in the performance of their duties and establishing the penalty to which those responsible shall be liable. In this regard, the Committee refers to the opinion formulated in its 2007 observation.

Article 11. Material working conditions of labour inspectors. Referring to its 2007 observation in which it noted the improvements pointed out by the Government in this regard (in particular, provisions facilitating the reimbursement of inspectors' professional travelling expenses and the granting of advances for that purpose), the Committee notes the Government's announcement of a thorough review of the material needs of the inspectorate carried out to provide the competent authorities with objective information to take into account in determining an appropriate budget for its effective operation. It notes with *interest* that the Ministry of Labour and Social Security has to that end taken steps to establish closer links with the other bodies of the executive authority and the legislative authority and that this exercise has facilitated the development of an operational plan for 2009 demonstrating the importance of labour inspection and emphasizing the need to increase its resources.

Article 5(a), Article 10, paragraph 1(a)(i), and Article 21(c), (f) and (g). Register of enterprises, exchange of information and statistics. The Committee notes that the analysis carried out of the labour inspection situation has highlighted the lack of a register of enterprises and that a recommendation has been made in that regard. The recommendation has been included in the action plan, which provides for the creation of a register at the national level within the Ministry based on the register developed and used by the IGSS. The Government has provided a copy of a draft cooperation agreement between the MTPS and the IGSS on the exchange of information relating to occupational safety and health in the textile industry, and the action plan provides for an agreement on the exchange of relevant data between the MTPS, the tax authorities and the registrar of companies.

The Committee requests the Government to provide information in its next report on the measures implemented under the collective agreement and the action plan with regard to the matters mentioned above, as well as a copy of any relevant text or draft text, and to indicate to the Office any difficulties encountered.

Further to its previous comments, the Committee also requests the Government once again to provide a copy of the legal provisions in force concerning the mechanism to compensate labour inspectors for overtime.

Furthermore, the Committee would be grateful if the Government would provide information in reply to the allegation made by the MSICG concerning the wage discrimination against inspectors in the category of "chief technicians".

Finally, noting the statistics on inspection activities provided by the Government with its report, the Committee requests the Government to indicate whether the measures defined in the action plan to strengthen the labour inspection system have been taken to enable the central authority to publish and transmit to the ILO as soon as possible an annual report as required under Articles 20 and 21 of the Convention.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1994)

The Committee notes the Government's report received on 25 September 2008 and the numerous documents attached. It notes in particular the analysis of the labour inspection system carried out by the ILO in 2008 and the resulting action plan drawn up to improve its operation.

Articles 6 and 14 of the Convention. Human resources allocated to labour inspection activities in agricultural undertakings. Number and qualifications. Number of men and women inspectors in relation to the number of

agricultural undertakings liable to inspection (Article 14). According to the Government, the number of inspectors carrying out their duties in the agricultural sector is not sufficient, but efforts are being made to ensure that each regional office covers all agricultural undertakings through the introduction of programmed inspections with a view to enforcing the labour legislation and checking all the documents required concerning conditions of work (payment of the minimum wage, bonuses and compensation), as well as the implementation of health and safety measures (in particular the obligation to provide workers with the necessary equipment to prevent industrial accidents and occupational diseases). ***The Committee would be grateful if the Government would provide a copy of the texts on which these checks in agricultural undertakings are based, as well as a copy of any relevant document illustrating their application in practice (model form, inspection report, etc.).***

Appropriate training of men and women inspectors in agriculture and the updating of their technical skills (Article 9). Further to its previous comments concerning the usefulness of specific training for inspectors responsible for enforcing the legal provisions on conditions of work in agriculture, the Committee notes that, according to the Government, such training is provided by the Occupational Safety and Health Department of the General Directorate of Social Welfare for inspectors from the regional offices of the General Labour Inspectorate (IGT) carrying out inspections in agricultural undertakings. The training focuses on safety measures relating to installations and operations carried out during the stage preceding the export of goods, as well as protective equipment for agricultural workers. ***The Committee requests the Government to provide detailed information in its next report on the frequency, content and duration of this type of training, as well as the number of participants. It requests it to keep the ILO informed of the follow-up to the 2008 action plan which resulted from the analysis carried out by the ILO in terms of the ongoing training, including distance learning, of inspectors working in the agricultural sector through the conclusion of agreements with technical institutions and universities.***

Article 6. Duties entrusted to labour inspectors. Paragraph 1(a). Conditions of work in agricultural undertakings producing for multinational agri-food enterprises. In reply to the Committee's previous comments concerning the denial of rights of workers in these undertakings, according to the information provided by the Trade Union Confederation of Guatemala (UNSITRAGUA), in particular concerning hours of work and the payment of overtime, the Government indicates that the IGT has made efforts to ensure that in all subregional or regional offices labour inspectors carry out programmed inspections in undertakings in which they have reason to believe that the conditions of work are contrary to the legislation in force and harmful to the workers. The Committee also notes the texts provided of collective agreements regulating the remuneration of overtime concluded within various agri-food undertakings. Noting this information with *interest*, the Committee nonetheless wishes to remind the Government that, under *Article 21* of the Convention, agricultural undertakings should be inspected as often and as thoroughly as is necessary and that, under *Article 20(c)*, inspectors should treat as absolutely confidential the source of any complaint and give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint. However, to be able to respect this obligation of confidentiality effectively, it is essential that both employers and workers are convinced of the possibility of any undertaking being inspected at any time and not exclusively in response to a complaint. This is the only way to avoid drawing the employer or his representative's attention to the link which may exist between an inspection and a complaint. By focusing their inspection activities only on undertakings which have been reported or are the subject of a complaint, labour inspectors are unable to hide this link and therefore expose the person making the complaint to the risk of reprisals by the employer. For this reason, it is essential that measures are taken to ensure that inspections of agricultural undertakings are also carried out routinely in as many agricultural undertakings as possible. ***The Committee would be grateful if the Government would therefore take measures to ensure that inspections in agricultural undertakings are carried out not only in response to a complaint, but also routinely based on an appropriate schedule. It requests the Government to take prompt measures to that end and to provide in its next report a copy of any relevant document, as well as any statistics available concerning the type of inspections carried out during the period covered by the report.***

Noting that the collective labour agreements sent to the Office expired in 2008 and 2009, the Committee requests the Government to provide information on the developments with regard to conditions of work in the agricultural undertakings covered by the agreements which have expired.

Paragraphs 2 and 3. Duties relating to the conditions of life of the families of agricultural workers and compatibility of further duties entrusted to labour inspectors with inspection duties. ***The Committee would be grateful if the Government would provide statistical and other information concerning the activities of labour inspectors with regard to the families of agricultural workers and the results of those activities. It also requests it to provide information on the manner in which it is ensured, as indicated in its report, that the duties entrusted to labour inspectors in addition to those defined in Article 3(1)(a), (b) and (c) do not interfere with the discharge of those duties.***

Articles 8 and 20. Need to improve the conditions of service of labour inspectors to enable them to respect the ethical principles of their profession. ***Drawing the Government's attention to its comments under the Labour Inspection Convention, 1947 (No. 81) (under Article 6) on the same subject, the Committee would be grateful if it would take measures to ensure that labour inspectors carrying out their duties in the agricultural sector benefit from conditions of service (remuneration, career prospects, consideration in which they are held by the public authorities,***

etc.) such that they are above any attempt to bypass the ethical principles of integrity and impartiality inherent in their profession and if it would provide information on the progress made in that regard.

Articles 12, 15 and 16, paragraph 1(c)(iii). Cooperation of the Guatemalan Social Security Institute (IGSS) and higher education establishments with the labour inspectorate. Cooperation relating to preventive control of new plant and dangerous materials or substances used and handled in agricultural undertakings. In reply to the Committee's request concerning the association of inspectors in this preventive function, the Government indicates that, where the IGT is informed of the geographical extension of the activities carried out by an agricultural undertaking, a team of inspectors who are experts in health and safety is immediately appointed by the competent regional office to carry out a visual inspection and issue the relevant instructions. The Committee also notes that, according to the Government, health and safety technicians from the Ministry of Labour and Social Welfare use suitable tools to analyse the harmful or toxic materials or substances and make recommendations to the employer on this matter, including with regard to protective equipment for workers. In the event that the technical inspection means of the IGSS prove insufficient, the analysis of products and substances is entrusted, for the purposes of obtaining advice and recommendations, either to a university institution (chemistry and pharmacology faculty) or to the National Institute of Forensic Medicine for advice and recommendations on the safe use of these products, materials and substances. The IGSS provides support to the inspection services in all departments of the Republic and samples of substances, materials and products taken by labour inspectors during inspections are transmitted to the competent laboratory of the IGSS for analysis. According to the Government, the IGSS responds within ten working days with any recommendations that are necessary to protect the health and safety of workers exposed to these substances and products. The labour inspectorate then carries out automatic inspections to ensure that these recommendations have been implemented and any employer responsible who fails to comply with any warnings issued by the inspector is liable to prosecution. ***While taking due note of this information, the Committee would be grateful if the Government would provide with its next report a copy of the legal provisions governing the cooperation procedures described above, as well as any other relevant documents or statistics.***

Cooperation relating to the exchange of information and the keeping of registers. Further to the analysis of labour inspection carried out which noted a confusion between the respective activities and functions of the inspectors of the Ministry of Labour and Social Welfare and the IGSS inspectors, as well as the poor coordination between their activities, the Government indicates that cooperation has been established between these two institutions, which has resulted in particular in the exchange of information in the context of a project in the textile industry. ***While taking due note of this information, the Committee requests the Government to specify the action taken in the agricultural sector under the 2008 action plan with regard to the conclusion of coordination agreements between the inspection services of the IGSS and the IGT through regular meetings, as well as with regard to the conclusion of an agreement on the planning and implementation of joint activities and the exchange of information. The Committee would also be grateful if the Government would provide a copy of any legal text or any other relevant document, as well as statistics on the activities carried out by the two institutions.***

Noting that the action plan also provides for the establishment of cooperation between the labour inspectorate and the tax authorities and Registrar of companies with a view to creating a specific labour inspection database, the Committee requests the Government to indicate any developments in this regard and to provide a copy of any legal text or any other relevant document.

Article 19, paragraph 1. Notification of occupational accidents and cases of occupational disease to labour inspectors. In reply to the Committee's 2007 direct request concerning the need to supplement the legislation with provisions defining cases and the manner in which the labour inspectorate shall be notified of occupational accidents and cases of occupational disease, the Government expresses its political will to take relevant steps. In this regard, it refers to a cooperation project between the IGSS and the IGT relating to the notification of occupational accidents and diseases through the post or by electronic mail and provides a document relating to such cooperation in the textile industry, as well as draft regulations on the notification by workers of occupational accidents and diseases to the labour inspectorate in accordance with Conventions Nos 81 and 129. ***The Committee takes due note of this information and requests the Government to provide information in its next report on the measures already taken and implemented in practice to improve the system of notification to the labour inspectorate of occupational accidents and cases of occupational disease in agricultural undertakings. It would be grateful if it would provide a copy of any legal text adopted in this regard, as well as any other relevant documents and any statistics available.***

Referring to the 2008 action plan, the Committee would be grateful if the Government would also specify the action taken to give effect to the recommendation to establish a computer system to facilitate the use of IGSS data to create a national register of notifications of occupational accidents and cases of occupational disease.

Articles 22, 23 and 24. Role of labour inspectors in the prosecution of violations committed by agricultural employers. The Committee notes that, according to the Government, inspectors refer to the labour and social security tribunals cases of violations of the labour legislation identified during their inspections. ***In the light of its observation under Convention No. 81 concerning the prosecution and punishment of violations, the Committee requests the Government to provide information concerning the agricultural sector.***

Articles 25, 26 and 27. Periodical reports and annual report on the work of the labour inspectorate. The Committee notes with ***interest*** the information provided by the Government concerning the laws and regulations covered

by the labour inspectorate and the regional distribution of inspection staff, as well as the statistical tables on the agricultural undertakings liable to inspection; the number of persons working in those undertakings; inspection visits; violations committed and penalties imposed; occupational accidents and their causes and occupational diseases and their causes. It also notes the statistical tables attached to the report on the cases dealt with by the inspection and conciliation sections of the various regional offices. *Noting the lack of information on the number and distribution of labour inspectors carrying out their duties in agricultural undertakings, the Committee requests the Government to provide this information in its next report.*

Furthermore, the Committee cannot over-emphasize the need for the Government to take measures, in the context of the 2008 action plan, to ensure that an annual labour inspection report containing up to date information on the matters listed in Article 27 is published rapidly and a copy sent to the ILO within the period prescribed by Article 26. The Committee reminds the Government that, in accordance with Article 26(1), the report may be drawn up either as a separate report or as part of a general annual inspection report.

Guinea

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

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

The Committee notes the Government's report received in June 2006 and observes that, despite the Office's reminder of 20 June 2006, the annual inspection report which was due to be sent has not been received by the ILO. While noting the information on the legal provisions giving effect in law to the Convention, the Committee would point out that the Government has not supplied the information called for in its previous observation regarding the practical functioning of the labour inspection system. It is therefore bound to repeat the same observation:

Resources of the labour inspectorate. The Committee notes with concern that the information provided by the Government in its report for the period ending June 2005 reveals that the labour inspectorate suffers from a persistent shortage of resources. It notes, in particular, that retired labour inspectors are no longer being replaced and that the inspection services as a whole suffer from a lack of computer equipment and transport facilities. It notes, moreover, that labour inspectors have not received any training since 2000. *The Committee hopes that the Government will soon be in a position to furnish the labour inspectorate with the resources it needs to operate effectively, in particular in order to ensure that the number of labour inspectors is sufficient (Article 10 of the Convention), that they are furnished with the material means and transport facilities necessary for the performance of their duties (Article 11) and that they receive adequate training for the performance of their duties (Article 7(3)). The Government is requested to transmit information on any progress made in this regard in its next report.*

Publication of an annual report. The Committee notes that no annual inspection report has been transmitted since that covering the period of 15 October 1994 to 15 October 1995. *Referring to its previous requests, it once again requests the Government to take any appropriate measures with a view to the fulfilment by the central inspection authority of its obligation to publish and transmit to the International Labour Office an annual report in accordance with Articles 20 and 21 of the Convention.*

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

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

Guyana

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

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

Obligation to report pursuant to article 22 of the ILO Constitution. The Committee notes the communication by the Government, in reply to its previous request, of the circulars (notices) of 18 March 2005 designating the authorities which must be notified of occupational accidents and cases of occupational disease, in relation to Article 19 of the Convention. It also notes the communication of the annual report for 2004 from the Industrial Relations Department of the Ministry of Labour, containing brief information on labour inspection activities in the agricultural sector. However, the Committee notes that no detailed report on the application of the Convention has been sent for more than ten years. *The Committee therefore requests the Government to supply, in its next report under article 22 of the ILO Constitution, all the information required by each part of the Convention report form.*

Articles 26 and 27 of the Convention. Objectives and content of the annual report on the work of the labour inspectorate. The Committee notes that, despite the high number of strikes in sugar plantations and agriculture in 2004 and their socio-economic impact (227 strikes resulting in the loss of 82,880 workdays and wages amounting to 129,061,000 dollars) the labour inspectorate only performed six inspections for the whole sector. The Committee considers that these figures testify both to poor conditions of work and lack of vigilance on the part of the inspection authorities responsible for monitoring conditions of work in agricultural undertakings. In any event, they call for the adoption of measures to curb the deterioration of the social climate, particularly by means of inspection activities and initiatives to provide employers and workers with information. However, the Committee notes that the Government has not supplied any information indicating that such measures have been taken or are envisaged. It also notes that the content of the report does not allow any assessment to be made of the level of coverage of the

labour inspection system in relation to worker protection requirements in the sector, these needs not being defined, particularly with regard to occupational safety and health. The significant lack of statistics relating to inspection visits (*Article 27(d)*) and violations (*clause (e)*) and the total lack of information regarding the laws and regulations giving effect to the provisions of the Convention (*clause (a)*), the number of staff of the labour inspection service (*clause (b)*), the number of agricultural undertakings liable to inspection and the number of persons working therein (*clause (c)*), and also the lack of statistics with respect to penalties imposed (*clause (e)*), occupational accidents, including their causes (*clause (f)*) and occupational diseases, including their causes (*clause (g)*), make it impossible for the Committee to perform its role of monitoring the practical application of the Convention. The Committee reminds the Government that the requirement to publish an annual report on inspection activities and send it to the ILO serves an important purpose at both the national and international level. It is an essential tool for evaluating the operation of the labour inspection system and for making improvements to it, with the participation of employers and workers and their respective organizations (*Articles 26 and 27*). **The Committee invites the Government to refer to paragraphs 320–328 of its 2006 General Survey on labour inspection and requests it to take the necessary measures, if need be with technical assistance from the Office, to enable the central labour inspection authority to include all the information required by each of clauses (a) to (g) of Article 27 in the annual report on its work.**

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

Hungary

Labour Inspection Convention, 1947 (No. 81) (ratification: 1994)

Article 3, paragraph 1(a) and (b), of the Convention. Preventive measures in the area of occupational safety and health. The Committee notes with **interest** the measures taken to improve levels of occupational safety and health, namely: (a) the unification of competence for inspections relating to occupational safety and health and general working conditions (Decree No. 295/2006 establishing the legal and institutional conditions for the uniform supervision of health and safety by regional inspectorates); (b) the reinforcement of inspections (inspections outside regular hours, inspections focusing on sectors in which employees are exposed to serious hazards, inspections in the priority sectors of agriculture, construction and processing industries); (c) more severe sanctions; (d) the publication of lists of employers which have violated health and safety regulations as a deterrent on the Ministry's web site; and (e) the introduction of the "Partnership for Safe Employment" initiative. The latter initiative is intended to improve occupational safety and health, enhance the social responsibility of employers and disseminate good practices. This initiative consists of a voluntary commitment to compliance with the regulations respecting health, safety and labour conditions and this takes the form of a written agreement entitling employers to use the label "Safety Employment Partner" at their events and in the provision of their services. A list of employers which have signed the agreement is published on the web site of the labour inspectorate. These employers are provided with regular information on labour law provisions by the Government. Any violation of the respective requirements involves the risk of losing the right to use the label.

The Committee would be grateful if the Government would continue to provide information on any further measures adopted with a view to promoting a culture of good safety and health conditions in all workplaces and their impact.

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

Italy

Labour Inspection Convention, 1947 (No. 81) (ratification: 1952)

The Committee notes the Government's report received in July 2008, its replies to the Committee's previous comments and the attached substantial documentation relating to the implementation of Legislative Decree No. 124 of 23 April 2004 on the rationalization of inspection duties relating to social security and labour.

Article 3, paragraph 2, of the Convention. Impact of monitoring and sanctioning of illegal employment and unauthorized work on inspection of conditions of work. In its previous comments the Committee had noted that numerous structural and legislative measures adopted to implement Legislative Decree No. 124/2004 focused on strengthening the powers of the Ministry of Labour and Social Policy for combating unauthorized work and illegal employment and that labour inspectors played a major role in this process. The Committee had emphasized the need to re-establish labour inspectors in their duties defined by the Convention and limit their cooperation with the immigration authorities to an extent that is compatible with the purpose of this Convention.

The Committee notes the indication by the Government that inspectors' powers are not limited to the control of clandestine non-EU workers and their principal objective is to ensure observance of employment and social legislation. The Government enumerates the duties of the inspectors of the Ministry of Labour, Health and Social Policy under Act No. 628 of 22 July 1961 and Legislative Decree No. 124 of 23 April 2004. These include the monitoring of the application of all laws concerning civil and social rights, the protection of labour relations and the occasional control of contractual arrangements, typical or atypical; the monitoring of the correct application of contracts and collective agreements; the monitoring of occupational safety in the building sector only; the supervision of the functioning of pension funds and the welfare activities of professional associations; the carrying out of inquiries and investigations at the request of the

Ministry of Labour; and the fulfilment of the functions required by legislation and regulations or delegated by the Ministry of Labour.

The Government adds that monitoring and control is entrusted not only to inspectors of the Ministry of Labour, Health and Social Policy but also to the *Carabinieri* of the Labour Protection Division, the inspectors of the social security and insurance institutions and the local health authority inspectors. The inspectors of the Ministry of Labour operate as officials of the criminal police “within the limits of the service assigned and under powers conferred under current legislation”. The *Carabinieri* of the Labour Protection Division perform similar functions to the inspectors of the Ministry of Labour, that is criminal police activities which, unlike those of labour inspectors, are not subject to “the limits of the service and under powers conferred under current legislation”. Monitoring and control functions in pensions and welfare matters are also exercised by the inspectors of the National Social Security Institute (INPS), the National Occupational Accidents Insurance Institution (INAIL) and other bodies who do not have the status of officials or agents of the criminal police. Finally, local health authorities also have staff responsible for monitoring and control of the application of legislation on occupational safety and health. Like the labour inspectors, this staff also has the status of criminal police officer.

The Committee also notes that, according to the comments of the Italian Confederation of Small and Medium Private Industry (CONFAPI) on the Government’s report, the Italian legislation in this area is largely in line with the Convention.

The Committee finally takes note of the detailed information attached by the Government on the results of special investigations carried out during the second half of 2006 and 2007 as well as several circulars issued by the General Inspectorate of the Ministry of Labour since 28 September 2006 for the implementation of Legislative Decree No. 124 of 23 April 2004. The Committee observes that the control of the legality of employment, including employment of clandestine migrants, appears to constitute one of the main targets of these circulars and investigations.

The Committee recalls from its previous comments that the role of the labour inspectorate, pursuant to the provisions of the Convention, is to monitor not the legality of the employment relationship but the conditions in which the work is performed and that the system of labour inspection must apply to all employees or apprentices, however they may be remunerated and whatever the type, form or duration of their contract. Cooperation with the immigration authorities should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of *all* workers and to improve working conditions. In this respect, it should be emphasized that the expression “while engaged in their work” used in *Article 3(1)(a)* of the Convention indicates that the protection afforded by labour inspection must be provided to workers during their period of employment.

The Committee considers that the role assigned to labour inspectors as *Carabinieri* of the criminal police may severely jeopardize the performance of their original duties as defined by the Convention, namely to ensure that workers are protected against the imposition of conditions of work which are contrary to the legislation. As indicated in its previous comments, systematically involving labour inspectors in coordinated operations to combat illegal employment does nothing to promote a climate of confidence, which is necessary if cooperation on the part of workers with an irregular status of residency is to be achieved, especially in the form of reports and complaints to labour inspectors. On the contrary, it represents an obstacle to the opportunities for inspectors to obtain information regarding the conditions of work experienced by these workers.

The Committee therefore once again emphasizes the need for the Government to take measures to distinguish with sufficient clarity the powers and working methods of labour inspectors from those of the officials of other bodies responsible for combating illegal employment and migration. Such a separation in no way excludes the possibility of establishing a form of collaboration which involves labour inspectors drawing the attention of the competent authorities to employers in breach of the legislation regarding conditions of work and the protection of workers, especially as regards abuses reported with regard to workers whose situation is irregular. The Committee emphasizes once again that the financial consequences (fines and workers’ wage claims) resulting from the actions of the labour inspectorate can constitute an effective deterrent against the employment of persons in an irregular situation with regard to labour legislation. ***The Committee requests the Government to indicate in its next report any measures taken or envisaged to re-establish labour inspectors in their duties defined by the Convention and limit their cooperation with the immigration authorities to an extent that is compatible with the purpose of the Convention. It would be grateful if the Government would keep the Office informed of all progress made in this respect or, if necessary, inform it of any difficulties encountered.***

Articles 20 and 21. Publication and communication to the ILO of an annual inspection report. In its previous comments, the Committee took note of the Government’s decision not to publish an annual report in the immediate future on account of institutional reforms concerning primarily the methods for the collection of statistics. The Committee notes from the Government’s latest report that, nevertheless, the results of inspection activities are published either on the Ministry of Labour web site or through press conferences. ***The Committee recalls that the publication of an annual inspection report is required by Article 20(1) and (2) of the Convention and once again requests the Government to publish such a report in the near future, containing detailed information on each of the matters covered by Article 21, and to ensure that a copy is sent to the ILO within the deadlines required by Article 20(3).***

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1981)

Article 6, paragraphs 1(a) and 2, of the Convention. Detrimental impact of the monitoring and sanctioning of illegal and unauthorized work on the discharge of the primary duty of the monitoring of conditions of work. With reference to its observation relating to the Labour Inspection Convention, 1947 (No. 81), the Committee recalls from its previous comments under this Convention that the extent of illegal employment in various forms in agriculture has led the Government to focus inspection operations, conducted jointly with other official bodies pursuing different objectives from that of the protection of workers while engaged in their work, mainly on the detection of undertakings guilty of contraventions and on prevention in this area.

The Committee notes from the Government's report that the employment relationship in the agricultural sector is subject to special provisions under the Civil Code, sectoral collective agreements and numerous legal provisions concerning social security, as well as the practices of the National Social Security Institute (INPS) and the National Occupational Accident Insurance Institute (INAIL). The enforcement of these provisions is chiefly entrusted to the competent departments of the Ministry of Labour which take and coordinate initiatives to combat clandestine and illegal labour along with surveillance of labour and social legislation, including with the assistance of the above social security institutes and their agencies.

The Committee also notes that the Italian Confederation of Small and Medium Private Industry (CONFAPI), in its comments on the Government's report, is of the view that Italian legislation in this area is largely in line with the Convention.

The Committee notes the four analyses attached by the Government containing data relating to the routine surveillance in agriculture conducted in 2007 by the regional and provincial labour departments throughout the national territory. The Government indicates that, as can be seen from these analyses, in 2007 a total of 14,397 agricultural businesses were inspected, of which 5,978 were in violation; of the 61,992 workers covered by the inspections, 10,048 were found to be illegal, including 1,803 non-EU workers and 187 children.

In view of the results of the controls mentioned by the Government, the Committee observes, as it does under Convention No. 81, that the control of the legality of employment, including the employment of clandestine migrant workers, appears to constitute one of the main targets of these controls. It once again points out that, under the terms of *Article 4* of the present Convention, the system of inspection in agriculture must cover all wage workers or apprentices, "however they may be remunerated and whatever the type, form or duration of their contract". It recalls once again that during the preparatory work for the adoption of *Article 4* of the Convention, most of the member States considered that the existence of a wage relationship with the operator should be the determining factor in defining the workers covered by this provision (General Survey of 2006 on labour inspection, paragraph 77). Although the labour inspectorate may often be asked to cooperate with the immigration authorities in view of the growing numbers of migrant workers in many countries, such cooperation should be carried out cautiously, keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers and to improve their working conditions (General Survey, op. cit., paragraph 161.) The Committee therefor once again recalls that even though there may be no doubt that measures are necessary to put a stop to the phenomenon of illegal migration, the role assigned to labour inspectors in this regard at the workplace can severely jeopardize the realization of the prime objective of the Convention, namely, to ensure the protection of workers against the imposition of conditions of work which are contrary to the relevant legal provisions. ***The Committee therefore requests the Government to indicate in its next report the steps taken or envisaged to ensure that labour inspectors working in the agricultural sector refocus their action on the duties defined by the Convention and to limit their collaboration with services responsible for monitoring immigration to an extent which is compatible with the aim of the Convention. It would be grateful if the Government would keep the Office informed of any progress made in this respect and inform it of any obstacles encountered.***

Articles 26 and 27. Publication and communication to the ILO of an annual inspection report. In this respect, the Committee once again refers to its comment under Convention No. 81 and requests the Government to ensure that detailed information on each of the subjects covered by Article 27 is published soon in an annual report and that a copy is sent to the ILO within the deadline prescribed by Article 26.

Kenya

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspection services and the justice system. The Committee notes that it is envisaged to promote effective cooperation between the labour inspection system and the justice system with a view to encouraging due diligence and attention in the treatment by judicial bodies of violations reported by the labour inspectorate. In this regard, the Government indicates the development of procedural rules and regulations for the industrial court which complete the recently reviewed and adapted labour legislation. ***The Committee asks the Government to keep the ILO informed of any developments in terms of strengthening the above***

cooperation and, where applicable, to send a copy of any law or regulation adopted governing the legal procedure of the industrial court.

Article 2, paragraphs 1 and 23, and Article 3, paragraph 1, of the Convention. Scope of labour inspectors. The Committee notes with *interest* that Legal Notice No. 227/1990, which exempted establishments located in export processing zones (EPZs) from the application of the health and safety legislation, is now null and void and that the provisions of the Occupational Safety and Health (OSH) Act apply to all workplaces, including those in EPZs.

It further notes that the services of the Department of Occupational Safety and Health carried out a total of 4,117 occupational safety and health inspections during the 2008–09 financial year. Although it indicates that the Department monitored the activities of the safety and health committees established under section 9 of the OSH Act and trained 5,150 labour inspectors, the Government explains that it cannot provide information on the number of occupational safety and health committees established in industrial and commercial establishments in EPZs due to the limited capacity of the data-capturing system which does not segregate different workplaces. *The Committee would be grateful if the Government would provide a copy of the court ruling which found Legal Notice No. 227/1990 to be null and void and if it would continue to keep the ILO informed of further inspection visits carried out by occupational safety and health officers. It requests the Government to make every effort to improve the data-capturing system with a view, among other objectives, to the disaggregation of data by industrial and commercial establishments, and to communicate the missing information in the near future.*

The Committee notes that the categories of workers to be exempted from the scope of the Labour Institutions Act on labour administration and inspection, as provided for by section 4(3) of the Act, are to be specified by relevant rules and regulations. *The Committee requests the Government to keep the ILO duly informed in this regard and to communicate a copy of any relevant rules and regulations.*

Articles 10, 11 and 16. Adequate means of action and working conditions of labour inspection staff. Having expressed its concern at the persistent lack of labour inspection staff, office equipment and means of available transport facilities, the Committee *regrets* that, according to the Government, no progress has yet been made in this regard. *Although fully aware of the difficulties that the country faces in the ongoing global recession and food crisis, the Committee nevertheless encourages the Government to do its utmost to seek international financial assistance to enable it to ensure sustainable resources for the effective functioning of the labour inspection services and to keep the ILO informed of any measures taken and the results achieved in this respect.*

Article 14. Reporting and investigation of occupational accidents and cases of occupational disease. The Committee notes the description by the Government of its investigation procedure with regard to occupational accidents and cases of occupational disease: after reporting to the Director of the Occupational Safety and Health Services (DOSH) through the relevant accident reporting form (DOSH 1), occupational safety and health inspectors are sent to visit the scene of the accident, where they interview witnesses as well as the victim of the accident and collect other necessary evidence. The relevant report drafted following accident investigations constitutes the basis for action such as, where appropriate, improvement or prohibition notices, training, advice or prosecution. While the possibility to set up a tribunal to investigate occupational accidents and cases of occupational disease is foreseen in section 128 of the OSH Act, the Government sees no need to constitute such a tribunal as the DOSH has been entrusted with the investigation of these cases. *Noting the indication that, in the years 2008 and 2009, a total of 291 accidents were investigated, the Committee would be grateful if the Government would indicate the number of occupational accidents and cases of occupational disease reported in comparison with the number of investigations actually conducted, as well as the action taken following these investigations (improvement or prohibition notices, prosecutions and penalties imposed).*

The Committee notes that, according to the Government, the obligation set out in Article 22 of the OSH Act for medical practitioners to notify occupational diseases to the Director of the OSH Services is not functioning in a satisfactory manner in practice as medical practitioners, despite an existing list of 40 occupational diseases in the second schedule to the OSH Act, are not adequately sensitized, bearing in mind the complexity of diagnosing occupational diseases. *The Committee urges the Government to take measures to sensitize medical practitioners (e.g. through awareness campaigns, the distribution of brochures or the organization of training sessions). Drawing the Government's attention to the possibility of ILO technical assistance to this end, the Committee would be grateful if it would indicate any steps taken in this regard and the results achieved.*

Articles 20 and 21. Annual report on labour inspection activities. The Committee notes that no annual report has been received, although the Government mentions an annual ministerial report under these Articles. It had noted in its previous report the obligation under Article 42(1) of the Labour Institutions Act for the Commissioner for Labour to prepare and publish, not later than 30 April of each year, a report on the activities undertaken in his/her department. The content of the report, as set out in Article 42(2), includes the information required under *Article 21* of the Convention. It also noted that Article 25 of the OSH Act provides for the development and maintenance of an effective programme of the collection, compilation and analysis of occupational safety and health statistics covering occupational accidents and diseases, as well as the existence of an accident database where information sent through the DOSH 1 form is entered. *The Committee once again requests the Government to provide information on the progress made in establishing a system to give effect to the requirements of Article 25 of the OSH Act in practice and any difficulties that have been encountered.*

It urges the Government to ensure that an annual report, containing all the information and statistics on labour inspection activities required by Article 21 of the Convention, is published and communicated to the ILO.

Labour inspection and child labour. The Committee notes the Government's indication that it has not yet provided the child labour division with any budgetary allocation due to financial constraints. However, it notes with *interest*, that under the ***Time-bound Programme*** for the elimination of child labour implementation with ILO-IPEC, training sessions have been organized for the labour inspectorate in the area of project management, strategic management, capacity building on child labour issues and the training of trainers. ***The Committee requests the Government to ensure, where applicable within the framework of international financial cooperation, that adequate resources are rapidly made available. It asks the Government to specify the content of the above training of labour inspectors, the number and function of the participants and the duration of the training, and to provide information on any further training in this regard, as well as on its impact on the level of observance of legal provisions relating to child labour.***

Libyan Arab Jamahiriya

Labour Inspection Convention, 1947 (No. 81) (ratification: 1971)

Article 3, paragraphs 1 and 2, and Article 5(a) of the Convention. *Cooperation between the labour inspection services and judicial bodies with a view to improving the implementation of the legislation covered by the Convention.* The Committee notes that, according to the Government, labour inspectors periodically file their reports of offences at the police station responsible for their area, which forwards them to the Public Prosecutor of the Republic. The latter refers them to the competent court for processing and a decision. According to the Government, this procedure illustrates the close cooperation that exists between labour inspectors, the police services, the public prosecutor and the courts. The Committee nonetheless notes that the statistics of offences reported in 2007 in the course of inspection visits and the action taken on them show no judicial follow-up. Furthermore, the 2007 annual inspection report contains information on a large-scale inspection campaign targeting filling stations, restaurants, shops, hotels and other commercial establishments and focusing on the detection of work permit infringements and breaches of the legislation on foreign labour, and indicates that legal procedures have been set up to regularize the situation of the persons concerned in coordination with the Prosecutor General and the provincial prosecutors with a view to investigating and settling cases referred by the labour inspectorate. The Committee notes first that these controls focused not on conditions of work (hours of work, wages, leave, weekly rest, employment of women and young persons, etc.) and the protection of workers in the exercise of their occupation (freedom of association, social security, etc.), but on enforcement of the legislation on foreign labour and work permits, and secondly that no information has been supplied indicating that judicial proceedings were initiated or concluded. ***The Committee would be grateful if the Government would send copies of the legislative or regulatory provisions that constitute the basis in law for the cooperation between the labour inspectorate and judicial bodies, together with information on the number and the subjects of the judicial decisions handed down following reports of contraventions submitted directly or indirectly by the labour inspectorate.***

Articles 20 and 21. *Reporting obligations on the activities of the labour inspectorate.* The Committee notes that, as is the case with the statistics so far sent by the Government, the annual labour inspection report for 2007 is not in the form of a publication, as required by *Article 20*. The purpose of this obligation is to inform any authority that may be interested or concerned, and particularly employers and workers and their respective organizations, concerning the way in which the labour inspectorate functions, so that they may make any comments they deem fit or any proposals for improvement.

Furthermore, while the report contains detailed information on the composition and geographical distribution and by sex of the inspection staff (*Articles 8, 10 and 21(b)*), the data on inspection visits *Article 21(d)* are too scant and imprecise to allow an assessment of their frequency and quality or to determine the legal provisions covered by inspections. Table No. 3 on inspection visits in the hydrocarbons sector shows that, between 3 and 12 March 2007, 15 worksites and 80 enterprises were visited and 180 infringements were noted. The figures contained in table No. 4 are 6,704 restaurants and cafes, 1,346 pastry shops and bakeries, 40,676 commercial establishments, that is a total of 48,726 workplaces, in which 49,315 Libyan and 25,909 foreign workers were employed. These figures would appear to relate to an inspection programme covering these categories of establishments with a view to regularizing the situation of the persons that they employ. The Committee *regrets* that it has to emphasize that this information cannot serve as a basis for any evaluation of the mandate of the labour inspectorate or its coverage (*Article 21(c) and (d)*).

The statistics set out in two other tables (Nos 5 and 9) are completely identical. One purports to show inspections in the area of occupational safety and health and the other inspections with no specification as to the legal aspects covered. Their results are set out under the titles "measures taken", "measures already taken", "time limits set" and "files opened". Such data cannot serve as a basis for any form of evaluation of the application of the Convention. Furthermore, no information is supplied on any sanctions that may have been imposed on offenders (*Article 21(e)*), or on occupational accidents (*Article 21(f)*) or cases of occupational disease (*Article 21(g)*). The Committee however noted in its previous comments the existence of legal provisions requiring the notification of statistics of occupational accidents and cases of occupational disease and the powers of labour inspectors in this respect. The Committee is therefore bound once again to emphasize to the Government how essential the annual report prescribed by the Convention is as an instrument for

attaining the twofold objective assigned to it at both the national and international levels. *The Committee invites the Government to refer to paragraphs 320 et seq. of the General Survey of 2006 on labour inspection, and to ensure that effect is given, at the earliest possible date, in both law and in practice, to Articles 20 and 21 of the Convention through the publication and communication to the Office of an annual report on the work of the inspectorate containing the information set out in Article 21(a)–(g).* The Committee once again reminds the Government of the valuable guidance provided in the Labour Inspection Recommendation, 1947 (No. 81), regarding the presentation and appropriate level of detail of the information to be included so as to allow an accurate evaluation of how the labour inspection system functions and the determination of the resources needed for its gradual improvement.

Luxembourg

Labour Inspection Convention, 1947 (No. 81) (ratification: 1958)

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

The Committee notes the Government's reports for the periods ending on 30 June 2005 and 30 June 2007, received at the ILO on 21 December 2005 and 26 November 2007, respectively, the annual report of the Inspectorate of Labour and Mines (ITM) for 2005 and the legislation attached. It also notes that the Labour Code, adopted on 31 July 2006, does not change the previous legal provisions on labour law, including those on labour inspection.

Developments in the labour inspection system. The Committee notes the process to enhance the efficiency and relevance of the labour inspection system, in particular a bill to reform the ITM currently before the competent parliamentary bodies. *It awaits any developments in this respect and would be grateful if the Government would keep the Office informed.*

International cooperation in labour inspection. The Committee notes that the annual report of the ITM contains information on each of the subjects set out in *Article 21 of the Convention*, and also on the ITM's regional activities in the context of the European Union, such as participation in the drafting of new directives on occupational health and safety, and its activities at international level including the organization, in collaboration with the ILO, of a conference on integrated labour inspection systems held from 9 to 11 March 2005 and attended by delegates from some 70 countries. The Committee notes that according to section 6 of the Act on the Posting of Workers, the ITM's purpose is to act as a liaison office for international cooperation with counterpart public administrations in the Member States of the European Union. The synergy thus created will enhance action to prevent industrial accidents and occupational diseases among migrant workers, in the "major region" composed of the founding members of the "old Europe". *The Committee would be grateful if the Government would provide information on the ways and means used to attain this objective, and on the results.*

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

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

Malawi

Labour Inspection Convention, 1947 (No. 81) (ratification: 1965)

Article 4, paragraph 1, of the Convention. *Need to re-establish a central authority entrusted with control and supervisory powers in the labour inspection system.* According to the Government's vague indications in reply to the observation made by the Committee on the basis of the recommendations of an ILO technical mission which visited the country in May 2006: (1) the labour inspection system is in the process of being developed in consultation with social partners; (2) the Ministry has already started putting in place measures to come up with a labour inspection policy and set guidelines, and a meeting was held in 2009 to kick-start the process; (3) the Ministry has placed emphasis on the planning of inspections, and sweeping inspections have been carried out in the major cities, while some joint inspections with labour inspectors and safety and health inspectors have been undertaken, for example in the northern region of the country; (4) the functional review of the Ministry, under which the Inspection Services Unit is to be strengthened to enable it to set annual targets and conduct inspections in the field, is awaiting approval; and (5) the Ministry has undertaken supervisory visits to field offices and organized some training for inspectors, including those responsible for occupational safety and health with a view to developing an integrated inspection system.

In addition, the Committee notes from the Government's report under the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that the budgeting and funding of labour inspection is decentralized in such a manner that each office is allocated funds directly by Treasury according to the latter's priorities. Consequently, offices with motorcycles or motor vehicles cover fuel and maintenance, while the Ministry only receives reports on the activities performed. Based on this information, the Committee observes that the very notion of a central labour inspection authority seems to have become devoid of all substance, as the Ministry's only residual role consists of receiving activity reports from labour inspection offices, without any power to determine the needs of the labour inspection services in terms of financial and material resources with a view to their proper operation. The objective of the ILO technical mission was to help the Government to anticipate the effects of globalization on working conditions and workers' rights, to secure the commitment of the social partners to the principle that an effective labour inspection service allows the twofold interests of social protection and improved productivity, and to raise the Government's awareness of the importance of the tripartite dimension of labour administration. Although it made no reference to a decentralized labour inspection system, the

mission emphasized, on the contrary, that there were no inherent or structural barriers for the operation of an effective and efficient labour inspection service; and that there was considerable room for improvement, in particular in policy, planning, management procedures, communications, equipment and training, and that this could be done by rationalizing, streamlining and consolidating the inspection functions of the Labour Directorate in the field structure. The decentralized operation of the labour inspection system, as described by the Government in the report on the application of Convention No. 129, is not such as to meet the economic and social objectives of the labour inspection Conventions. The obligations deriving from the ratifications of a Convention in any event remain the responsibility of the State. Consequently, the Government is bound, among other obligations, to: (i) observe the principle of placing the labour inspection system under a central authority, pursuant to *Article 1*; (ii) ensure that the number of labour inspectors is determined on the basis of the criteria listed in *Article 10*; and (iii) make the necessary arrangements to equip labour inspectors with the material means and transport facilities, and to reimburse any travelling and incidental expenses necessary for the performance of their duties (*Article 11*). The Government is also bound under the Labour Administration Convention, 1978 (No. 150), which has also been ratified by Malawi, to ensure that the staff of the labour administration system have the status, the material means and the financial resources necessary for the effective performance of their duties. Consequently, the allocation to labour inspectorates of material means and financial resources should be left to the discretion of the decentralized authorities, but should be determined by the Government at the central level in accordance with the priorities of labour inspection and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government's commitments, as reaffirmed in its report, be fulfilled and an annual report on labour inspection activities, as provided for in *Articles 20 and 21*, be published and serve as a basis for the assessment by the central authority of the respective needs and priorities. The technical assistance mission recommended the strengthening of the Office of the Chief Labour Officer in order to allow it to play a more important role in the setting of annual targets, the monitoring of performance by both the field and headquarters and the evaluation of the quality of inspections themselves. It added that more work is required in Malawi if the goals of decent work are to be achieved and expressed the view that as the country has embarked on a process of attracting foreign investment in agriculture and manufacturing, especially textiles, there is a need to strengthen institutions that will promote a good and fair labour market.

The Committee urges the Government, to provide details of the measures announced in its report as a follow-up to the recommendations of the ILO technical mission and to provide copies of all relevant texts or documents. It also urges it to adopt all the necessary measures to secure an inspection system operating under the supervision and control of a central authority (Article 4) that is provided with adequate human resources in terms of both numbers and skills (Articles 6, 7 and 10) and the material conditions necessary for the exercise of its functions in relation to labour inspections (Article 11), and to keep the ILO informed of any developments in law and in practice in this respect.

Articles 20 and 21. Annual report on labour inspection activities. The Committee notes with **concern** that the statistics of inspections covering all the sectors of the economy, as published in the *Labour Statistics Yearbook*, show a significant decrease from 3,043 in 2006 to 1,088 in 2007. Recalling that an annual report on labour inspection activities, which has to be published and communicated to the ILO in accordance with *Article 20*, shall contain information on each of the topics listed in *Article 21*, the Committee observes that the above statistics do not allow any appraisal of the effect of this decrease in inspections on compliance with the legislation covered by this Convention. It draws the Government's attention to Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81), which provides guidance on the manner in which such information could be presented. ***The Committee therefore asks the Government to provide the available statistics on the types of industrial and commercial workplaces and indications of the legal areas targeted by inspections and the results achieved during the period covered by the next report. It also asks the Government to indicate the measures taken to ensure the publication of an annual report, as provided for in Articles 20 and 21.***

Labour inspection activities targeting child labour. According to the Government's report, 3,000 children were removed from employment in the framework of the ILO-IPEC programme, instead of the target of 1,500. ***Noting that the project mostly targets child labour in agriculture, the Committee would be grateful if the Government would provide the ILO with the latest statistics on labour inspection activities pertaining to child labour, specifically in industrial and commercial workplaces, and the action taken as a result.***

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

The Committee draws the Government's attention to its observation under the Labour Inspection Convention, 1947 (No. 81), and asks it to provide the ILO with information relating to the points raised as far as they also concern the present Convention.

Article 7 of the Convention. Need to re-establish a central authority entrusted with control and supervisory powers over the labour inspection system in agriculture. With reference in particular to the indication by the Government that the budgeting and funding of labour inspection is decentralized in such manner that officers with motorcycles or motor vehicles take care of the fuel and maintenance, and the Ministry only receives reports on the activities performed, the Committee would like to emphasize the overall crucial importance for labour inspectors to have at their disposal appropriate transport facilities to be in a position to perform their duties in most undertakings liable to labour inspection.

Taking into consideration that agriculture is the major economic sector of the country, the Committee notes with **concern**, according to the description by the Government of the way that decentralization operates, that it is not the obligation of the Government to provide for appropriate conditions of work for labour inspectors in agriculture, as this is left to the discretion of each district authority. As emphasized in the observation under Convention No. 81, the allocation to the labour inspectorates of material means and financial resources should not be determined by decentralized labour administration authorities, but by taking into account nationwide labour inspection priorities and national economic and financial possibilities. Only if the central labour inspection authority is entrusted with the powers laid down in the Convention can the Government fulfil its commitments, including the obligation to ensure the publication of an annual inspection report containing the information required by *Article 27* in order to give the central authority the necessary basis for the identification of the priority actions to be undertaken. The Committee also draws the Government's attention to the specific recommendation made by the ILO technical assistance mission which visited the country in 2006 concerning the need to strengthen the labour inspection system in agricultural undertakings with a view to securing decent work in the most attractive sector in the country for foreign investments.

The Committee is bound to urge the Government, in the light of the above: to provide details of the progress achieved in the implementation of the measures announced in its report to follow up the recommendations of the ILO technical mission, in so far as they relate to labour inspection in agriculture; to provide copies of all relevant texts or documents and to adopt all measures that are essential to secure a labour inspection system in agriculture under the supervision and control of the central authority that is provided with human resources and material conditions of work adapted to the specific needs of the agricultural sector (Articles 8, 9, 14 and 15); and to keep the ILO informed of any developments in this regard. It also urges the Government to send a copy of any relevant legal texts and documents.

The Committee notes with **concern** that the statistics of inspection visits covering all sectors of the economy, published in the *Labour Statistics Yearbook* show a significant decrease (from 3,043 in 2006 to 1,088 in 2007). The Committee recalls in this respect the requirements for the publication and communication to the ILO of an annual report on labour inspection activities, as provided for in *Article 26*, containing information on each of the topics listed in *Article 27* relating to labour inspection in agricultural undertakings. The Committee observes that the above statistics do not allow any appraisal of the extent to which the decrease in inspection visits affects the application of the Convention. ***The Committee therefore asks the Government to provide any available statistics on the types of agricultural undertakings and legal areas targeted by the inspections and the results achieved during the period covered by the next report.***

Labour inspection activities targeting child labour. The Committee notes with **interest** the Government's indication that, instead of the target of 1,500, a total of 3,000 children were removed from employment in the framework of the ILO-IPEC programme. ***The Committee would be grateful if the Government would indicate the role played by labour inspectors in this regard.***

Mali

Labour Inspection Convention, 1947 (No. 81) (ratification: 1964)

Articles 20 and 21 of the Convention. ***Publication and communication of reports on the activities of the inspection services.*** The Committee notes with **interest** the annual reports of the National Labour Directorate for 2007 and 2008. These reports contain much of the information required by *Article 21*. The Committee can thus assess to some extent how far the Convention is applied and support the Government in its efforts for gradual improvement. It notes, however, that the National Directorate's annual reports cover not only inspection work, in accordance with *Article 21* of the Convention, but also other labour administration duties, done by other public servants than inspectors. One of the aims of *Articles 20 and 21* is to provide the central inspection authority with the kind of information it needs in order to determine, in the light of the social and economic objectives of labour inspection, the resources required to run the services efficiently, and in order to submit appropriate budgetary proposals for the attainment of these objectives. This aim can be achieved only if the data on the operation and results of labour inspection are compiled and consolidated separately from data on other functions of labour administration. ***Since, as the annual reports of the National Labour Directorate indicate, relevant data on labour inspection are available, the Committee asks the Government to take the necessary steps in the near future, with the requested ILO assistance, to have a separate annual report on the work of the inspection services published, in accordance with Articles 20 and 21, setting out clearly the information on labour inspection in industrial and commercial workplaces. Referring to its general observation of 1999 on the labour inspectorate's role in combating child labour, the Committee would be grateful if the Government would ensure that the report in question also includes information on child labour in relation to industrial and commercial workplaces.***

Article 5(a). ***Specific measures to encourage cooperation between the inspection services and the justice system.*** The Committee notes that trial magistrates, public prosecutors and labour inspection officials participated in the subregional seminar on cooperation between inspection services and judicial bodies held in Dakar from 8 to 10 May 2008 as part of a project to modernize labour administration and inspection (ADMITRA). It notes with **interest** that the Minister of Justice addressed a circular letter to general prosecutors asking them to urge regional prosecutors to provide for action to be taken on reports of infringements drawn up by labour inspectors and to maintain healthy cooperation with inspectors in the interests of better compliance with the labour legislation. ***The Committee requests the Government to provide in its***

next report information on the practical action taken on this circular. It requests the Government to ensure that relevant statistics are published in future annual reports on the work of the labour inspection services.

Articles 6, 7 and 10. Status, conditions of service and composition of the labour inspection staff. With reference to its previous comments, the Committee notes that, contrary to what the Government has been announcing for years, the draft decree on bonuses and indemnities for labour inspectors has still not been promulgated. It also notes that despite the Government's statement that 12 labour inspectors were to be recruited in 2008, the list of labour personnel for Mali includes no inspectors, and that the staff of the inspectorate are all, without exception, in the category "controllers" (31).

In an earlier report on the application of this Convention (2003), the Government indicated that it would be utopian to expect training in labour inspection, and that training for labour inspectors was limited to a grounding in labour law at the National School of Administration, an internship in the services and participation in a training course at the African Regional Labour Administration Centre (CRADAT). The Committee notes with *interest*, however, a training plan sent in 2008 intended for all labour services personnel and covering, inter alia, occupational risk prevention in the construction and public works sector (BTP); inspection methodology; penal action; and the preparation of various forms of inspection visit reports. Furthermore, the National Labour Directorate's annual report for 2008 indicates that a training workshop on ethics in inspection work, work contracts and hours of work was held for controllers from 14 to 25 April 2008 and that a training session for labour inspection trainers on occupational risks was also organized, under the guidance of two experts from GIP INTER.

The Committee would be grateful if the Government would provide information on any developments in the area of initial training for inspection staff, and on the number and distribution by category and level of qualification of the staff currently performing inspection duties as prescribed in Article 3(1) of the Convention, specifying the criteria used to differentiate between these categories. It would be grateful if the Government would also explain why the 12 inspectors who were supposed to be recruited in 2008 are not on the list of central and regional labour administration staff sent to the Office.

The Committee again asks the Government to adopt the measures that are essential to the improvement of the conditions of service of labour inspection staff (remuneration, career plan, merit bonuses, etc.) so as to attract to, and retain in the profession persons who are sufficiently qualified and motivated, and hopes that in its next report the Government will be in a position to provide information showing real progress in this area.

The Committee would be grateful if the Government would also continue to provide details of the training received by staff performing labour inspection duties and on the practical impact of such training.

Articles 11, 16 and 21(c). Additional functions entrusted to labour inspectors, transport facilities and frequency of inspection visits. According to the abovementioned annual report for 2008, the duties of the inspection services consist not only of dispute settlement and conciliation, but also supervision of the application of the labour legislation, "which must ordinarily take up most of their time". The report even stresses that "they must make visits to workplaces their main occupation". The Committee notes with *interest* from the same report that ten vehicles have been assigned to the National Labour Directorate and the regional directorates for labour, employment and vocational training. In the absence of any figures on the industrial and commercial workplaces subject to labour inspection, the statistics of inspections (306) and the workers they covered (16,613) in the course of 2008, are not sufficient for an assessment of the labour inspectorate's coverage rate in relation to the scope of its mandate. It nonetheless notes that in 2008, out of 1,482 individual complaints, 1,091 were settled through conciliation. The report also indicates that 11 collective labour disputes were recorded, 40 per cent of which were followed by work stoppages in which 2,935 workers took part, mostly in the mining (2,680 workers) and the hotel (208) sectors. The Committee would like to stress that conciliation is not among the duties of the labour inspectorate as defined in *Article 3(1)* of the Convention and that, furthermore, according to Paragraph 8 of Labour Inspection Recommendation, 1947 (No. 81), "the functions of labour inspectors should not include that of acting as conciliator or arbitrator in proceedings concerning labour disputes".

The Committee would be grateful if the Government would take measures to relieve labour inspection staff of conciliation duties so as to enable them to devote themselves more fully to supervising the legislation on working conditions and the protection of workers, making use, in particular, of the vehicles recently acquired by the labour administration. The Government is asked in its next report to provide information in this regard (number and distribution of vehicles made available to labour inspectors for travel to workplaces; measures taken to relieve labour inspectors from conciliation duties).

Furthermore, the Committee requests the Government to ensure that the labour inspectorate has access to reliable data such as the number, categories and geographical distribution of workplaces and establishments subject to inspection, and the number of workers employed in them, so that the central inspection authority can plan inspection activities (supervision, advice, information) that ensure protection of the most vulnerable categories, and to ensure that this information is included in the annual report required by Articles 20 and 21.

Articles 17 and 18. Follow-up action taken by the labour inspectorate in relation to breaches of the legislation covered by the Convention. The Committee notes with *interest* from the 2008 annual report the most frequent causes of the individual complaints submitted to the National Labour Directorate (claims for wages and accessories; notices of dismissal or resignation; overtime; paid leave; and dismissals), and the infringements noted in the course of inspections

(concerning pay registers, employer registers and safety registers; labour contracts; wages; minimum wages; safety and hygiene; hours of work; staff representation; weekly rest; social contributions; and occupational medicine). It nonetheless notes that no information is provided as to the causes of the collective labour disputes, which affect the mining and hotel sectors in particular. According to information available at the ILO, the collective action affecting the mining sector is founded on an enterprise's violation of the provisions of a collective agreement on working conditions and the protection of certain rights at work. The miners' claims reportedly concern, in particular, the rate of output demanded of them, the length of the working day and the non-payment of overtime and other bonuses included in a collective agreement. It would appear that the enterprise dismissed en masse workers who were covered by this collective agreement only to re-employ them under new inferior contractual conditions. ***The Committee requests the Government to send to the Office detailed information on the role of the labour inspectorate in collective labour disputes, particularly in the mining sector, where these conflicts have affected 2,680 workers and consequently their families. Please also indicate whether, in the enterprises concerned by these disputes, the inspection staff noted any infringements of the labour legislation covered by the Convention and whether they recommended remedial measures or the application of penalties. Pointing out that according to Article 27 of the Convention, legal provisions consist not only of laws and regulations but of arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by inspectors, the Committee requests the Government to supplement the required information with relevant statistics and documents.***

Articles 14 and 21. Notification of occupational accidents and cases of occupational diseases. The Committee notes that the annual reports for 2007 and 2008 contain information on reported industrial accidents and, in the case of the report for 2008, the inquiries conducted into these accidents. It observes, however, that no information at all is provided on cases of occupational disease, although information available at the ILO refers to pathologies linked to the handling and ingestion by workers of certain toxic substances in the course of extraction work in gold mines. ***The Committee would be grateful if the Government would indicate the preventive measures taken to reduce the number of accidents and mitigate their consequences in the mining and public works sectors, and to take measures to allow the diagnosis of cases of service-incurred diseases and the notification of such cases to the inspection services so that their most common causes can be identified and eliminated to the extent possible. The Committee requests the Government to keep the Office informed of the measures taken for these purposes.***

Mauritius

Labour Inspection Convention, 1947 (No. 81) (ratification: 1969)

Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspection services and the justice system. The Committee notes with ***interest***, with reference to its 2007 general observation, that under section 26 of the Occupational Safety and Health Act, 2005, the Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment, or any officer of the Ministry, may conduct a prosecution under the OSH Act before any court other than the Supreme Court. They are also empowered, by the Industrial Court Act, in respect of legal provisions relating to conditions of work, to institute both legal and criminal proceedings in the Industrial Court for, and in the name of a worker, through its prosecution unit. The Committee notes in particular with ***interest*** that the principal occupational safety and health officers are provided with prosecution courses by officers of the State Law Office and act as prosecutors for the Occupational Safety and Health Inspectorate. The Committee also notes with ***interest*** that the powers entrusted to labour inspectors to conduct prosecutions before the Industrial Court, as well as before other courts, give them the opportunity to facilitate the proceedings, particularly by suggesting the postponement of a decision on the case until the defect is remedied. ***The Committee would be grateful if the Government would indicate any further measures taken to encourage cooperation between the labour inspectorate and the justice system, such as the organization of meetings, seminars or training sessions aimed at mutual awareness raising for common objectives, the exchange of information, the execution of decisions, etc., and on the impact of such cooperation on observance of the legal provisions pertaining to conditions of work and the protection of workers while engaged in their work.***

Montenegro

Labour Inspection Convention, 1947 (No. 81) (ratification: 2006)

The Committee notes with ***interest*** the Government's first report and the Montenegrin labour inspection audit report which was carried out by the ILO in May–June 2009 in the context of a technical cooperation project on Enhancing Labour Inspection Effectiveness, funded by the Government of Norway.

The Committee also notes that the Union of Free Trade Unions of Montenegro (USSCG) formulated comments on the application of the Convention dated 2 September 2009, which were transmitted to the ILO by the Government on 9 September 2009.

The Committee would be grateful if the Government would provide the ILO with any comment it deems relevant on the points raised by the USSCG.

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

New Zealand

Labour Inspection Convention, 1947 (No. 81) (ratification: 1959)

The Committee notes the Government's report, as well as the comments of the New Zealand Council of Trade Unions (NZCTU), received on 28 August 2009, and the Government's reply received on 30 August 2009. It also notes the comments of Business New Zealand, received on 30 August 2009.

Articles 5(a) and 21(e) of the Convention. Effective cooperation between the labour inspection services and the justice system. Referring to its 2007 general observation, the Committee notes with **interest** that, according to the Labour Department's policy "Keeping Work Safe", the Department provides guidance to judges on sentencing according to its enforcement principles after a decision is taken to prosecute a case. **However, as the Government has not provided any further information on measures aimed at promoting effective cooperation between the labour inspection services and the justice system, the Committee invites the Government to refer to paragraph 158 of its General Survey of 2006 and to its general observation of 2007, to take appropriate measures and to provide relevant information to the ILO.**

Articles 10 and 16 of the Convention. Number of labour inspectors and inspections. The Committee notes the NZCTU's allegations concerning the reduction in the number of inspections of workplaces in general, and particularly of random inspections, in recent years. It refers to reports to the Australasian Workplace Relations Ministers' Council, which indicate a decrease in the number of active field inspectors in occupational health and safety from 1.2 inspectors per 10,000 employees in 2001 to 0.8 inspectors per 10,000 employees in 2004 and a decrease of inspections by health and safety inspectors from 26,405 in 1995 to less than 5,000 by 2005–06. Despite the slightly increased level of inspections since 2006, the NZCTU still considers them insufficient as an effective deterrent to violations of provisions respecting labour conditions. The Committee notes in this regard the Government's indication that the number of health and safety inspections has increased from 5,717 in 2005–06 to 8,196 visits in 2008–09 and that the number of safety and health inspectors has increased slightly from 166 in 2004 to 172 in 2008 (156 safety and health inspectors, 12 specialist positions and four professional leadership positions). The Committee also notes that the total number of labour inspectors responsible for the enforcement of general conditions of work is only 33, of whom five are assigned to the Recognized Seasonal Employer (RSE) scheme, which targets the horticulture/viticulture sector. **The Committee requests the Government to take appropriate measures in the near future to ensure that the number of labour inspectors (general labour inspectors and safety and health labour inspectors) is sufficient for the effective enforcement of laws and regulations respecting labour conditions in industrial and commercial workplaces liable to inspection.**

Articles 3, paragraphs 1 and 2, 5, paragraph 1, 6, 12, 15(c) and 17. Additional duties entrusted to labour inspectors. Mobilization of resources and incompatibility in the light of the objectives pursued. The Government's reply to a comment by the NZCTU indicates that labour inspectors and immigration officers carry out joint inspections. According to the Government, this is the case in the RSE programme, as well as in so-called crisis situations under the Decent Work Taskforce. The Government indicates that other areas for such cooperation are under consideration. The Committee refers in this regard to paragraphs 75 to 78 and 161 of its General Survey of 2006 on labour inspection in which where it recalls that the principal function of labour inspection is not to enforce immigration law and that, given that the human and other resources available to inspection services are not unlimited, the volume of inspection activities devoted to conditions of work is likely to be diminished in relation to those concerning the legal status of workers under immigration law. It also emphasized that neither Convention No. 81 nor the Labour Inspection (Agriculture) Convention, 1969 (No. 129), contain provisions suggesting that any worker be excluded from the protection afforded by labour inspection on account of their irregular employment status. The Committee further emphasized that, to be compatible with the objective of labour inspection, the function of verifying the legality of employment should have as its corollary the reinstatement of the statutory rights of all workers. It therefore advocated caution in any collaboration between the labour inspectorate and the immigration authorities, since such objective can only be met if workers are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers. To ensure effective and efficient collaboration by all workers with labour inspectors, foreign nationals residing illegally in the country, who are among those who presumably suffer most from abusive conditions of work, should not fear the double penalty of losing their jobs and being expelled. **The Committee therefore urges the Government to take measures to ensure that the powers of inspectors to enter workplaces liable to inspection are not misused for the implementation of joint operations to combat illegal immigration. It requests the Government to take measures to promote collaboration by the services responsible for combating illegal immigration with the labour inspection services, in such a manner that these services notify the labour inspectorate of cases of illegal immigrants apprehended outside a workplace who are engaged in a labour relationship covered by the Convention. Labour inspectors should accordingly be in a position to ensure their protection in accordance with the powers conferred upon them under the terms of the Convention and national labour legislation.**

Articles 17 and 21(e). Consistency of decision-making by labour inspectors. Development of a coherent prosecution policy and statistics on enforcement actions. The Committee notes with **interest** that the Labour Department has completed a range of work to improve the consistency and transparency of enforcement (of health and safety legislation in particular). In this regard, it notes that the prosecution panel which was set up as a means of learning about consistency in decision-making and enforcement processes has completed its evaluation and a Labour Department

enforcement policy, “Keeping Work Safe” (which can be accessed through the link: <http://www.dol.govt.nz/publications/research/keeping-work-safe/index.asp>), has been developed and was officially released in 2009 following public consultation in 2008. The policy explains the various enforcement tools available to the Department and provides specific guidance relating to enforcement. The policy is supported by the development of internal policy guidelines and various improvements in practice to assist staff in its application. *The Committee welcomes the fact that the government policy provides for the publishing of details of cases where this is considered appropriate, which might have a dissuasive effect, and it asks the Government to provide details of cases in which the labour inspectorate has made use of this possibility.*

Noting that the Labour Department adheres to the principle of the use of the minimum enforcement necessary, it requests the Government to ensure that, with a view to the credibility of the labour inspectorate and as requested by the NZCTU, labour inspectors do not fail to apply sanctions where appropriate with a view to ensuring that the system is dissuasive in practice.

Noting that, based on the evaluation of the prosecution panel, it is envisaged to develop new methods to improve the consistency of decision-making and investigation practice, the Committee asks the Government to keep the ILO informed in this regard and to provide copies of any relevant documents.

Articles 20 and 21. Publication and content of the annual inspection report. The Committee notes that the annual report of the Labour Department (available on the government web site at www.dol.govt.nz) does not contain all the statistics needed by the Committee to make an evaluation of the operation of the labour inspection system. *The Government is requested to ensure that an annual inspection report in accordance with the requirements of Article 21 is published and made available to the ILO.*

Norway

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1971)

The Committee notes that the Government’s report has not been received. It is therefore bound to repeat its previous observation on the following points:

Article 19 of the Convention. Notification of occupational accidents. The Committee notes that, to remedy the under-reporting of occupational accidents, the Labour Inspection Authority is taking measures to ensure both a higher percentage of reports and better quality of the data provided. Development of the system aims at better harmonization with statistics presented at the European level. *The Committee would be grateful if the Government would provide information on all progress made in this respect and also on the notification of cases of occupational disease in agricultural undertakings. The Committee again asks the Government to provide a copy of the document relating to the mandatory quality management system, including occupational health and safety aspects, established by the Norwegian Agriculture Cooperation and client companies of agricultural undertakings.*

Articles 26 and 27. Communication of an annual inspection report. *The Committee requests the Government to send the annual report of the Labour Inspection Authority, which was not attached to its report as announced.*

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

Pakistan

Labour Inspection Convention, 1947 (No. 81) (ratification: 1953)

The Committee notes that the Government’s report has not been received. While noting the brief information received by the ILO on 1 November 2008, it is bound to repeat its previous observation, which read as follows:

The Committee notes that the Government’s report, received on 8 November 2007, contains no information responding to its previous observation or to the matters raised by the Pakistan Workers Federation (PWF) in its communications of 25 November 2006 and 2 May 2007, forwarded by the Office to the Government on 1 March 2007 and 19 June 2007, respectively.

According to the abovementioned organization, the Government of the two largest provinces of the country, namely Sindh and Punjab, have no system for supervising application of the legislation. On the contrary, they apply a policy prohibiting the inspection of an industry for one year following its establishment, thus endangering the workers in the event of breach of the occupational safety and health prescriptions applying to high-risk activities, although the State has prime responsibility for applying these prescriptions. In its communication received in May 2007, the above organization states that although the Government is required by Articles 11, 12 and 38 of the Constitution to abolish child, bonded and forced labour and to ensure, in accordance with Convention No. 81, safe working conditions by establishing independent labour inspection machinery, in the two abovementioned provinces, inspectors may not enter a workplace without prior permission from the employer or prior service of notice on the employer. This has made the labour laws redundant and allowed the employers to exploit the workers. Citing a draft labour inspection policy developed by the Government to restore independent labour inspection machinery in order to enforce fundamental rights of workers in letter and in spirit, the abovementioned organization requests that they be enforced by statutory laws.

The Committee notes in this connection that in March 2006, the Ministry of Labour, Manpower and Overseas Pakistanis published a document on labour inspection policy setting out new approaches to inspection. It also notes that a tripartite

workshop organized jointly with the ILO on “Revitalizing Labour Inspections System in Punjab” was held on 22 and 23 August 2007 at Lahore. In the course of the workshop, various issues were addressed including the Government’s labour inspection policy and the implementation of the ILO/IPEC project. *The Committee hopes that the Government will not fail to provide the information it requested in its observation of 2005 and to inform the ILO of its position on each of the points raised by the Pakistan Workers Federation, so that the Committee can examine them together with the report. The Government is also asked to specify how it gives effect in law and in practice, including in the area of child labour, to the new approach to labour inspection, the main objectives of which are, according to the Government’s representative in his speech to the workshop:*

- *flexible, transparent, fair and innovative approaches to labour inspection;*
- *extension of inspection activities in both formal and informal sectors;*
- *involvement of private sector in provision of labour inspection services;*
- *compliance with labour policies and laws;*
- *increased harmony and cooperation between workers and managers.*

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

Paraguay

Labour Inspection Convention, 1947 (No. 81) (ratification: 1967)

The Committee notes the Government’s report, the partial replies to the comments made in 2006 by the Ibero-American Confederation of Labour Inspectors (CIIT), the documents attached and the press release by the Ministry of Justice and Labour dated 15 October 2009, received later. It notes with *interest* the adoption of a Decent Work Country Programme under a tripartite agreement concluded between the Ministry of Justice and Labour, employers’ and workers’ organizations and the ILO, and draws the Government’s attention to the following points.

Articles 3, paragraphs 1(a) and 2, and 18 of the Convention. Low level of supervision; impunity of those committing offences. In reply to the criticism made in 2006 by the CIIT concerning the low level of supervision of the legislation relating to conditions of work and the protection of workers, the Government points out that the new administration, in office since the election of a new President in August 2008, has been able to bring to light numerous cases of reported violations which have not resulted in legal proceedings and bring them to the attention of the public prosecutor. Referring to the statistics attached to its report, the Government emphasizes that the number of charges and penalties imposed (where cases have been the subject of court decisions) has since increased and the amounts of the fines imposed have also increased substantially. *The Committee notes this information with interest and requests the Government to provide, while awaiting the production of an annual report on inspection activities as provided for by Articles 20 and 21, statistical data on the violations reported by inspectors in the areas covered by the Convention, the legal action taken against employers at fault and the penalties imposed.*

Recalling that, in accordance with Article 18, the penalties should be not only adequate but also effectively enforced, the Committee requests the Government to provide information on the proportion of penalties imposed which are effectively enforced. It invites the Government to refer to Paragraph 9(c) of the Labour Inspection Recommendation, 1947 (No. 81), with regard to the manner in which statistics could usefully be presented.

Article 6. Precarious status and conditions of service of labour inspectors. In reply to the allegations made by the CIIT concerning the poor conditions of service and precarious status of labour inspectors, the Government acknowledges that the collective agreement concluded in 1998 by the Ministry of Justice and Labour and the Single Union of Officials and Employees of the Ministry of Justice and Labour (SUFEMJTPY) is not applied in practice. It indicates that 85 per cent of labour inspectors are permanent officials, while the remaining 15 per cent are new recruits or persons seconded from other ministerial departments or State institutions. With regard to the level of remuneration of inspectors, the Government provides information showing that it is very close to the legal minimum wage and is in no way commensurate with their level of training, the complexity of their duties or their length of service. The Government also indicates that an investigation conducted in respect of several inspectors following allegations of corruption resulted in six titular controllers/inspectors being charged and suspended until the end of the proceedings. It also resulted in more than half the number of titular inspectors being transferred to other posts within the same Ministry and the recruitment of nine new inspectors. These developments have resulted in a substantial reduction in the level of seniority of personnel. *The Committee expresses concern at the situation described by the Government and urges it to take the necessary measures to enhance the conditions of service of labour inspectors and controllers (remuneration, career prospects, consideration of their socio-economic role) to protect them from the corrupt practices to which they are currently exposed on account of their vulnerability. The Committee requests the Government to refer in this respect to paragraphs 201 to 220 of its 2006 General Survey on labour inspection and to provide information in its next report on the measures taken or envisaged in this regard including, in particular, information allowing a comparison of the conditions of service of labour inspectors with those applicable to other officials carrying out activities with a comparable level of responsibility, such as inspectors in the ministry responsible for finance and tax.*

Article 7, paragraph 3. Inadequacy of training for labour inspectors. The Committee notes three resolutions of the Deputy Minister of Labour and Social Security attached to the Government’s report concerning the various training courses which have been provided for officials, including labour inspectors, namely: a four-day training workshop in the

context of the HIV/AIDS in the workplace project; a three-day workshop on work and health within the labour inspectorate; a day on labour law and AIDS in the context of the HIV/AIDS project; and an advanced computer course. The Government also announces other courses organized specifically for occupational safety and health inspectors, without providing further information. The Government adds that a labour inspection manual has been produced in cooperation with workers' organizations (CPT, CNT and CUT) and employers' organizations (UIP and FEPRINCO). The manual deals with: the objectives and principles of labour inspection and supervision; the characteristics of the labour inspection service and its fields of competence; the different types of inspection and the various areas covered; the responsibilities and duties of inspectors; the labour inspection procedure; the preparation of inspection reports and follow-up inspections; and finally the penalties applicable under the labour legislation. The relevant ILO Conventions and Recommendations, as well the national legislative provisions, laws and decrees, governing the activity of labour inspection and supervision are attached to the manual. Referring to the allegations made by the CIIT concerning the inadequacy of training for labour inspectors, the Committee notes that the training sessions mentioned by the Government are very short, concern relatively limited matters compared to the numerous and complex duties they have to carry out and were only attended by a small number of inspectors. ***The Committee requests the Government to take measures to improve the initial training provided to labour inspectors to enable them to carry out the duties set out in Article 3(1) of the Convention, as effectively as possible and to offer them subsequent training in the course of employment to update their knowledge and skills to enable them to adapt to technological or other developments in the world of work. The Committee would be grateful if it would provide information on the measures taken or envisaged to that end and on any difficulties encountered. The Committee also requests the Government to provide a copy of the above labour inspection manual.***

Article 11. Inadequacy of material resources for inspectors. The Committee notes that the Government does not indicate any progress concerning the material resources made available to inspectors and does not reply to the concerns expressed by the CIIT in this regard. However, it notes that under the Decent Work Country Programme, labour inspection is one of the five priorities of labour policy. ***The Committee requests the Government to take measures, if necessary with external financial assistance, to improve the material and logistical resources available to labour inspectors with a view to the effective performance of their duties and to provide information in this respect.***

Article 12, paragraph 1(a), and Article 15(c). Restrictions on the right of inspectors to enter workplaces liable to inspection: obstacles to compliance with the obligation of confidentiality relating to complaints. The Committee notes, according to the documents attached to the report, that labour inspectors are not empowered, as provided for under *Article 12(1)(a)* of the Convention, to enter freely any workplace liable to inspection and that all inspections seem to be subject to an order by the Deputy Minister of Labour. In its 2006 General Survey mentioned above, the Committee considered that the requirement for a formal authorization issued by a higher authority or by another competent authority to carry out an inspection constitutes a restriction on the principle of the inspectors' free initiative with regard to the inspection of workplaces (paragraph 265). In accordance with *Article 12* of the Convention, inspectors should be empowered to carry out inspections subject only to their being provided with proper credentials. The inspector's professional identity card should suffice to meet the requirement of proper credentials referred to in the Convention. ***The Committee therefore requests the Government to take the necessary measures to bring this practice to an end and to ensure that inspectors are empowered, in both law and practice, to enter freely at any hour of the day or night any workplace liable to inspection, as provided for by paragraph 1(a) of Article 12, and to provide information on these measures and their results.***

Articles 15(c), 16, 19, 20 and 21. Planning of inspections: conditions required for compliance with the obligation to treat complaints as confidential and for the publication of an annual report on labour inspection activities, as a tool for the evaluation and improvement of the labour inspection system. The Committee notes with *interest* Decree No. 580 creating the Department for the Registration of Employment Relationships, regulating the Employee Employer Register and defining the penalties applicable in the case of violation, under which all employers are under the obligation to ensure registration in the Employment Register within 60 days from the start of an employment relationship (section 3). It also notes that the tripartite agreement on the Decent Work Country Programme provides for improved computerization of administrative registers and the granting of benefits to employers, particularly to SMEs, who enter into formal employment relationships. The Committee hopes that the Decent Work Country Programme will be launched quickly, as the existence of a workplace register is necessary to achieve the objectives of the Convention. Such registers are an essential tool for the application of *Article 16* relating to the frequency and quality of inspections. They facilitate the planning and carrying out of routine inspections in the workplaces covered by the Convention and ensure that labour inspectors comply with the obligation to treat complaints as confidential with a view to preventing the employer or his representative from detecting any link whatsoever between the inspection and the likelihood of a complaint, identifying the person responsible for the complaint and taking reprisals against that person (*Article 15(c)*). ***The Government is requested to take measures, particularly through the implementation of the Decent Work Country Programme, to give full effect in both law and practice to the above provisions and to provide information on the progress made in that regard, in particular on the results of the implementation of Decree No. 580 in relation to the above objectives of the Convention.***

Noting the continued failure to give effect to Articles 20 and 21 concerning the publication, transmission and content of the annual inspection report, as well as the lack of information on this matter, the Committee requests the Government to provide information in its next report on the implementation of the necessary measures to that end, particularly in response to the efforts to computerize data as envisaged in the Decent Work Country Programme and apply the provisions of the inspection manual relating to the obligation of inspectors to submit periodical reports to the higher authority (Article 19).

Articles 5(a) and 21(e). Effective cooperation between the labour inspection services and the judicial bodies. According to the press release of the Ministry of Justice and Labour, dated 15 October 2009, the creation is envisaged, in the context of the Decent Work Country Programme, of units specializing in labour law within the public prosecutors' offices in the towns of Pozo Colorado, Filadelfia and Villa Hayes, with a view to improving conditions of work in the Chaco area. Appropriate training should be provided to these public prosecutors to enable them to support the measures taken by labour inspectors in enforcing the law. ***The Committee takes due note of this information and requests the Government to keep the ILO informed of the follow-up to this project and to indicate any other measures taken to promote effective cooperation between the labour inspection services and the judicial bodies.***

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

Poland

Labour Inspection Convention, 1947 (No. 81) (ratification: 1995)

The Committee notes the Government's report received on 8 September 2009 as well as the Executive Summaries of the Chief Labour Inspector's Annual Reports for 2006, 2007 and 2008 and the Programme of Activities of the National Labour Inspectorate (NLI) for 2007. It also notes the Act of 13 April 2007 on the National Labour Inspectorate.

Article 3, paragraph 1(a) and (b), Articles 5 and 16 of the Convention. National actions and international cooperation in the field of labour inspection. The Committee notes the detailed information in the Programme of Activities of the NLI for 2007 concerning: (a) long-term actions for 2007–09 (definition of priority actions); (b) inspection-supervisory actions in the annual programme for 2007 (targeted inspection areas, assessment of legal acts); (c) training and the building of the IT system of NLI; and (d) cooperation with other bodies and institutions dealing with labour protection issues.

The Committee notes with ***interest*** in the annual reports the information on various preventive actions undertaken in 2008 cooperation with the social partners and other authorities and organizations, and particularly by campaigns on asbestos, the manual handling of loads, occupational risk assessment, on safe building and young workers starting their employment; as well as programmes on the observance of labour law in small companies and stress in the workplace and competitions aimed at promoting work safety, such as the all-Poland competition "Employer-organizer of safe work". The Committee notes in particular with ***interest*** the actions and preventive measures addressed at young people in 2008, such as:

- the actions in summer and winter camps for children in collaboration with Polish scout associations;
- the informal educational programme "Safety Culture", implemented in post-gymnasium schools;
- additional training sessions for a total of 6,528 pupils and students; and
- numerous events (fairs, career days) during which the NLI distributed specific publications for young people and provided legal advice to young people starting their employment.

The Committee further notes with ***interest*** that in 2008 a total of 16,500 persons attended training events organized by the NLI. Relevant information is provided via the mass media (newspapers, radio, TV), as well as through leaflets, brochures, posters and periodical publications prepared by the NLI, on the Government's web site (www.pip.gov.pl), and through the large amount of advice provided upon request by the labour inspectorate. The Committee notes with ***interest*** that the NLI maintains close cooperation with various international institutions, including in the area of the training of labour inspectors and the exchange of information, such as the Senior Labour Inspectors Committee (SLIC), the European Agency for Safety and Health at Work in Bilbao, the International Social Security Association (ISSA), the International Network of Training Institutes for Labour Relations (RIIFT) and other partners at the regional level. It further notes with ***interest*** the priority given by the labour inspectorate to activities aimed at protecting persons working in sectors and companies with the highest incidence of occupational hazards, such as in the construction sector.

Articles 8 and 10. Number of labour inspectors. The Committee notes with ***interest*** that the labour inspection staff at the NLI increased from 2,423 employees in 2006 to 2,655 in 2007. ***The Committee would be grateful if the Government would indicate the proportion of women inspectors and specify whether they are entrusted with duties specifically targeting women workers in industrial and commercial workplaces.***

Article 5(a) of the Convention. Specific cooperation between the labour inspection services and the judicial system and other public services or institutions. The Committee notes the information in the Government's report, already contained in its 2007 report that, since 1 July 2007, competent labour inspectors act as public prosecutors in certain cases of minor offences relating to general labour conditions and the legality of employment by lodging complaints with the

competent courts (article 37 of the Act on the National Labour Inspectorate). It further notes that in 2008, out of the 1,114 notifications filed with the Office of the Public Prosecutor, 101 indictments were referred to the courts, with 11 persons being fined, two sentenced to suspended prison sentences and one being acquitted. Meetings to exchange information on current proceedings and to explain problems arising in practice are organized between the regional labour inspectorates and the Office of the Public Prosecutor. The Committee especially welcomes the meetings and instructions pertaining to the methodology for prosecuting crimes and securing evidence which are aimed at ensuring that prosecutions are brought to a conclusion. ***The Committee would be grateful if the Government would keep the ILO informed of any further cooperation activities and their impact, including extracts from relevant judicial decisions.***

Article 12, paragraph 1. Right of inspectors to enter workplaces freely. While noting the information provided by the Government on the content of the Act of 19 December 2008 amending the Act on freedom of economic activity and certain other Acts, in the absence of the text of the new Act, the Committee is not in a position to assess whether its provisions give effect to *Article 12(1)(a)* of the Convention. Some of the explanations provided by the Government on the new Act appear to relate to inspection on issues other than the labour-related matters covered by the Convention. The Committee emphasizes once again that labour inspectors with proper credentials should be entitled to carry out supervisory functions without the need for further authorization. Moreover, it is important that there should be no prior notification of inspection visits to the employer or her or his representative, unless the labour inspector deems such notification necessary for the effectiveness of the control to be performed. ***The Committee asks the Government to provide the ILO with a copy of the Act of 19 December 2008. It also asks it once again to take the necessary steps to ensure that the legislation fully complies with this important provision of the Convention. It requests the Government to keep the ILO informed of any progress achieved in this regard and to communicate a copy of any relevant legal provisions.***

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

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1995)

Article 6, paragraph 1(a) and (b), of the Convention and Paragraph 14 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133). Preventive activities by the labour inspectorate in agriculture. The Committee notes with ***interest*** that the labour inspectorate has again taken various measures during the reporting period aimed at reducing the incidence of industrial accidents and cases of occupational disease (according to the information on the Government's web site, the incidence of accidents is two-and-a-half times higher in agriculture than in other sectors of the economy). These measures include an increase in the number of inspection visits to agricultural undertakings of 48 per cent compared to 2007 (including controls of a large number of agricultural machines and technical facilities, and demonstrations of the safe operation of tractors, machines, saws and chainsaws), as well as inspections in timber and other forestry management activities. The Committee also notes with ***interest*** the annual preventive and promotional campaign to improve safety and health conditions at work in individual farms. The National Labour Inspectorate (NLI) has also organized conferences, meetings, training and seminars for agricultural and forestry entrepreneurs, workers and occupational health and safety staff on relevant legal provisions, the hazards inherent to asbestos, transport activities, child labour in agricultural undertakings, and on musculoskeletal disorders and occupational diseases. The Committee notes with ***satisfaction*** the organization of other kinds of preventive activities, such as: (1) field shows and training courses in safe cutting methods in the event of specific threats (trees brought down by storms or snowfalls) in some forest district offices; (2) education in rural areas targeting children (including talks to over 32,000 children, with the help of schoolteachers) as well as adults, on the most frequent work-related hazards, accompanied by around 500 competitions and other interactive activities (Olympic, knowledge and artistic contests) for almost 53,000 rural children and young people, as well as actions in summer and winter camps for children, as indicated under Convention No. 81; (3) the organization of inspection stands and consultation points on technical safety at work during mass rural events, such as machine shows and exhibitions; (4) the publication and distribution of brochures, guidebooks and leaflets; and (5) the provision of information to the public through newspapers, radio and television. ***The Committee would be grateful if the Government would continue to provide information on any further labour inspection actions and initiatives for the same purpose in agriculture, including forestry.***

Article 16, paragraph 1. Right of inspectors to enter agricultural undertakings freely. The Committee notes the information provided by the Government that, according to an accepted interpretation of the Act on the National Labour Inspectorate of 13 April 2007, inspection authorities in agricultural and forestry undertakings do not require authorizations, even though section 24 of the Act envisages such authorization. ***The Committee would like to refer the Government to its related comment under Article 12(1) of Convention No. 81 and asks the Government to ensure that the legislation is brought into line with the relevant provisions of both Conventions with regard to the free access of labour inspectors to workplaces liable to inspection with a view to avoiding differences in inspection procedures in practice.***

Romania

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee notes the Government's report received in July 2009, the attached legislation, and also the comments from the National Trade Union Confederation (CNS "Cartel ALFA"), received on 29 June 2009 and sent to the Government on 24 July 2009. The Committee also notes the Government's reply to those comments and its indication that it will provide further information in due course.

Article 5 of the Convention. Inter-institutional cooperation and collaboration with employers and workers. The Committee notes the Government's reference to the cooperation protocols concluded during the reporting period between the labour inspectorate or territorial labour inspection services and other public or private bodies or institutions, and with employers' and workers' organizations. ***The Committee requests the Government to supply information on the forms and modes of cooperation concerned, especially with regard to the protocols concluded with the Ministry of Justice and the National Trade Registry, the gendarmerie, the Ministry of Internal Affairs and Administrative Reforms and the Immigration Office, or to provide copies of these protocols.***

International cooperation in the field of labour inspection. ***The Committee requests the Government to supply details (content, impact and period of validity) of the cooperation agreements concluded with the inspection authorities of Hungary, Portugal and Spain.***

Articles 7, 8, 10 and 11. Reinforcement of labour inspection staff and improvement of their conditions of work. The Committee notes the detailed information concerning the geographical distribution of inspection staff by sex, grade and speciality, and also the reinforcement of their numbers and qualifications during the 2007–08 period. It also notes the information concerning improvements in their conditions of work through the provision to labour inspectors of new offices, equipment and vehicles for the effective performance of their duties. The Committee further notes that between 2002 and 2008, men and women inspectors received training in different forms and in different areas (occupational safety and health, industrial relations, legislation, public relations, public service management and communication, etc.). It notes with particular *interest* the reference to a "train the trainers" programme for 257 inspectors in 2007 and 225 in 2008 as part of the PHARE project (for strengthening labour inspection capacities) aimed at monitoring the application of the new legislation transposing the *acquis communautaires* in the area of international relations, in partnership with the labour and social security inspectorate of Spain. ***The Committee would be grateful if the Government would supply information on the impact of these training activities on the operation of the labour inspectorate in practice and on its results.***

Article 6. Status and conditions of service of labour inspectors. Further to its previous comments, the Committee notes that, according to the Government, the draft regulations for labour inspectors, the preparation of which was announced by the Government at the June 2005 session of the Conference Committee on the Application of Standards, and also in the Government's report for 2005, have still not been adopted. The Government does not provide an explanation with regard to this postponement. However, according to CNS "Cartel ALFA", under sections 11 and 12 of Emergency Ordinance No. 37/2009, adopted on 22 April 2009, the employment relationship of civil servants and other contractual public employees has been suspended with immediate effect. Among the various civil servants employed in a variety of state institutions, labour inspectors are affected by this Ordinance. A number of these inspectors, including in the higher category, who enjoy professional recognition in the field and possess the requisite level of competence and seniority, have reportedly already been transferred and replaced on the basis of political criteria and without any selection based on an objective appraisal of the requisite competencies, by persons belonging to the political class in power. The trade union considers that this Ordinance breaches the provisions of the national Constitution (article 20(2) of which establishes the supremacy of international treaties in the hierarchy of national standards); of Act No. 188/1999 issuing the civil service regulations, as amended, published in *Official Journal* No. 365 of 29 May 2007 (the trade union claims that section 19 affirms the status of labour inspectors as civil servants and their independence in relation to any change of government and any undue external influence). It is also in breach of the present Convention, *Article 6* of which provides that the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences. In a letter received on 22 October 2009 relating to the union's comments, the Government indicates that the implementation of the provisions of Emergency Ordinance No. 37/2009 has not been detrimental to the stability or independence of public servants occupying managerial posts. In this regard, it points out that, during the notice period, in accordance with section 99 of Act No. 188/1999, the Ministry of Labour, Family Affairs and Social Protection offered to officials in managerial positions whose positions had been closed other vacant posts in the civil service, taking into account their seniority and professional qualifications. Appointments thus made were the result of free consent given in writing by the officials to the options available. The Government states that, firstly, these transfers from managerial to executive posts do not signify any denial of the professionalism of the persons concerned and, secondly, many of them were appointed to managerial posts created pursuant to the provisions of Emergency Ordinance No. 37/2009. The Government also provides details of the conditions required for access to posts under management contracts concluded with the principal credit controller for a period not exceeding four years. With regard to labour inspectors, the Government states that they were recruited in accordance with Act No. 188/1999, as amended, issuing the civil service regulations, and Government Decision No. 611/2008 concerning the approval of standards relating to career development and structures for civil servants.

However, it explains that the Emergency Ordinance concerned was adopted with a view to reducing public expenditure and tackling budget deficit problems, including through the definition of performance criteria for the organization and coordination of certain public authorities and institutions. The Government affirms that, in applying the provisions of the Emergency Ordinance, it was not a question of diminishing the professional status of the labour inspectorate, but rather to improve the management and efficiency of the work of the public institutions while reducing budgetary expenditure, all of this being in the public interest. The Government states that further information on any new developments will be sent in due course. The Committee wishes to emphasize the vital importance of providing labour inspectors, in accordance with *Article 6* of the Convention, with stability of employment, and also the need to ensure that, in accordance with *Article 7*, candidates for the labour inspection service are recruited on the basis of their qualifications for the performance of their duties and that they are duly trained to this end. ***The Committee requests the Government to provide clarifications on any legislative measures affecting the status of labour inspectors, together with copies of any relevant text, and also on the practical consequences of these measures for the careers of labour inspectors who participated in training between 2002 and 2009 and who were in active service at the time that Emergency Ordinance No. 37/2009 was promulgated. It requests the Government to take all the necessary steps to ensure that any new legal provision or practical measure implemented with regard to the status and conditions of service of labour inspectors does not obstruct the full application of Articles 6 and 7 of the Convention, and to keep the ILO duly informed in this respect.***

Articles 16, 17 and 18. Priorities for inspection visits and action taken further to reported infringements. The Committee notes with *interest* that, according to the information supplied by the Government, inspections are carried out on the basis of: an annual or monthly programme approved by the chief labour inspector and determined according to criteria such as the number of workers and the level of risk of workplaces; statistical trends relating to industrial accidents and cases of occupational disease; and the number of labour inspectors and material resources available. Further to its previous comments, the Committee also notes once again a significant increase in the number of penalties imposed on persons responsible for infringements, and observes in particular that this increase is more substantial for infringements of the legal provisions relating to industrial relations than for those in the area of occupational safety and health, whereas the overall number of corresponding penalties does not display any great difference. The number of stoppages of work in enterprises and stoppages in the operation of certain installations ordered by the labour inspectorate also increased considerably between 2007 and 2008. ***With reference to its previous comments asking the Government to provide further information with regard to the increase in the number of penalties and also to indicate whether this was due to new enforcement methods, better training of inspectors or a proliferation of infringements, the Committee notes that the Government has not provided any clarification and therefore requests it to do so and also to explain the reason for the considerable increase in stoppages of work or plant operations ordered by labour inspectors.***

The Committee also requests the Government to supply information on court decisions issued during the next reporting period further to prosecutions instituted on the initiative of the labour inspectorate, stating the areas of legislation to which they refer and the branches of activity concerned.

Articles 20 and 21. Communication of the annual labour inspection report. The Committee notes that the annual labour inspection report for 2007 was not attached to the Government's report, contrary to what the Government indicated. ***The Committee requests the Government to send this report to the ILO and ensure that future annual reports are sent within the prescribed deadlines.***

Russian Federation

Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)

The Committee notes the Government's reports received in October 2008 and September 2009 containing a partial reply to its previous comments. In order to assess more accurately the effect given to the Convention in law and in practice, it requests the Government to supplement the information provided on the following points.

Legislation. ***The Committee once again requests the Government to provide a copy of the Ministry of Labour and Social Development Orders Nos 1035 of 9 September 1999, 73 of 24 October 2002, 909-K and 378-RK of 29 October 1999, 143 of 9 July 2002 and Act No. 53-FZ of 20 May 2002 and to provide in its report information on the substance of the provisions of each of these texts. Furthermore, the Committee asks the Government to provide a copy of the Statute of the Federal Labour and Employment Service, approved by the Ordinance of the Government of the Russian Federation of 30 June 2004, No. 324, which has still not been received by the ILO.***

The Committee would also be grateful if the Government would supply a copy of any document of a legislative, regulatory or administrative nature relating to the matters covered by the Convention.

Articles 8 and 10 of the Convention. Composition and geographical distribution of the labour inspection staff. Referring to its previous direct request, the Committee once again asks the Government to indicate the proportion of women in the labour inspection staff at all levels of responsibility and to indicate, where appropriate, the special tasks assigned to men and women inspectors, respectively, as well as the geographical distribution of labour inspectors, the number of workplaces liable to inspection and the number of persons employed therein.

Articles 16 and 19. Coverage, frequency and thoroughness of inspections. In the absence of any report from the Federal Labour Inspectorate, the Government is asked to provide any available statistics and other data concerning the inspection of workplaces throughout the country (number, categories of private and publicly managed enterprises, activities exercised and the number of workers occupied therein, as well as types and frequency of inspections).

The Committee once again requests the Government to provide copies of inspection reports for publicly managed organizations and private establishments.

Articles 20 and 21. Publication and communication to the ILO of the annual report on labour inspection activities. The Committee notes that the report of the Federal Labour Inspectorate for 2007, indicated as being attached to the Government's report for 2008, has not been received by the ILO. The Committee would be grateful if the Government would provide the above report, together with any subsequent annual reports, and if it would inform the ILO of the manner in which such reports are published.

Labour inspection activities relating to child labour. With reference to its 2007 observation under the Minimum Age Convention, 1973 (No. 138), the Committee would be grateful if the Government would take appropriate measures to ensure that the annual report of the Federal Labour Inspectorate contains statistics on activities to enforce the legal provisions pertaining to child labour in industrial and commercial workplaces. It also requests the Government to indicate the measures undertaken to this effect, any difficulties encountered and the progress achieved.

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

Saint Vincent and the Grenadines

Labour Inspection Convention, 1947 (No. 81) (ratification: 1998)

Articles 20 and 21 of the Convention. Reporting obligations on the activities of the labour inspection services. The Committee notes with interest the indication in reply to its request of 2008 that the Department of Labour is in the process of establishing a labour market information system with technical assistance provided by the ILO Subregional Office in Port-of-Spain. According to the Government, as of 31 July 2009, all preliminary and follow-up consultations with key stakeholders, including employers' and workers' representatives, had already been concluded and all existing forms had been revised and new forms and electronic databases created. Moreover, the training of staff in the use and operation of the new system was due to have been completed by the end of September 2009 and the system is expected to be functional by 31 July 2010. The Government is of the view that, once operational, the system will significantly assist the Department of Labour in generating in an efficient and timely manner a wide range of labour market statistics including those on labour inspection. The Committee requests the Government to ensure that the new system will allow the labour inspection central authority to publish and communicate to the ILO in the very near future and on an annual basis a report on the work of the services placed under its supervision and control, and that the report contains the information indicated in points (a)–(g) of Article 21. The Committee would be grateful if the Government would indicate any progress made and any difficulties encountered.

The Committee hopes that the Government will make use of the guidance provided in Paragraph 9 of the Labour Inspection Recommendation, 1947 (No. 81) to this end.

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

Sao Tome and Principe

Labour Inspection Convention, 1947 (No. 81) (ratification: 1982)

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

Article 14 of the Convention. Information on industrial accidents and cases of occupational disease. The Committee notes the Government's commitment, in response to its previous comments, to making every possible effort to ensure that the labour inspectorate is informed of industrial accidents and occupational diseases. It asks the Government to provide in its next report information on the procedures introduced and the specific measures taken to this effect.

Articles 19, 20 and 21. Inspection activity reports. Further to its previous comments, the Committee notes that the Government has not provided any information on measures taken to ensure the publication and communication to the ILO of an annual report on the work of the labour inspectorate. It therefore asks the Government to take, in the very near future and with ILO technical assistance if necessary, measures to ensure that the central inspection authority fulfils its obligations under Articles 20 and 21, on the basis of regular inspection reports submitted to it, in accordance with Article 19, by the services under its control. The Committee asks the Government to keep the Office informed of any progress made in this respect and to provide in its next report any available information on inspection visits carried out during the period covered and on the results of these visits (including, in particular, details of the number and categories of inspected establishments, the contraventions reported, the measures prescribed, and the penalties imposed and effectively enforced).

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

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

Sweden

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1970)

The Committee notes the Government's reports received on 1 November 2007 and 2 August 2009. It also notes with **interest** the three brochures annexed to the 2007 report on: safety instructions for clearing forests damaged by storms ("Minimum requirements for salvage harvesting in wind-thrown forests"); the use of chemical substances on unsalvaged forest and existing stands; and the use of chemical substances for the planting and raising of new trees, all published by the Swedish Work Environment Authority (WEA).

Articles 6, paragraph 1(b), 5, paragraph 1(a), and 12 of the Convention. Inter-institutional cooperation for occupational safety and health in agriculture, including for independent farmers. The Committee notes with **satisfaction** the various measures taken by the WEA, in constant coordination with other national authorities and the social partners to prevent work injuries and accidents. According to the Government, information is distributed through brochures (such as the brochure "ADI 629-Working safely with animals"), a specific site on agriculture on the WEA's web page (<http://www.av.se/teman/jordochskog/>), as well as through media activities and the participation of the WEA in trade union meetings. The WEA also provides individual advice on matters such as simple systems of risk assessment which can easily be applied by individual farmers, for example in enterprises with few or no employees, as well as supplying contact information to the respective enterprises on social partners with expertise on specific issues. In addition, the Government refers to the launching of a joint supervisory initiative in 2009 aimed at changing farmers' attitudes to hazards in their work environment. The initiative will continue for three years and will focus on systematic work environment management, machinery, the hazards of firewood production, personal protective equipment and work with animals. It will include undertakings both with and without employees, as most fatal accidents occur in undertakings that do not have employees.

Articles 6, paragraph 1(a) and (b), and 9, paragraph 3. Specific preventive measures taken after the storms "Gudrun" (2005) and "Per" (2007), including special training for labour inspectors. The Committee notes with **interest** the short- and long-term measures carried out by the WEA in reaction to the consequences of the above storms. In the short term, the districts worst affected by the storm were allowed to coordinate functions in the area of supervision, including calling in work environment inspectors from all over Sweden to join the work. In addition, a specialist conference for 24 inspectors was organized to cope with the special situation in order to improve their skills for the surveillance of the areas hit by the storm. With regard to long-term measures, the WEA supplied information through the above brochures on special work risks following the storm, appropriate personal protective equipment and suitable working methods to cope with risks arising in chainsaw work for emergency salvage harvesting, and the spreading of strong chemical pesticides to prevent insect attacks in unsalvaged forests and existing stands, as well as pesticides to facilitate planting in cleared areas. In addition, labour suppliers, plant nurseries and major forestry enterprises have been targeted with supervisory measures.

The Committee would be grateful if the Government would provide details of the other activities to which it refers in its report, namely: (1) media activities; (2) the system of risk assessment; and (3) the joint supervisory initiative in 2009 aimed at changing farmers' attitudes to hazards in their work environment.

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

Switzerland

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

Articles 20 and 21 of the Convention. Publication and content of the annual report on labour inspection activities. The Committee notes with **satisfaction** the publication of the annual report of the labour inspectorate for the period 2001–08 on the web site of the State Secretariat for Economic Affairs (SECO) (see www.seco.admin.ch/dokumentation/publikation/00008/00022/01737/index-htm1?lang=fr) and the annual report on occupational safety and health for the same period on the web site of the Federal Coordination Commission of Occupational Safety (CFST) (see www.ekas.admin.ch/index-fr.php?frameset=14). It notes in particular the conformity with the provisions of *Article 20* of the Convention with regard to the date of publication of the report and the exhaustive nature of the information included in these reports on the matters referred to in *Article 21*. Furthermore, the maintenance on the above web sites of the reports relating to several years is useful in that it enables an analysis of developments in activities and the results achieved in relation to the measures implemented.

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

Syrian Arab Republic

Labour Inspection Convention, 1947 (No. 81) (ratification: 1960)

Content of the information sent in response to the Committee's comments. Legal aspects and practical scope. While noting the information on the process under way to adopt a new Labour Code concerning health supervision in enterprises, and certain information on the policy to prevent discrimination, prohibit human trafficking and protect domestic workers, the Committee notes that the Government has not replied to its previous comments, particularly those on the effect given in law and in practice to the provisions of the Convention.

It further notes that despite the Government's stated intention, no annual inspection report has reached the Office. It points out that this is an obligation deriving not only from *Articles 20 and 21 of the Convention*, but also from section 41 of the regulations governing the bodies competent for health and safety. Furthermore, as the Government observes, labour inspection is high on the list of priorities in the Decent Work Country Programme agreed with the social partners in 2008 and publication of an inspection report has been recognized as essential, as the Committee has pointed out consistently since 2001.

The Committee is therefore bound to ask the Government in its next report to provide more than merely general or theoretical information on the manner in which effect is given to the Convention. It reiterates its previous request for the Government to provide copies of all the implementing texts adopted in the areas covered by the Convention, particularly regarding the establishment and operation in practice of occupational safety and health committees, and to send information to the Office, including relevant figures, on the impact of these measures in terms of the inspections carried out and trends in the occupational accidents and cases of occupational disease recorded.

Noting that the Government's report does not reply to the Committee's request for specific information on the role attributed to labour inspectors in the implementation of projects for international cooperation in the area of labour migration, and says nothing of the role they are called on to play in the context of the widespread shift towards enterprise privatization, the Committee once again asks the Government to provide this information together with statistics and any other relevant documentation.

The Committee also once again asks the Government to ensure, in accordance with Article 20, that an annual report on the work of the inspectorate containing the information requested under Article 21(a)–(g) is actually published by the central inspection authority and that a copy is sent to the ILO as soon as it is published. Compliance with this obligation is doubly essential: first, for the Committee and the other ILO supervisory bodies in performing their functions with respect to this Convention; and, secondly, for the need for the central labour inspection authority, other competent authorities and the social partners to be informed about the work of the labour inspectorate in law and in practice, with a view to contributing to its improvement.

Lastly, the Committee would be grateful if the Government would keep the ILO informed of any developments in the functioning of the labour inspectorate in the context of implementation of the Decent Work Country Programme.

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1972)

Principal reasons for the lack of a satisfactory inspection system in agriculture and the place of labour inspection in the objectives of the Decent Work Programme (2008–10). The Committee notes that, despite the adoption of relevant texts for the development of labour inspection in agriculture, numerous obstacles persist, namely:

- the insufficient number of inspectors;
- the severe lack of specific training activities designed to update the skills of labour inspectors, particularly with regard to occupational safety and health;
- the derisory financial resources in relation to the size of the agricultural sector;
- the lack of compensation for inspectors for the conditions of work in a particularly difficult sector;
- the lack of job security for inspectors;
- the lack of experience of inspectors, the very limited awareness of agricultural workers and employers and the lack of knowledge concerning the labour legislation.

The Committee notes that, according to the Government, the report on the application of the Convention has been forwarded to several bodies and institutions, such as the Ministry of Foreign Affairs, Ministry of Industry, the Confederation of Trade Unions and the Damascus Chamber of Industry. It notes, however, that the report was not sent to the Ministry of Finance, the Ministry responsible for the Public Service and Domestic Affairs, the Ministry of Education or the Ministry of Justice, even though the matters raised in the report concern issues falling within the remit of each of these bodies and the bodies concerned could contribute to strengthening the labour inspectorate. The matters raised relate to the allocation of the financial resources necessary for its operation, the updating of the training of labour inspectors as public servants, the phenomenon of child labour and the support of the police and judicial bodies in labour inspection activities.

The Committee requests the Government to ensure that labour inspection, which has been made a national priority under the Decent Work Programme established for the country, is gradually allocated the necessary financial resources to strengthen the number and qualifications of inspectors assigned to the agricultural sector. It draws the Government's attention in particular to the need to ensure that the conditions of service of inspectors are such that they are assured of stability of employment, especially through appropriate career prospects, and requests it to provide information in its next report on any progress made to that end in both law and practice and on any difficulties encountered.

The Committee also requests the Government to indicate the measures adopted in the context of the implementation of the Decent Work Programme with regard to the establishment of a labour inspection system operating effectively in agriculture, including appropriate cooperation mechanisms involving the other bodies and institutions concerned, and the social partners.

Articles 26 and 27 of the Convention. Annual report on inspection activities. Noting the Government's assessment that 24 labour inspectors is a derisory number in relation to the size of the agricultural sector, the Committee notes the lack of any annual report which would allow an accurate assessment of the nature and volume of activities carried out by these inspectors. Furthermore, the Government's brief indication of a single judicial body in relation to the provisions of the Convention, without specifying its purpose, is not sufficient to allow an assessment of the impact of the legal provisions allocating educational duties to labour inspectors to encourage employers to comply with the legislation on conditions of work and duties relating to the imposition of penalties in the case of resistance on the part of employers. *The Committee therefore urges the Government to provide a copy of the annual report on labour inspection in agricultural undertakings, which has not been sent to the Office, as well as copies of the subsequent annual reports prepared during the period covered by the Government's next report.*

Hoping that information on the content of the decisions handed down by the courts following the proceedings initiated by the labour inspectorate in agriculture will be included in the annual report, the Committee nonetheless requests the Government to provide the information available in this regard in its next report.

United Republic of Tanzania

Tanganyika

Labour Inspection Convention, 1947 (No. 81) (ratification: 1962)

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

1. *Articles 1 and 3 of the Convention. Labour inspection system.* The Committee notes the adoption of the 2003 Occupational Health and Safety Act, which establishes, among other things, the powers, rights and obligations of the inspectors responsible for enforcing the Act (sections 5 to 11), and the adoption of the 2004 Labour Institutions Act, Part VI (sections 43 to 49) of which is devoted to labour administration and the labour inspectorate which is responsible for enforcing labour legislation.

2. *Articles 10, 20 and 21. Staff of labour inspection services and annual report on their work.* The Committee notes that the number of labour officers rose from 74 in 2006 to 87 in 2007, that they cover the whole country and, according to the Government, act as labour inspectors. It further notes that the 2004 Act provides that "There shall be as many labour officers as are necessary to administer and enforce the labour laws" (section 43(4)). The Committee points out that for this purpose there should be a regular update of the total number of workplaces liable to inspection by these officials and by inspectors responsible for occupational health and safety, and of the number of workers employed in them. The Committee further points out that the information to be included in the annual report on the work of the inspection services, pursuant to *Article 21* of the Convention, should make it possible to gain a general understanding of how the system works, to analyse obstacles and constraints, to identify priority needs and to determine the budgetary allocations needed to meet them. *The Committee again expresses the hope that the Government will be in a position in the near future to publish such a report, with technical assistance from the ILO if necessary, and to send a copy of it.*

3. *Article 12, paragraph 1(a). Right of inspectors to enter workplaces freely. Timing of inspection visits.* The 2004 Labour Institutions Act provides that a labour officer may, with the prescribed certificate of authorization, "at any reasonable time" enter any premises (section 45(1)(a)). The Committee refers to its 2006 General Survey on labour inspection (paragraphs 268–271), and points out that the purpose of the abovementioned provisions of the Convention, which provide that inspectors "shall be empowered to enter freely and without previous notice at any hour of the day or night any workplace liable to inspection" is to allow inspectors to carry out inspections where necessary and possible in order to ensure the protection of workers and in accordance with the technical requirements of inspection. Inspectors must also have the authority to decide when inspection of the workplace is appropriate. *Consequently, the Committee requests the Government to specify in its next report the practical scope of the expression "at any reasonable time" used in the 2004 Labour Institutions Act and to indicate how it is ensured that it is the labour officer who decides whether the time of the visit is reasonable.*

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

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

Turkey

Labour Inspection Convention, 1947 (No. 81) (ratification: 1951)

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

The Committee notes the Government's report received by the Office on 31 October 2007 in reply to its previous comments as well as the observations of the Turkish Confederation of Employers' Associations (TISK) provided subsequently by the Government.

Articles 2 and 23 of the Convention. Developments in the scope of labour inspection. In its 2006 observation, the Committee requested the Government to continue providing information on: (i) the progress achieved in extending the coverage of the labour inspection system so as to also protect workers engaged in establishments in the informal sector; and (ii) the practice of inspection by geographical area and by sector. It observes that the Government has not provided the information requested, but that the TISK continues to deplore the absence of records of labour inspections and updated statistics. The employers' organization considers that it is not possible to target labour inspection on unregistered enterprises, as they have not been identified. **The Government is requested once again to provide information on the measures adopted to extend the scope of the labour inspection system to include establishments in the informal economy, with an indication of the manner in which the identification of these establishments is ensured or envisaged. It is requested to keep the Office informed of any difficulties encountered and, where appropriate, the measures envisaged or adopted to overcome them.**

Articles 4 and 5(a). Placement of labour inspection under the supervision and control of a central authority and effective cooperation between the various services entrusted with labour inspection. According to the TISK, the transfer of duties from the Ministry of Labour and Social Security to other ministries (Ministry of Health, Ministry of Defence, Ministry of Energy and Natural Resources) and to municipalities constitutes an obstacle to the necessary coordination of labour inspection activities. In the view of the TISK, the dispersion of responsibilities jeopardizes the integrity of inspection and does not allow the necessary coordination under the authority of a central body, as envisaged in the project for intervention against illegal employment prepared by the Ministry of Labour and Social Security. The TISK adds that, although section 95(2) of the Labour Law establishes the requirement to inform the responsible regional authorities of the results of inspections, this requirement is not often met, with the result that neither inspection records nor the relevant statistics are up to date. The TISK calls for the Government to publish the results of the remedial measures adopted for this purpose.

The Committee observes that neither the Government's report received in 2007, nor the general report of the labour inspection for 2005 refers to any restructuring of the labour inspection system. **The Committee would be grateful in this respect if the Government would provide clarifications, describe the measures referred to by the TISK to improve the exchange of information between inspection services and supply detailed information on their implementation in practice and on their impact on the compilation of statistics.**

With reference to its 2007 general observation, the Committee requests the Government to provide information on any measure implemented to promote effective cooperation between the labour inspection services and the judiciary with a view to the achievement of the economic and social objectives of the labour inspection services.

Article 5(b). Collaboration between the labour inspection services and employers and workers. The Committee notes that, according to the Government the Labour Inspection Council of the Ministry of Labour and Social Security has undertaken 17 tripartite projects since 2004 covering both occupational safety and health, and the application of general labour legislation. The Government indicates that, during the implementation of an inspection project, the social partners are informed and consulted concerning professional developments. Furthermore, reports on the results of inspection projects are published and made available to the social partners concerned. The Committee however notes that the Government does not provide sufficient details in this respect. **It would be grateful if the Government would indicate the purpose, frequency and arrangements for this tripartite collaboration and provide information on its impact in terms of the objectives of labour inspection.**

Article 3, paragraph 1(a) and (b), and Articles 10, 11 and 16. Human and logistical resources of the labour inspectorate necessary for the discharge of its duties. In its previous comment, the Committee referred to the comments of the Confederation of Turkish Trade Unions (TÜRK-İS) and requested the Government to indicate the manner in which it envisaged strengthening the staff, transport facilities and equipment necessary for the effective discharge of inspection functions. The Government announces the allocation of financial resources for the recruitment of inspectors. It adds that labour inspectors have access at all times to all existing transport facilities for their professional travel, and that a budget is envisaged and reserved for the purchase of portable computers. **The Committee requests the Government to indicate developments in staff numbers and prospects in this respect, as well as changes in equipment, resources and transport facilities made available to labour inspectors during the period covered by the next report.**

Article 3, paragraph 1(a) and (b), and Articles 17 and 18. Labour inspection activities. Balance between the function of inspection, on the one hand, and technical advice and information, on the other. The Committee notes that labour inspectors through inspections at the workplace raised 29,245,439.43 Turkish New Lira (TRY) in 2005 and TRY30,438,285.53 in 2007 in fines. Furthermore, they referred 7,843 cases of violations to the Public Prosecutor in 2005 and 5,327 cases in 2006. The TISK considers that the inspection system is principally repressive, with labour inspectors hardly discharging their preventive functions, namely the provision of information and technical advice. It also regrets that inspectors do not always have the necessary technical equipment for their investigations and that their reports of violations are drawn up rapidly and without a scientific basis, which can have serious consequences for employers. It observes that appeals against the decisions of labour inspectors are most frequently set aside by the courts, which are overworked, even though section 17 of Labour Law No. 4857 provides for the possibility to produce proof to the contrary. The TISK considers that labour inspectors should therefore only use their powers of punishment with care and attention. In its view, practices should be adopted which reward employers that comply with the law and limit intervention by the labour inspectorate in enterprises covered by a collective agreement to cases in which a complaint has been made.

The Committee notes, from the information provided by the Government, that Law No. 4817 affords any person concerned a right to information and that advice is provided upon request either by the Labour Inspection Council or its regional departments, and also by the Communication Unit of the Office of the Prime Minister (BİMER). Information on the application of labour legislation and labour disputes is provided to the social partners through a telephone system "Allo labour". However, the TISK considers that the system is inadequate and that it should be possible to provide information without a request being

made, in a proactive manner. While noting the Government's indications concerning the various information services available, the Committee draws the Government's attention to paragraph 86 of its General Survey of 2006 on labour inspection on this subject. In this paragraph, it refers to Paragraph 14 of the Labour Inspection (Agriculture) Recommendation, 1969 (No. 133), which provides examples of measures for the promotion of continued education intended to inform the social partners of the applicable legal provisions and the need to apply them strictly, as well as the dangers to the life or health of persons and the most appropriate means of avoiding them (clause 1) and appropriate means of workers' education (clause 2). *The Committee encourages the Government to take inspiration from this guidance to develop educational approaches and tools intended to give the best possible effect to Article 3, paragraph 1(b), of the Convention and asks it to inform the ILO of any progress achieved in this respect.*

Improvement of the labour inspection system in the field of occupational safety and health. The Committee notes the information provided by the TISK concerning the development of an inspection policy based on prioritizing sectors and establishments that are at risk and involving the regular redefinition of the relevant criteria with a view to improving the supervisory techniques and methods of labour inspectors, their training and their capacity to issue appropriate recommendations. *The Government is requested to provide information on the impact of this policy on the occupational safety and health situation in the industrial and commercial workplaces covered by the Convention, including the level of application of the relevant legislation and the number of accidents and cases of diseases that are occupational in origin. The Committee would be grateful if the Government would also provide data on the prosecutions made against employers which are at fault or in violation in the above fields and on the penalties imposed during the period covered by the next report.*

Labour inspection and child labour. With reference to its comments under the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee notes the information provided by the TISK reporting the conclusion between the TISK and the TÜRK-İS on 12 December 2005 of a collaboration agreement to contribute to the implementation of the social collaboration project to combat child labour and the time-bound policies and programmes in the province of Adana. This collaboration takes the form of the establishment of an office responsible for the education of children, their families and employers, and for the provision of appropriate training in several regions and for various sectors. This structure followed the opening by the TISK of a working children's bureau, which has been operational since April 1999 in three industrial sites. The joint office is reported to have begun providing services to seasonal child workers and street children, as well as those engaged in furniture production. The TISK suggests that this model should be extended to industrial regions of the organized economy and to smaller industrial sites. The objective is to provide health, education and training services to child workers and advice to adult workers and employers throughout the country. According to the TISK, as 87 per cent of children who work do so in small-scale workplaces (one to nine workers), measures should be designed to combat illegal employment in those enterprises.

Recalling that, in accordance with Article 3(1)(a) of the Convention, legal provisions relating to conditions of work include those respecting the employment of children and young persons, and with reference to its 1999 general observation on this issue, the Committee hopes that the Government will rapidly take the necessary measures at the various levels of social policy with a view to bringing an end, with the active collaboration of the labour inspectorate, to the illegal employment of these categories of particularly vulnerable workers, while at the same time guaranteeing their integration or reintegration into school. The Committee requests the Government to provide information on these measures and on the specific role attributed to labour inspectors in this area by the projects implemented in the context of cooperation with the ILO/IPEC programme. It would also be grateful if it would provide relevant statistics on the ten-year project to combat child labour, 2005–15, referred to in its report.

Article 6. Status and conditions of service of labour inspectors. The Committee notes, from the information provided by the TISK, that draft conditions of service for the public service, including a draft text of the specific conditions of service of labour inspectors, have still not been adopted and that labour inspectors are accordingly still covered by a 1979 text. *The Government is asked to provide clarifications on this matter and to supply a copy, if possible in one of the working languages of the ILO, of any text that is in force determining the status and conditions of service of labour inspectors.*

Article 7. Aptitude of labour inspectors and specific training for the discharge of certain functions. According to the TISK, between June 2005 and July 2007 significant progress was achieved in reforming social security schemes. However, the organization regrets that certain of the government services entrusted with responsibility for supervising the legislation which entered into force in May 2006, in contrast with labour inspectors who are duly trained for this purpose, often lack the necessary technical competence and human qualities indispensable for the discharge of their duties. The Government indicates in this respect that in 2006 labour inspectors participated in training seminars for an accumulated duration of 3,914 hours, particularly in the fields of occupational safety and health, personal protective equipment and labour legislation. *The Committee requests the Government to provide clarifications on the viewpoint expressed by the TISK regarding the sharing of responsibilities for the supervision of social security legislation and to supply information on the content and regularity of the training provided to inspectors during their employment, and on the number of participants concerned in each case.*

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

Uganda

Labour Inspection Convention, 1947 (No. 81) (ratification: 1963)

The Committee notes that the Government has not sent the report requested by the Conference Committee on the Application of Standards concerning the measures taken to follow up its conclusions adopted at its session in May–June 2008. However, it notes the information received by the ILO on 11 November 2008 concerning the adoption in 2006 of Employment Act No. 6 and Occupational Safety and Health Act No. 9, and the views expressed by the Central Organization of Free Trade Unions (COFTU) and the National Organization of Trade Unions in Uganda (NOTU) at a tripartite workshop on the application of the Convention. The Committee also notes that, as recommended by the Conference Committee in 2001, 2003 and 2008, an ILO technical assistance mission was received from 13 to 17 July 2009 and that, together with the Government and the social partners and various public bodies, it examined the reasons for the deterioration in the labour inspection system since the 1990s, with a view to remedying it.

Need to establish a labour inspection system that meets the requirements of the Convention

The ILO technical assistance mission noted that the dismantling of the labour inspection system that followed its decentralization observed by an earlier ILO mission in 1995, has progressively worsened. The many interviews it had with staff of the labour administration and other public departments and with the social partners provided the mission with information betraying a level of distress that demands the urgent re-establishment of a labour inspection system able to ensure the supervision of the legal provisions related to conditions of work and the protection of workers, in accordance with *Article 3, paragraph 1(a), of the Convention* and to provide both employers and workers in industrial and commercial workplaces with useful information for their implementation, as required by *Article 3(1)(b)*.

The field visits proposed to the mission were limited to two very large foreign-owned agro-food companies located in areas of very intense industrial activity (Kampala and Jinja) and the mission regretted that it had not been in a position in which it could assess working conditions in small and medium-sized Ugandan establishments. However, the gradual deterioration in the labour inspection situation can be discerned from the information contained in the annual inspection reports received at the ILO in 1994 and 1996. According to the report covering 1994, the Labour Department had 83 employees, of whom 62 worked in the districts. Despite limited resources, the inspection staff managed to carry out 280 fully fledged visits, 292 visits to monitor implementation and 436 visits for other purposes. As prescribed by *Article 3(1)(a)* of the Convention, these inspections focused on application of the provisions on working conditions (general conditions and occupational safety and health) and the protection of workers. Of the many complaints from workers that had reached it, the labour inspectorate was able to deal with 1,252 and refer 32 to the courts. The annual inspection report for 1994, as well as providing detailed information on the work of the inspectorate, supplied statistical data together with relevant analyses and comments, including on occupational accidents, placing special emphasis on the lack of general safety and health standards in small and medium-sized establishments.

In 1995, an ILO technical assistance mission found that the labour administration was only represented in 20 of the country's 39 districts and had lost over 75 per cent of its human resources. For example, of the 67 posts planned for the occupational safety and health department, only two existed, one in Jinja, the other in Mbala, notwithstanding the significant number of establishments covered by the 1964 Factories Act and the fact that they were located throughout the country.

The annual inspection report for 1996 referred to 17 collective labour disputes concerning trade union rights, the refusal by employers to pay wage arrears and retirement benefits, and unfair dismissals of unionized workers. With the restructuring of the country's administration, unemployment was compounded by the dismissals of public employees. During the period covered, supervision of working conditions appears to have been marginalized in relation to employment policy and to no longer have been a matter of concern for the Government. The central labour administration's resources had been so reduced that no vehicles were left for travel outside the capital to supervise the operation of district services, some of which were unattainable by telephone. During the year covered by the above report, only 13 of the 21 district labour services were able to communicate information on their work: in all, 1,151 inspection visits were carried out, for some of which transport was provided by the employers. In total, there were 19 occupational safety and health inspection staff. Out of the 104 occupational accidents notified, only eight were investigated. Records showed that 25 per cent of the accidents were in construction and 33 per cent in government services and private security bodies. The 26–30 age group accounted for 34.61 per cent of the accidents, but no legal proceedings had been initiated during the period covered. The industrial court nonetheless apparently played an important role in pacifying and harmonizing industrial relations and, in most of its decisions it found for the workers. Its impact was attributed to its functional and financial independence.

In the observations it made in the years that followed, the Committee repeatedly noted that the Convention was not applied and reminded the Government of the obligations arising out of ratification, asking it to take the necessary steps to remedy the situation of the labour inspection services. Such measures involve, in particular, placing the inspection services under the supervision and control of a central authority and recruiting qualified and properly trained personnel. Financial, material and logistical resources are also essential for the control of the industrial and commercial establishments covered by the Convention and of the relevant national legislation (suitably equipped offices, provision of appropriate technical equipment for inspections and transport facilities and repayment of duty travel expenses). The diversity and complexity of the labour inspection functions defined in the Convention also require labour inspectors to devote most of their time to these duties, in their capacity as public officials who are assured of stability of employment and are independent of improper external influences.

Nevertheless, due to the decentralization of the labour administration as a whole, the Ministry of Labour as such soon disappeared and its component parts were absorbed by a succession of ministries. The labour administration is now a department in the Ministry of Gender, Labour and Social Development (MGLSD). Its resources have been significantly reduced, as has its authority over the decentralized services. While decentralization was designed as a response to the demands of a policy to encourage investment, both national and international, in the interests of developing the national economy and creating jobs, its implementation has become increasingly detrimental to workers because it has overlooked issues relating to conditions of work, which is in violation of the Convention.

The Local Governments Act, No. 1 of 1997, transferred labour issues to the districts, together with services and activities for social rehabilitation, probation and well-being of street children and orphans, the role of women in

development, community development, youth, culture and information services. With this transfer of authority, the districts are now exercising powers formerly held by central government, such as formulating development plans on the basis of priorities defined at the local level including raising, levying, managing and assigning resources through separate budgets, and establishing or abolishing public service bodies. As labour administration issues were no longer given priority, district labour departments were consequently reduced to rudimentary structures, and in some instances disappeared altogether. Furthermore, the number of districts increased from 56 to 75 in 2005 and to 80 in 2009, and is likely to increase further in the near future. Only the district of Kampala, which has a special status, is administered by the country's central authorities. COFTU and NOTU have expressed concern at the fragmentation of the country's administration at a time of drastic reductions in labour administration personnel and have called for amendment of the Constitution so that labour inspection can be placed back under the control and supervision of a central authority in a fully fledged ministry of labour endowed with the necessary capacities to fulfil its functions effectively. Although a similar view was expressed by nearly all the political and administrative officials and other stakeholders it met, the mission concluded that there is no such prospect on the agenda.

On 15 September 2008, the Local Governments Act was again amended with a view to the further decentralization of the administration taking account of a distinction between rural and urban entities. In accordance with section 77 of the Act, local governments will have the right and duty to formulate, approve and execute their budgets and plans subject to compulsory budgetary equilibrium (paragraph 1). Subject to the obligation to give priority to the objectives set out in national programmes (paragraph 2), urban governments are given financial independence, provided that their plan is incorporated into the district plan (section 79). The Committee notes that, according to section 83 (paragraph 2), central Government allocates to local governments to finance the operation of decentralized services, an unconditional minimum amount calculated in accordance with Chapter 7 of the Constitution, equal in value to the amount of the previous tax year for the same item.

In its report received in November 2008, the Government stated that it was seeking funds within the framework of the Decent Work Country Programme adopted in May 2007, while pointing out that the enhancement of labour inspection is a key element of a strategy for improvement of industrial relations through the promotion of rights at work. It undertakes to address all the issues raised by the Committee in the report due in 2009, taking into account the conclusions of the Conference Committee on the Application of Standards in June 2008. However, the Government has not sent the report as announced, but documented information gathered by the ILO mission of July 2009 shows that, while the MGLSD received an additional budgetary allocation in the course of the year, the labour inspectorate had no place in the MGLSD's budgetary allocations for the current fiscal year and that, moreover, labour administration issues in general are not included in any of the projects or strategies developed for the short and medium term by the Ministry in charge of local governments.

The Committee nevertheless hopes that, as soon as possible, the labour inspectorate will be given a key role in the country's social and economic development strategy, in particular through the process for revising the Decent Work Country Programme adopted in 2007, through the enactment of the above new legislation on employment and occupational safety and health, and to ILO technical assistance in fulfilling the objectives of the Convention. The Committee recalls that labour inspection is a function of the public administration that needs its own operating budget allowing the recruitment of suitable personnel and adequate resources to be made available. It is for the ministry responsible for labour to define requirements for this purpose and to raise awareness among governmental authorities and the social partners, particularly employers, of the positive impact of efficient labour inspection on a country's economic development and enterprise financial results.

The Committee notes with *interest* the re-establishment of an Industrial Court financed by the state budget. In accordance with Act No. 8 of 2006 on labour disputes (arbitration and settlement), the court hears disputes that the labour inspector has been unable to settle or appeals by one of the parties where there has been no decision within 90 days. However, if the Industrial Court is to play its role fully, it would be advisable for the legislation on the functioning and powers of the labour inspectorate to be revised so as to adapt it to developments in the world of work, and for the legislation on conditions of work to be supplemented by regulations to give it practical effect under the supervision of the labour inspectorate. The Committee notes the indication to the technical assistance mission that a parliamentary process is under way for this purpose. *The Committee notes with interest that the Employment Act, No. 6 of 2006, and the Occupational Safety and Health Act, No. 9 of 2006, contain provisions that are largely consistent with the Convention, and requests the Government to take measures promptly to give effect to them in practice. In particular, it requests it to ensure that effect is given in the near future to section 3(1) of the Occupational Safety and Health Act (No. 9) and section 9 of the Employment Act (No. 6), concerning the recruitment of the necessary inspection staff to ensure the implementation of these Acts, and that the number of inspectors will be determined in each district on the basis of the technical and geographical criteria referred to in Article 10 of the Convention. The Committee therefore urges the Government to ensure that the necessary conditions are created to establish effective cooperation between the labour administration and the other public services and private institutions that possess useful data (such as the ministries of finance, justice, tourism, commerce and industry, the Bureau of Statistics, the Investment Authority and the National Social Security Fund (NSSF)) for the establishment of a companies register providing the labour inspectorate with the*

necessary information to develop an inspection programme that takes into account the branches of activity in which workers are the most vulnerable in view of the general conditions of work and the risks for their safety and health.

The Committee notes with *interest* that, in accordance with section 20 of the Employment Act (No. 6), an annual report containing information on labour inspection must be published by the labour commissioner at the ministry responsible for labour, which seems at least to suggest a return to the idea of a central labour inspection authority within the meaning of *Article 4* of the Convention to supervise and control the work done by the district inspection services. An annual report, prepared in accordance with *Articles 20 and 21* of the Convention, will also enable the national authorities concerned, as well as the social partners and the ILO's supervisory bodies, to gain a sufficiently clear idea of the way the labour inspection system functions and hence to envisage or propose, as the case may be, the necessary means of improving it.

The Committee requests the Government to provide information on any measures taken in pursuit of the above objectives, together with any relevant documents. It would be grateful for information on the manner in which it plans to give effect to Article 4 of the Convention in terms of organizing and running the labour inspection system in practice in the context of the application of the current version of the Local Governments Act. The Committee finally requests the Government to ensure that an annual inspection report, containing the information available on the subjects listed at Article 21 of the Convention and reflecting both progress made and the shortcomings of the labour inspection system, will be published and that a copy will be sent to the ILO.

Ukraine

Labour Inspection Convention, 1947 (No. 81) (ratification: 2004)

The Committee notes the communication by the Federation of Trade Unions of Ukraine (FPU), dated 28 September 2009, containing comments on the application of the present Convention, particularly the impact of Cabinet Order No. 502 of 23 May 2009, supplementing Law No. 877-V of 5 April 2007 concerning the fundamental principles of state supervision of economic activities. The Office sent these comments to the Government on 20 November 2009. *The Committee requests the Government to provide its opinion on the points raised by the above organization, as well as any relevant documentation.*

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

[The Government is asked to reply in detail to the present comments in 2010.]

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 2004)

The Committee notes the communication by the Federation of Trade Unions of Ukraine (FPU), dated 29 September 2009, containing comments concerning the application of the present Convention, particularly the impact of Cabinet Order No. 502 of 23 May 2009 supplementing Law No. 877/V of 5 April 2007 concerning the fundamental principles of state supervision of economic activities. The Office sent its comments to the Government on 20 November 2009. *The Committee requests the Government to provide its opinion on the points raised by the Organization, as well as any relevant documentation.*

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

[The Government is asked to reply in detail to the present comments in 2010.]

United Kingdom

Labour Inspection Convention, 1947 (No. 81) (ratification: 1949)

The Committee notes with *satisfaction* that the Health and Safety Executive's web site www.hse.gov.uk/index.htm publishes numerous documents and information on many topics, such as surveys on the occupational hazards, including psychological risks, to which men and women workers are most frequently exposed in a number of industries, together with measures to reduce or even eliminate them. It notes, for example, the web page www.hse.gov.uk/lead/index.htm, which focuses on lead exposure and the specific risks incurred by men, women and young people who work with lead, and provides useful guidance for identifying and eliminating such hazards. The Committee firmly hopes that the information provided will be put to good use throughout the United Kingdom, as a supplement to the obligations under the Convention, and that other countries will also take advantage of it, in the interest not only of protecting men and women workers, but also of improving the economic performance of enterprises. The Committee notes with *interest* in this connection the information sent by the Government showing, through a study of developments in work days lost due to various health disorders, the close link between protection and productivity, which was also noted by the Committee in its General Survey of 2006 on labour inspection (paragraph 374).

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

Uruguay

Labour Inspection Convention, 1947 (No. 81) (ratification: 1973)

The Committee notes the Government's report received by the ILO on 1 October 2009 in reply to its previous observations, the annual reports of the General Labour and Social Security Inspectorate (IGTSS) for 2007 and 2008, as well as the observations made in August 2008 by the Ibero-American Confederation of Labour Inspectors (CIIT) on matters partly raised in its previous comments, as well as the legislative texts and documents attached.

Article 6 of the Convention. Status and conditions of service of labour inspection staff. Stability of employment and independence. The Committee notes that, according to the CIIT, only three of the 33 new occupational safety and health inspectors in the Work Environment Division are public servants, and that others are employed under contracts which are renewed at the discretion of the administrative authority. This allegation contradicts the Government's statement in its 2007 report that all labour inspectors are public servants. Consequently, it would appear that the conditions of access and employment of labour inspectors laid down by Act No. 18.172 of 31 August 2007 do not apply to all inspection staff. In particular, it is not therefore certain that persons carrying out labour inspection duties based on temporary contracts are subject to the system of exclusivity of duties for the Ministry of Labour (MTSS). Consequently, these inspectors could be required or authorized to carry out other duties for other public or private employers which, in the Committee's view, constitutes a serious obstacle to the independence required for the performance of their primary duties. However, the Committee notes the Government's indication that it plans to incorporate into the body of labour inspectors the 33 contract workers who do not yet have the status of public servant. ***The Committee would be grateful if the Government would provide information on any developments relating to the implementation of this measure.***

The Committee requests the Government to provide a copy of the Ministerial resolution which, according to the Government, concerns the compensation of overtime worked by labour inspectors.

Conditions of service. With regard to the issue of the disparity between the wages of tax inspectors and those of labour inspectors, to the detriment of the latter, the CIIT indicates that the difference is 25 to 40 per cent. It also points out the persistent wage inequality compared to other officials in the form of the issue of food vouchers equivalent to around 10 per cent of their wage. Furthermore, according to the CIIT, Act No. 18.172 and MTSS Resolutions Nos 129 and 139 of 2007 have resulted in a loss in the wage benefits previously negotiated for labour inspectors, as well as the loss of the usual benefit of clothing and shoes. ***The Committee requests the Government to take measures to ensure that the remuneration of inspectors is at least in line with that of other public servants with responsibilities of a similar level and complexity (for example, tax inspectors), and to provide details on these measures as well as illustrative statistics in this regard.***

Discrimination against labour inspectors based on trade union membership or the performance of trade union activities. The Committee notes that, in reply to the allegation made by the CIIT concerning discrimination relating to the promotion of affiliated inspectors, the Government provides information including a list of names indicating that ten of the 14 team leaders working in the General Conditions of Work Division (CGT) and the Work Environment Conditions Division (CAT) are affiliated to the Association of Labour Inspectors of Uruguay (AITU) and adds that the exclusive criteria for appointment are professional competence and the skills necessary to coordinate labour inspectors. It also points out that the managerial posts advertised in 2003 and 2004 in the CAT and CGT Divisions were filled by the most qualified candidates.

In reply to the allegation made by the CIIT concerning the abusive nature of the transfers imposed on inspectors affiliated to trade union organizations, the Government indicates that transfers are exceptional and are based on the existence of family connections incompatible with the performance of duties within the same office, in accordance with Decree No. 30/003.

According to the CIIT, since the end of 2007, discrimination against inspectors for trade union activities has also taken the form of a reduction in wages the amount of which corresponds to the period spent carrying out these activities during the working day. This period is allegedly determined by means of the obligation imposed on inspectors to complete a form available for that purpose on the MTSS intranet site giving a very detailed account of their daily activities (administrative work, travelling time, study of documentation and related tasks, rest, interruptions, trade union activities).

The Committee takes due note of the information provided by the Government in reply to the allegations made by trade union organizations and requests the Government to provide a copy of any legal text or document on the basis of which inspectors may not be subjected to harassment or sanctions at the hands of their superiors.

Article 7. Retraining of inspectors. According to the CIIT, inspectors do not benefit from the retraining that is necessary to enable them to adapt to technological and legislative changes, particularly those concerning general conditions of work. The Government nevertheless mentions various types of training in the course of employment relating to arbitration awards, the content of collective agreements, new regulations and occupational safety issues. Furthermore, the annual reports provide further information on some of these training activities, including training relating to the prevention of chemical hazards with the support of Spain, training on occupational hazards in the construction and electromagnetic assembly sector with ILO support, as well as training for the team leaders in the CGT Division on the supervision of wages and the working environment and conditions. The Committee notes with **interest** that inspectors also

benefit from specific training designed to protect their own health during inspections. ***The Committee would be grateful if the Government would ensure that the training of inspectors continues to be updated regularly and requests it to provide the ILO with information on any measures taken to that end.***

Article 10. Number of labour inspectors. According to the Government, the labour inspectorate is now staffed by 152 inspection personnel (compared with 142 in 2007) covering a population of 1,230,000 workers, equivalent to around one inspector for every 8,000 workers. The number of staff in the Legal Division has been increased, as previously announced, through the recruitment of seven jurists and three officials responsible for the legal affairs of the IGTSS before the courts. The information provided by the Government nonetheless seems to confirm the allegations of the CIIT concerning the uneven distribution of inspectors between the capital (80 per cent) and the rest of the country. This situation seems to be explained by the concentration of protected workers in the capital. ***The Committee once again requests the Government to provide detailed and up to date information on the geographical distribution of labour inspection staff. Noting that it has not provided information concerning the comments made by the CIIT concerning the uneven distribution of inspectors between the CAT and CGT Divisions, the Committee requests the Government to provide any comments that it considers relevant in this regard.***

Article 10(a)(i) and (ii), and Articles 11 and 16. Working conditions of inspectors and inspection visits. According to the CIIT, the lack of means available to the labour inspectorate already reported (lack of physical space, furniture and computer equipment) has been exacerbated further as a result of the increase in the number of staff and the increasing complexity of the tasks related to the supervision of wages in the various sectors. The health of inspectors has even been affected and has resulted in sick leave. Furthermore, the lack of suitable transport facilities, in particular four-wheel drive vehicles, is hindering the performance of inspection visits. The Committee notes that, according to the Government, in order to address needs relating to the strengthening of human resources, the MTSS plans to establish a new IGTSS head office close to the current premises. With regard to means of transport for journeys in rural areas, the Government indicates that the entire fleet of vehicles is to be replaced soon and that bids have been invited to that end.

The Committee notes with ***interest*** the provision to the ILO of the CGT and CAT inspection procedure manuals (the CAT manual is in the process of being revised), which the CIIT had indicated were necessary, as well as the information that cases of administrative disputes brought before the courts are analysed regularly by members of the Legal Division with a view to rectifying procedural errors in the future.

After criticizing the lack of an inspection policy targeting on a priority basis activities characterized by a high rate of industrial accidents and cases of occupational disease, the CIIT indicates that the broad system of inspections (the “rake” system) has been replaced by specific operations and inspections carried out in response to complaints. The Committee notes, in the annual inspection reports, information indicating the implementation of operations targeting particular sectors, such as bakeries, construction and commerce. It notes the information showing the performance of proactive inspections relating to general conditions of work, while the information concerning occupational safety and health seems to show activities triggered mainly by complaints or reports.

The Committee notes the information provided concerning the “Chameleon” project introducing a computerized registration system allowing registration of enterprises via the Internet. This system is based on the information which has to be submitted each year by employers under Decree No. 108/07. It will allow the gradual centralization of information concerning formal enterprises (branch of activity, number and distribution by sex and by category of worker, wages, etc.), firstly in the capital and then in the rest of the country. The Committee hopes that the “Chameleon” project will facilitate the rational programming of inspection activities and increase the number of proactive inspections relating to safety and health in branches in which workers are exposed to a high risk of occupational hazards. In this regard, it notes that a draft document concerning the monitoring of industrial accidents and cases of occupational disease is being examined with technical assistance from the ILO. The Committee hopes that the establishment of the register of construction enterprises introduced by Act No. 18.362 of 6 October 2008 will contribute to strengthening inspections in this sector where the risk of industrial accidents is very high.

The Committee notes with ***interest*** the information provided concerning bilateral cooperation with Argentina relating to the exchange of training. The Government indicates that Uruguayan inspectors have already benefited from training in occupational safety.

The Committee requests the Government to keep the ILO informed of any developments relating to the envisaged improvement in conditions of work, including the transport facilities and means of labour inspectors, as well as the impact of new means on inspection activities.

It would be grateful if the Government would take the measures to extend the “Chameleon” system across the country in the near future and to implement the project relating to the monitoring of industrial accidents, and requests it to provide information on any progress made.

Article 5(b) and Paragraphs 4–7 of the Labour Inspection Recommendation, 1947 (No. 81). The Committee notes from the annual activity reports for 2007 and 2008 that the IGTSS has carried out training activities for workers on various subjects (labour law; risk prevention in industry, commerce and services; regulations applicable in the construction sector; and risk prevention). It also notes the participation of the IGTSS in events organized by universities and schools to

disseminate information concerning labour rights. Furthermore, since 1999, a list of occupational safety and health laws has been provided on the web site of the Ministry of Labour and Social Security (MTSS) (www.mtss.gub.uy).

Referring to its comments concerning the Occupational Safety and Health Convention, 1981 (No. 155), the Committee notes with *interest* the numerous actions undertaken by the tripartite branch committees to disseminate information on risk prevention during various events (construction fairs; audiovisual campaigns; training programmes for trainers provided by the ILO for the social partners).

The Committee requests the Government to continue providing information on the cooperation between the labour inspection services and the social partners in the area of risk prevention with a view to promoting an occupational safety and health culture.

Articles 5(a) and 21(e). Effective cooperation between the labour inspection services and judicial bodies. Further to its 2007 general observation, the Committee notes with *interest*, from the Government's report concerning the Labour Inspection (Agriculture) Convention, 1969 (No. 129), that a course has been given by a magistrate to labour inspectors on the activities of the labour courts in specific cases. According to the Government, labour inspectors have in turn been called on by the courts as experts. ***The Committee requests the Government to provide further information on any cooperation implemented between the labour inspectorate and the judicial bodies, including information concerning cases in which inspectors have been consulted by the courts as experts.***

Articles 20 and 21. Annual inspection report. ***The Committee would be grateful if the Government would ensure that future annual reports on inspection activities contain detailed information on all the matters covered by Article 21, if possible following the guidance provided in this regard in Paragraph 9 of Recommendation No. 81.***

Labour Inspection (Agriculture) Convention, 1969 (No. 129) (ratification: 1973)

The Committee notes the Government's report received by the ILO on 1 October 2009 in reply to its previous observations, the annual reports of the General Labour and Social Security Inspectorate for 2007 and 2008, as well as the observations made in 2008 by the Latin American Confederation of Labour Inspectors (CIIT) on matters partly raised in its previous comments. The Committee also notes the legislative texts and documents attached to the report.

Referring to its observation concerning the Labour Inspection Convention, 1947 (No. 81), the Committee requests the Government to provide the information requested in its next report, in so far as it relates specifically to labour inspection in agriculture.

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

Yemen

Labour Inspection Convention, 1947 (No. 81) (ratification: 1976)

The Committee notes that the information provided by the Government in reply to the numerous points raised in its previous comments are very general and vague and therefore do not allow any assessment of the level of application of the Convention. It is therefore bound to repeat its previous requests, which read as follows:

Articles 19, 20 and 21 of the Convention. The Committee's follow-up of the content of labour inspection reports as tools for evaluating and improving the operation of the inspectorate. In the comments that it has been making for nearly 20 years, the Committee has encouraged the Government to take the necessary steps to publish and send to the ILO an annual inspection report containing in particular, the information required on the matters listed at *clauses (a) to (g) of Article 21* of the Convention. In the dialogue that it has held with the Government over these years, the Committee has noted that despite the political and economic difficulties it has had to cope with, the Government has done its utmost to send available information, largely in the form of statistical tables on some of the subjects covered by the Convention pertaining to one or other geographical or administrative division of the country. The Government has repeatedly stated, however, that the labour inspectorate's lack of financial resources was the cause of the failure to publish an annual report as required by the Convention. In 1994, the Committee noted with interest an annual report on the work of the inspection services for an earlier period, but pointed out that it lacked information essential to an assessment of the extent to which the labour inspection system actually covers the duties that have to be discharged (for example, the number of workplaces liable to inspection and the numbers of workers employed in them). It also noted that the Government had obtained technical assistance from the ILO to restructure and reorganize the Ministry of Labour in the context of the country's reunification, and expressed the hope that application of the Convention would improve as a result. In 1995, however, the Committee observed that the Government was having difficulty in providing the labour inspectorate with sufficient human resources of high quality and the material and logistical resources it needed to carry out its functions.

The Government nonetheless stated that it would shortly be sending an inspection report for 1994. Although this proved impossible, the Government continued to send statistical tables covering in part some of the subjects listed at *Article 21*. In a direct request sent to the Government in 2000, the Committee again pointed out the need to know the number of industrial and commercial establishments liable to inspection, the activities they carry on and the number of workers they employ, as a basis on which to determine the inspectorate's needs in terms of human and material resources. It asked the Government also to send information on developments in the legislation affecting the organization and working of the labour inspectorate and the status and conditions of work of labour inspectors.

In its observation of 2004, the Committee took note of the Government's efforts gradually to reinforce the labour inspection system, in particular by including in the Labour Code new provisions setting out the duties and powers of labour inspectors, and to equip the inspection services with computer hardware with a view to setting up a countrywide network for exchanging information and to providing the central administration with the means to monitor compliance with the law in

workplaces on a permanent basis. The Committee accordingly considered that it should henceforth be possible for an annual inspection report to be drawn up and expressed the hope that such a report would shortly be published. It also welcomed the fact that an inventory of workplaces liable to inspection had been undertaken in Sana'a and hoped that such an inventory would also be undertaken for all other parts of the country, thus allowing an objective evaluation of the coverage provided by the inspection services with a view to determining what needed to be done in order to improve them gradually.

In its observation of 2006, the Committee continued to monitor progress reported by the Government in the development and efficiency of the system of statistics and sought information on the action taken by the Government further to its commitment to send the Office a report by the General Administration of the Labour Inspectorate showing inspections by workplace, the number of workers by enterprise, the number of infringements reported, and the penalties and other measures applied. It nonetheless noted that, according to the Government, owing to a lack of resources the General Administration had no computers; that eight governorates had no inspection service because there was no economic activity; and that the inspections recorded concerned only the capital and the governorate of Hamdramaout because the other governorates had not sent in statistics. The Committee asked the Government to report on developments in the enactment of legislation that was to be revised with technical assistance from the ILO and the participation of the social partners. In its report received in September 2007, the Government provides information on the content of the statistics by enterprise (number of workers broken down between Yemeni and non-Yemeni, situation at the workplace at the time of the inspection, type of infringement of the provisions of the Labour Code and action taken by the labour inspectorate) and states that these data are published in an annual report of the General Department of Labour Inspection. The Government indicates, however, that the draft revision of the Labour Code is still under consideration by the social partners, and again requests technical assistance in undertaking the necessary amendments. A report issued by the ILO's Beirut Office on a mission carried out from 9 to 14 October 2008 shows that the revision of the Labour Code should be completed before the end of the year.

The Committee notes that the Department of Industrial Relations' annual assessment report for 2006, which the Government sent with its report for 2007, contains information and statistics on the activities of numerous labour agencies including the labour inspectorate, in ten of the country's 21 governorates. The Committee notes, however, that according to the introduction to the report, the labour administration is weak, disorganized, and operates in a routine manner on a shoestring budget. The report launches an urgent appeal to the Ministry of Labour to give labour issues the importance they deserve and to implement the necessary measures, particularly financial measures, to stop the exodus of labour administration managers at a time when such heavy demands are being made of the Ministry of Labour.

Implementing the provisions of the Convention and reinforcing the labour inspection system by launching a Decent Work Country Programme. The Committee notes that a Decent Work Country Programme, prepared in cooperation with the Government, the social partners and the ILO, and launched in August 2008, makes the establishment of an efficient labour inspection system a priority. A tripartite committee should soon be set up to monitor implementation of the programme and a national working group appointed by the Minister of Social Affairs and Labour and a national working group is to be appointed by the Minister of Social Affairs and Labour to ensure coordination with the ILO. The programme provides, inter alia, for ILO technical assistance in setting up a tripartite audit and formulating and implementing a national action plan that takes due account of the provisions of the Conventions on labour inspection and health and safety. The programme will also seek to promote the adoption of modern inspection practices that target prevention and more efficient integration of labour inspection in other programmes, with a focus on the efforts that will be needed in those areas of labour inspection that target the worst forms of child labour. The Committee also notes that one of the roles assigned to the Office will be to promote the recruitment and training of women inspectors with a view to proper supervision of the conditions of work of the female workforce. *The Committee would be grateful if in its next report the Government would provide information on all progress made, particularly through the implementation of the Decent Work Country Programme for 2008–10, towards establishing and operating a labour inspection system in industrial and commercial enterprises that is consistent with the principles laid down in the Convention and the guidance provided in the accompanying Recommendation, No. 81. Such information should cover the legislative amendments that the Committee has recommended in its comments since ratification of the Convention, the number and qualifications of men and women labour inspectors (Articles 8, 10 and 21(b)); their status and conditions of services (Article 6), the material resources, including computers, facilities and means of transport needed for the performance of their duties (Article 11); the machinery set up by the central inspection authority for the control and supervision of all the services for which it is responsible, including compliance by the labour inspectors with their obligations to report on their work in the areas of prevention and enforcement of the legislation on the conditions of work and the protection of workers in the carrying out of their occupation (Articles 4 and 19); measures to secure effective cooperation between the labour inspection services and the other public or private institutions and bodies engaged in similar work, including judicial bodies, so as to enlist their support for the work of the labour inspectorate (Article 5(a)); and measures for effective collaboration between labour inspectors and employers and workers (Article 5(b)) and Part II of Recommendation No. 81).*

The Committee hopes that, in view of the progress already made in compiling certain statistics that are of use in assessing the operation of the labour inspection system, the Government will be in a position to take the necessary steps to ensure that an annual inspection report is published and sent to the ILO within the time limits set by Article 20 of the Convention, containing the information required by Article 21, clauses (a) to (g). So that the information is useful to the central inspection authority in defining priorities for action in collaboration with the social partners and other interested parties while taking into account the financial resources available under the national budget, the Committee invites the Government to follow the guidance given in Recommendation No. 81 (Part IV) on the amount of detail that is appropriate.

Articles 5(a) and 21(e). Cooperation between the inspection services and the judicial bodies. Furthermore, further to its 2007 general observation, the Committee notes the information provided by the Government concerning measures designed to promote effective cooperation between the inspection services and the judicial bodies. *The Government is requested to provide as detailed information as possible on the urgent cases referred exceptionally to ordinary courts by the labour inspectorate and on the decisions handed down in these cases.*

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 63 (Barbados, Djibouti); Convention No. 81 (Algeria, Angola, Antigua and Barbuda, Armenia, Australia, Belarus,**

China: Macau Special Administrative Region, Costa Rica, Côte d'Ivoire, Croatia, Gabon, Ghana, Greece, Guinea, Guinea-Bissau, Guyana, Hungary, Iraq, Israel, Kyrgyzstan, Lesotho, Liberia, Luxembourg, Malta, Mauritius, Republic of Moldova, Montenegro, Netherlands: Netherlands Antilles, Norway, Panama, Paraguay, Poland, Russian Federation, Rwanda, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Solomon Islands, Sweden, Switzerland, United Republic of Tanzania: Tanganyika, Ukraine, United Kingdom, United Kingdom: Gibraltar, United Kingdom: Guernsey, United Kingdom: Isle of Man); Convention No. 85 (United Kingdom: Anguilla); Convention No. 129 (Belgium, Costa Rica, Côte d'Ivoire, Croatia, Egypt, Finland, Germany, Hungary, Malta, Republic of Moldova, Montenegro, Romania, Ukraine, Uruguay); Convention No. 150 (Antigua and Barbuda, Belize, Burkina Faso, Cambodia, Central African Republic, Cuba, Czech Republic, Democratic Republic of the Congo, Dominica, Guinea, Guyana, Iraq, Lesotho, Liberia, Republic of Moldova); Convention No. 160 (Brazil, Czech Republic, Ireland, San Marino, Swaziland).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 81** (*United Kingdom: Jersey*).

Employment policy and promotion

Australia

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

The Committee notes the Government's report received in September 2009, including replies to the matters raised in its 2007 direct request, evaluation data concerning the Welfare to Work reforms, and further information provided by the governments of South Australia and Western Australia. The Committee notes the comments received from the Australian Council of Trade Unions (ACTU).

Employment trends and active labour market measures. The Government indicates that the effects of the global economic crisis in Australia resulted in an increase in the unemployment rate as redundancies grew, skills shortages remained in particular industries and some locations, and certain industries faced these issues combined with the effects of an ageing workforce. The Government reports that it responded with a comprehensive package of programmes and employment services reforms. The Committee notes that Australia's unemployment rate has risen from 3.9 per cent in February 2008 to 5.8 per cent in July 2009, an increase of almost 40 per cent and the highest rate in almost six years. In its 2007 direct request, the Committee recalled that the Convention has a critical role to play in combating poverty and promoting social cohesion. The Government indicates in its report that it believes that all Australians should have the opportunity and capacity to play a role in all aspects of Australian life. The Government further reports that the Social Inclusion Agenda works, among other goals, to afford every Australian the opportunity to secure a job. In order to progress the Social Inclusion Agenda, the Government has created several new departments, e.g. the Ministry for Social Inclusion in Australia; a Parliamentary Secretariat with specific responsibility for social inclusion; a Social Inclusion Unit located in the Department of the Prime Minister and Cabinet; and the Australian Social Inclusion Board. ***The Committee asks the Government to continue to provide information and evaluation data on the impact of the various labour market reform measures undertaken on the employment situation, and information on the involvement of the social partners in the design and implementation of an active employment policy in accordance with the Convention (Articles 1, 2 and 3 of the Convention).***

Employment services. The Committee notes that since the previous report, the Government undertook a comprehensive review of the delivery of employment assistance programmes. The Government implemented Job Services Australia in July 2009, which replaced the Job Network, the Active Participation Model and a number of other smaller programmes. The Government reports that under Job Services Australia, jobseekers will no longer be moving in and out of different programmes, or from one provider to another. Every jobseeker will be linked to a provider of their choice, who will develop an individually tailored plan to assist the jobseeker in gaining employment. This plan will bring together the various types of assistance – vocational and non-vocational – needed to address the barriers faced by that individual. The Committee notes that the ACTU has welcomed the Government's announced changes to the employment services to include a greater focus on disadvantaged jobseekers, employer servicing and local labour markets. ***The Committee asks the Government to supply information on the effects of the changes to employment services with regard to the objectives of the Convention.***

Education and training policies. The Committee notes that under the Skilling Australia for the Future initiative, the Government has funded the Productivity Places Program which will deliver 711,000 training places over five years in areas of skills shortage to ensure that Australian workers develop the skills they need. The Government reports that these training places are being delivered in an industry-driven system, ensuring that training is more responsive to the needs of businesses and participants. Of the places, 392,000 training places will be allocated to existing workers wanting to gain or upgrade their skills, and 319,000 places will be allocated to jobseekers. The Government further reports that it has introduced the Jobs and Training Compact to support young Australians, retrenched workers and local communities get back to work, add to their skills, or learn the new skills required to obtain jobs as the labour market recovers. ***The Committee asks the Government to continue to provide information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities. The Committee also invites the Government to provide evaluation data on the Jobs and Training Compact.***

Means to promote employment of workers with disabilities. The Committee notes that, as part of its Social Inclusion Agenda, the Government is developing a National Mental Health and Disability Employment Strategy to increase employment opportunities for people with disabilities, including mental illness. The Strategy will be released in 2009 and is being developed following consultations with people with disabilities, peak bodies, service providers, employers and unions. The Government reports that it has already started implementing some early and important elements of the Strategy, including developing the new disability employment services and an employment incentive pilot. In this regard, the Committee notes that the Government is investing 1.2 billion AUD in the new Disability Employment Services which will commence in March 2010, and will help jobseekers with disabilities to secure and maintain sustainable employment. Under these changes, all jobseekers with disabilities will have access to individually tailored employment services that are better suited to their needs, with stronger links to training and skills development. The Committee also notes the commitment in South Australia to double the number of people with disabilities employed in the

public sector by 2014. *The Committee invites the Government to continue to provide information on labour market measures regarding workers with disabilities and evaluation data on the Disability Employment Services.*

Means to promote employment of older workers and younger workers. The Government indicates that despite a strong labour market over the past decade, there are still groups of people who experience labour market disadvantages. These groups will face further challenges in the context of the global economic recession – for example, young people who are out of work in a recession can find it particularly hard to recover once conditions improve. The Government indicates that it has agreed to establish a Compact with Young Australians which will entitle every Australian under the age of 25 to an education or training place. Through the Compact, a national “learning or earning” requirement (the National Youth Participation Requirement) will also ensure that all young people complete standard 10 and participate in education, training or employment until the age of 17. The Committee also notes the South Australia Works initiative which has developed a number of programmes aimed at providing young people aged 16–24 with skills and opportunities to move successfully from school, further education and training or unemployment, into stable, rewarding work. Concerning older workers, the Government reports that participation requirements for mature age jobseekers were examined by the Participation Review Taskforce. The Taskforce concluded that adult jobseekers should have the same participation requirements as other jobseekers but that any changes should be preceded by broader Government action to ameliorate negative attitudes towards adult workers. *The Committee asks the Government to continue to provide information on the measures intended to encourage and support employment levels of older workers. It also asks the Government to include in its next report information on the way in which recently adopted measures have increased opportunities for lasting employment for young people entering working life.*

Means to promote employment of indigenous peoples. In reply to the previous comments, the Government reports that it recognizes the particular disadvantage experienced by Aboriginal and Torres Strait Islander people in the labour market and that special measures are required to assist indigenous jobseekers into employment. Indigenous jobseekers are more heavily represented in regional and remote employment service areas than in metropolitan areas. The Government indicates that in June 2009, there were approximately 18,700 active registered indigenous jobseekers (4 per cent of total jobseekers) in metropolitan areas, whereas the numbers in regional areas was around 43,300 (13 per cent) and in remote areas 25,300 (80 per cent). Overall, indigenous jobseekers made up 11 per cent of that total Job Network active case load. The Government further reports that, in the 2008–09 fiscal year, Job Network members and other job placement organizations placed 38,000 indigenous jobseekers into work. Job Services Australia, which replaced Job Network on 1 July 2009, has an increased emphasis on assisting the most disadvantaged jobseekers, including many indigenous peoples. All Job Services Australia providers have a new requirement to develop and implement an indigenous employment strategy to increase the employment and retention of indigenous peoples within their organizations. Furthermore, the Committee notes the main findings in the 2009 Overcoming Indigenous Disadvantage Report, indicating that between 2001 and 2006 there were improvements in the indigenous unemployment rate, labour force participation rate and the employment to population ratio, although large gaps still remain between the indigenous and non-indigenous population. The Committee notes the comments formulated by the ACTU, which believes that sustainable, real employment is one of the corner stones in bridging the gap between Aboriginal and Torres Strait Islander people and the remainder of the population. The ACTU is concerned that aspects of the National Indigenous Employment Policy may be “more of the same” and suggests that historically these programmes produce few real employment outcomes with many participants finding themselves out of work once Government funding commitments have ceased. The ACTU believes employers, Government, unions and communities should work together to increase employment programmes and training producing long-term engagement in the workforce. *The Committee invites the Government and the social partners to continue to provide information on the impact of the measures taken to promote productive employment opportunities for indigenous people.*

Barbados

Employment Policy Convention, 1964 (No. 122) (ratification: 1976)

Implementation of an active employment policy. The Committee notes the information contained in the Government’s report received in February 2009. The Government indicates that its active policy designed to promote full, productive and freely chosen employment is declared through the Protocols formulated by the social partner, and through the speeches of the Prime Minister of Barbados and other ministers and government officials. The Government has reduced the level of the corporation taxes with the aim of reducing the cost of doing business. Furthermore, the Central Bank of Barbados reduced the prime rate for commercial banks by 0.25 percentage points to 4 per cent in October 2008 in order to encourage borrowing for investment purposes with the goal of driving economic growth. The Government indicates that its trade and industrial policies seek to create increased employment throughout the economy. The Committee notes that, in the second quarter of 2008, the unemployment rate rose to 8.6 per cent of the labour force. As the 2008 *Preliminary Overview of the Economies of Latin America and the Caribbean* of the Economic Commission for Latin America and the Caribbean (ECLAC) indicates, this slight increase of the unemployment rate over the same period of 2007 is still lower than it was in previous years (the participation rate was 68.7 per cent of the total adult population). The Committee further recalls the comments provided by the Barbados Workers’ Union in June 2008, in which it indicated that the union continues to support policy interventions on behalf of micro-enterprises and the self-employed, aimed at

promoting increased access to credit facilities and market information, formal education and training and, generally, the provision of decent work in the informal economy.

The Government also indicates that the policies are kept under review through individual monitoring by ministries, agencies and departments, under whose responsibility the implementation of such policies fall. The Ministry of Economic Affairs, Empowerment, Innovation, Trade, Industry and Commerce, through the Economic Affairs Division, has a monitoring process where the status of proposed policies are captured under a matrix format indicating the status of implementation of the financial and economic policies. Information on the status is transmitted to the Director of Finance and Economic Affairs and the Minister. ***The Committee asks the Government to provide further information on the measures implemented as part of an active policy intended to promote full, productive and freely chosen employment, and the results thereof. The Government is also asked to provide further information on the manner in which economic objectives are taken into account in the adoption and review of measures under monetary, budgetary and taxation policy, and price, income and wage policy.***

The Government indicates that Manpower Research and the Statistical Unit of the Ministry of Labour and Immigration conduct research and surveys in order to gather information about labour supply and demand. The Government also indicates that the Disabilities Unit and the Bureau of Gender Affairs seek to meet the needs of particular categories of workers such as women, young people, older workers and workers with disabilities. ***The Committee asks the Government to provide information on the impact of the measures implemented to meet the needs of vulnerable categories of workers such as women, young people, older workers and workers with disabilities.***

Education and vocational training. The Committee notes that the Barbados Training Board conducts vocational training through its skills training programmes. The Government also indicates that the Technical and Vocational Education and Training Council was established to disburse funds to training institutions to enable them to provide industry-specific training. The Technical and Vocational Education and Training Council is mandated, amongst other things, to ensure the standardization of training. ***The Committee would appreciate receiving information on the impact such measures have had on improving coordination between education and training policies and prospective employment opportunities.***

Participation of social partners. The Committee notes that national consultations on the economy are held on a yearly basis. ***The Committee reiterates its request to the Government to provide information in its next report on the manner in which consultations on the matters covered by the Convention are ensured, including any examples of the questions addressed or the decisions reached on employment policy through tripartite boards and committees that exist in the country. The Government is also requested to provide information on whether consultations are carried out with representatives of the rural workers and the informal economy, as requested in the report form under Article 3 of the Convention.***

Belarus

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

Measures to promote the employment of vulnerable categories of workers. The Committee notes the comments submitted by the Belarusian Congress of Democratic Trade Unions (BKDP) in August 2009. The BKDP refers to the right to work of the citizens, and argues that short-term contracts, in practice, limit workers' rights to free choice of employment. The BKDP indicates that short-term contracts are contrary to the spirit of the Convention, because terminating these contracts deprive workers of their right to work. The BKDP refers to non-renewal of fixed-term contracts in enterprises located in Bobruisk and Novopolstok. In this context, the Committee would like to draw the Government's attention to certain provisions of related international labour instruments (see Article 2, paragraph 3, of the Termination of Employment Convention, 1982 (No. 158), and Paragraph 3 of the Termination of Employment Recommendation, 1982 (No. 166)) that provide for the protection of workers against the use of contracts which can impair the achievement of the objectives of full and productive employment as laid down in Convention No. 122. ***The Committee invites the Government to reply to the BKDP comments, particularly to specify how it has been possible to satisfy the employment needs of the workers whose short-term contract of employment had ended. It also requests information in the Government's next report on the measures envisaged with the cooperation of the social partners to improve employment security in the labour market.***

The Committee received the Government's report submitted in September 2009 replying to its 2008 direct request. It looks forward to addressing the Government's information, as well as any response to the BKDP comments that the Government wishes to set forth, during its next session.

Brazil

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

Articles 1 and 2 of the Convention. Implementation of an active employment policy in the framework of a coordinated economic and social policy. The Committee notes the Government's report on the Convention received in

January 2009 as well as the detailed replies to the questionnaire for the General Survey on employment (2010). The Government explained in its report that the positive dynamic macroeconomic indicators have led to a decline in the unemployment rate (which fell from 9.5 per cent in July 2007 to 8.1 per cent in July 2008). The Government also indicated that the main characteristic of the cycle of growth was the marked formalization of the labour market. According to *Panorama Laboral 2008*, the evolution of the labour market in 2008 was one of the most favourable in recent years. The trend of reduced unemployment and informal employment continued. The average registered unemployment rate in the six metropolitan regions was 8 per cent in the period January to November 2008, 1.5 percentage points lower than that of the same period in 2007. In November 2008, there were early signs of a slowdown, with a loss of 40,800 jobs – the first negative result for the month of November in six years. The Committee also notes that unemployment has affected women more than men (in 2007, the rate was 10.8 per cent among women and 6.1 per cent among men). Young people have also suffered higher unemployment rates than the rest of the population (youth unemployment was 15.4 per cent in 2007, whereas the average rate of unemployment across the population was 8.2 per cent). The Committee also notes that, according to the Institute of Applied Economic Research (IPEA), the number of poor families in Brazil fell from 35 per cent to 24.1 per cent between 2002 and 2008 in six major cities of the country, which has entailed that 4 million people ceased to be considered poor. The Government adopted counter-cyclical measures and maintained its infrastructure projects under the Growth Acceleration Plan, entailing investments of US\$300 billion in 2009. Programmes to build houses for the poorest families are promoted, as well as an expansion of beneficiaries of the *Bolsa Familia* programme that provides financial assistance to 11.1 million families in the country. ***The Committee invites the Government to provide an evaluation in its next report of the impact of the various active labour measures undertaken, including the views of the social partners, on the current employment situation.***

Workers in the informal economy. Support to small-sized and micro-enterprises and to cooperatives. The Committee notes that the Job and Income Generation Programme (PROGER) continues to distribute funds to sectors which typically have little or no access to the financial system, such as micro- and small enterprises, cooperatives and workers' associations, liberal professionals, farming families and informal sector productive initiatives. PROGER also provides support to enterprises in sectors which are prioritized in Government development policies, developing infrastructure, promoting export activities and encouraging technological innovation. According to the statistics provided, between 2000 and 2008, over 16.3 million contracts were signed under PROGER. ***The Committee requests the Government to continue to provide information regarding the impact of the activities promoted by PROGER in terms of employment generation.*** The Committee also notes that, according to the Government, even in light of the global crisis, micro- and small enterprises continue to generate jobs and the sector represents the bigger part of the formal enterprises in the country. ***The Committee asks the Government to keep it informed regarding the measures implemented to promote the development of technical and managerial skills among the workers in the sector.*** The Committee also notes that currently the National Congress is implementing a new project to upgrade the existing regulations on cooperatives. ***The Committee asks the Government to continue to provide information on the development of a new legal framework favourable to cooperatives and of its expected impact on the creation of employment.***

Contribution of the employment services. In respect of the matters raised in its 2008 observation, the Committee notes that the Government deems it necessary to achieve greater integration of the 340 centres in the Public Employment, Labour and Income System (SPETR) and between the various activities of the system and a more adequate distribution of the resources made available to the SPETR. ***The Committee requests the Government to provide information, in its next report, on the advances made to ensure that the public employment services are contributing to the achievement of the objectives of the Convention.***

Article 2(a). Collection and use of employment data. The Committee notes that the Labour Market Observatory is a tool for research and planning whose objective is to produce and disseminate information, analyse and make action-oriented proposals for advising administrators of public policies and subsidies. ***The Committee asks the Government to indicate how the information and statistics on the employment situation and trends submitted by the Labour Market Observatory have contributed to the adoption and review of the employment policies.***

Educational and vocational training policies. The Committee notes the information provided on the Social and Vocational Training Programme (QSP), which is a comprehensive vocational education programme that has made a significant contribution in terms of helping people participate in the world of work, thereby helping to achieve the objectives set out in the National Training Plan (PNQ). From 2003 to 2007, the PNQ provided vocational training to meet the requirements of 664,850 workers in the country. In 2008, 39 training plans for specific economic sectors were under way. A joint initiative by the Ministry of Social Development and the Ministry of Labour and Employment, directed at the construction sector, will promote a national training and vocational placement initiative for the beneficiaries of the *Bolsa Familia* programme. ***The Committee invites the Government to include information in its next report on the impact the QSP and other initiatives have had on providing workers with the opportunity to acquire the necessary training to find suitable employment and to use their training and skills in such employment.***

Cambodia

Employment Policy Convention, 1964 (No. 122) (ratification: 1971)

The Committee notes the information provided in the Government's report received in November 2008, and the communication of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) received in August 2008. The FTUWKC indicates that Cambodia is one of the poorest countries in Asia, where life expectancy is 56 years and where 80 per cent of the population live on less than US\$2 a day. The FTUWKC also indicates that the garment industry, which has developed rapidly over the last ten years, now accounts for 90 per cent of Cambodia's exports and employs around 355,000 people, mainly young women from the poor rural communities. The Committee notes the concerns expressed by the FTUWKC that core labour standards are not being complied with in many factories, as workers are being forced to work long hours, night shifts and overtime, and do not benefit from paid, sick, or maternity leave.

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee notes that the Government has implemented the National Strategic Development Plan (NSDP), with the aim of reducing poverty and achieving the Cambodian Millennium Development Goals. In this regard, the Government has operated the long-term "Rectangular Strategy" in order to deliver on the NSDP. The Committee notes that the Rectangle III programme specifies policies relating to private sector development and employment. In particular, it specifies a systematic policy aimed at: (i) creating jobs, particularly for young persons entering the labour market, and for all Cambodian workers through various measures which encourage domestic investment and attract foreign direct investment in priority sectors, including agriculture, agro-industry, labour-intensive industries and tourism; (ii) establishing skills training networks for the poor; and (iii) developing a labour statistics system. *The Committee hopes that the Government will be in a position to indicate in its next report whether specific difficulties have been encountered in achieving the objectives defined in the Rectangular Strategy on employment policies, and the extent to which these difficulties have been overcome. The Committee also invites the Government to provide indications on the progress achieved in the collection of labour market data and the manner in which such data is used in the formulation and implementation of the employment policy.*

ILO technical assistance. The Committee notes that the 21st synthesis report for "Better Factories Cambodia" indicates that the programme has contributed to an improvement in the working conditions and standard of living of more than 270,000 workers, especially young women from rural areas. *The Committee requests the Government to continue to provide information on the progress of the "Better Factories Cambodia" programme and on the impact it has had on the creation of productive employment.*

Rural employment. The Committee notes that the Government has implemented diversification measures in different regions across the country. In Preah Vihear, the mountain areas are being converted into tourist destinations; in Svay Rieng, factories are now operating in former poor rural areas; and factories are being established in Kampong Chhnang. *The Committee requests the Government to provide information in its next report on the measures it has taken to promote employment opportunities in rural areas, including data on how such measures have contributed to ensuring balanced regional development.*

Youth employment. The Committee notes from the ILO's Policy Brief on Youth Employment in Cambodia (2007) that the total number of young people is expected to grow from 3.2 million in 2005 to 3.6 million in 2011. Young persons will still have a 24 per cent share of the total population. In this regard, there is concern over how the labour market will absorb an estimated 275,000 young jobseekers expected for each year over the next five years. The Committee notes that the NSDP includes provision for the implementation of a systematic policy to create more jobs, especially for young people entering the labour market, through various measures such as the establishment of skills training networks to assist young people and new graduates in response to labour market needs. *The Committee asks the Government to provide information on the measures taken to ensure productive employment opportunities for young persons.*

Labour market and training policies. The Committee notes that, in 2007, 38 educational and vocational institutions were in operation, under the overall responsibility of the Ministry of Labour and Vocational Training. In this year, 69,471 students attended training courses in those institutions, of whom 46,384 persons from 17 provinces, received certificates. The Government also indicates that, with the assistance of the Governments of India and Japan, entrepreneur training centres were established in order to promote a culture of entrepreneurship in the country. *The Committee requests the Government to continue to provide information on the results achieved by the measures taken by the Ministry of Labour and Vocational Training to coordinate education and training policies with prospective employment opportunities and to promote an entrepreneurship culture.*

Business development. The Committee notes that the Government has adopted a comprehensive SME Development Framework and prepared an SME Development Programme. Measures implemented under this programme are intended to create a favourable business environment for SMEs and micro-enterprises, to enable their better access to medium- and long-term finance, and to establish specific systems to support women in business, including through facilitating women's access to SME development initiatives and services. *The Committee notes with interest the measures taken to stimulate small and micro-enterprises and asks the Government to provide information in its next report on the effects of these initiatives on the creation of productive employment. It also asks the Government to provide information on any measures taken to involve social partners so as to ensure that the concerns of small*

businesses are taken into account in the formulation of employment policies and measures. In this regard, the Government may deem it useful to consult the provisions of the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

Article 3. Participation of social partners. The Government indicates in its report that the Labour Advisory Committee has not been consulted in the development and review of employment policies and programmes. The Committee recalls that, under the Convention, governments are required to ensure that the opinions of workers' and employers' organizations, as well as workers in the rural sector and the informal economy, are to be consulted "with a view to taking fully into account their experiences and views". ***The Committee asks the Government to provide concrete examples on the manner in which the views of employers, workers and other affected groups are sufficiently taken into account in the development, implementation and review of employment policies and programmes.***

Canada

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Employment trends, active labour market policies and involvement of the social partners. The Committee notes the Government's report received in September 2009 including detailed information provided by the provincial governments and comments received from the Canadian Labour Congress (CLC). The Government indicates that between October 2008 and May 2009, 362,500 jobs were shed from the Canadian economy (on a seasonally adjusted basis) and unemployment rose to an 11-year high of 8.4 per cent in May 2009 from 6.3 per cent in October 2008. On 27 January 2009, the Government introduced Canada's Economic Action Plan (Budget 2009) in response to the economic crisis. Budget 2009 provides over 46 billion Canadian dollars (CAD) over the next two years, almost CAD62 billion when combined with the support provided by other levels of government, to support the Canadian economy and help to create jobs. Together with the tax reductions announced in the 2007 economic statement, Budget 2009 is estimated to create or maintain over 265,000 jobs by the end of 2010. The initiatives of Budget 2009 aim to reduce taxes permanently, help the unemployed, create jobs through significant infrastructure spending, support industries and communities most affected by the global downturn, and improve the access to and affordability of financing for Canadian households and businesses. Furthermore, the Committee notes the various labour market measures taken at the federal and provincial levels aimed at creating employment opportunities and recovering from the crisis. The Committee recalls that *Article 1 of the Convention* provides that Members shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment. In this regard, the Committee notes the comments of the CLC indicating that it finds little recent evidence for such a declaration to have been enunciated "as a major goal" (*Article 1(1)*) by Canada or by most provinces, at least with enough clarity and conviction for the public to be meaningfully aware of it. Moreover, the CLC indicates that it is not aware that such a policy, in practice, is fully integrated in socio-economic decision-making of the country, and it seems notably absent with respect to macroeconomic policy making, including financial, trade and development policies. In its comments, the CLC also refers to the 2004 General Survey on promoting employment and strongly recommends that the Government and social partners review this document for the purpose of identifying how to improve inter-ministerial coordination, monitoring and reporting mechanisms, employment assessment processes and for programmes to prevent discrimination in employment or for re-employment of workers who lose their jobs for economic reasons. ***The Committee invites the Government to provide information in its next report on the impact on the labour market of the measures taken in Budget 2009 and to indicate how such measures are kept under periodical review within the framework of a coordinated economic and social policy (Article 2(a)). The Committee also invites the Government to keep in mind the concerns raised by the CLC and to provide further information on the effective consultations held with the social partners on the matters covered by the Convention (Article 3).***

Education and training policies. The Government reports that, in 2008–09, Human Resources and Skills Development Canada allocated CAD12.9 million annually to support the Pan Canadian Innovations Initiative (PCII). PCII projects must partner with provinces or territories and focus on one or more of the following priorities: literacy and essential skills, immigrants, Aboriginal peoples, under-represented groups, workplace training, and apprenticeship. The Committee notes that project examples include the partners building futures in New Brunswick and the British Columbia reclamation and prospecting teams. The Government indicates that, while interim results are positive, evaluation data is not yet available. The Committee further notes that the Government is providing CAD8.3 billion to the Canadian skills and transition strategy which includes extra support for people who have lost their jobs, enhancements to employment insurance and more funding for skills and training development to help Canadians to obtain better jobs. ***The Committee asks the Government to continue to provide information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities. The Committee also asks the Government to provide evaluation data on the PCII when it becomes available.***

Special measures in respect of vulnerable categories of workers. The Government indicates that since October 2008 the number of job losses has fallen more heavily for certain groups of workers, and workers from specific provinces and industries, resulting in their over-representation when counting net job losses. For example, recent immigrants account for 3 per cent of employed persons in Canada but resulted in 12 per cent of net job losses. The impact was even more pronounced in the cities of Montreal, Toronto and Vancouver (53 per cent of net job losses). Concerning workers with

disabilities, the Committee notes the measures adopted at the federal and provincial levels such as the “10 by 10 challenge” in British Columbia and the Ontario disability support program. With regard to older workers, the Committee notes that the Government will contribute additional funding to extend the Targeted Initiative for Older Workers (TIOW) until March 2012 to help more older workers remain active and productive participants in the labour force. TIOW provides support to unemployed older workers in communities affected by significant downsizing or closures, or a general high unemployment rate, through programming aimed at reintegrating these workers into the workforce. A summarizing evaluation is scheduled to begin in the autumn of 2009 and is expected to address programme relevance, success and cost-effectiveness. ***The Committee invites the Government to continue to provide information and evaluation data on labour market measures regarding workers with disabilities, older workers, immigrants, and other vulnerable categories of workers.***

Comoros

Employment Policy Convention, 1964 (No. 122) (ratification: 1978)

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee notes the report received in September 2008, in which the Government indicates that no significant developments have been observed since the previous report and that it hopes to provide all the information requested in its next report. The Committee recalls that in its 2008 observation it noted that a framework document on the national employment policy had been adopted following a national workshop organized in November 2007. The Government also indicated that a survey of young graduate jobseekers, undertaken in the island of Grande Comore by the General Directorate of Employment, would be extended to the islands of Mohéli and Anjouan so as to obtain full data on the employment market. The Committee notes that the central objective of the ILO Decent Work Country Programme in the Comoros 2009–12 (PPTD) is employment promotion and that the expected outcomes include, in particular, the formulation of an employment promotion strategy and the adoption of laws and regulations with a view to: implementing the strategy; developing the Act on cooperatives; formulating a strategy for women’s entrepreneurship and youth employment; introducing transparent and confidence-building procedures to spur investment and job creation; and, finally, implementing an information and monitoring system on labour market trends. ***The Committee requests the Government to indicate in its next report whether specific difficulties have been encountered in achieving the objectives established by the framework document on national employment policy and the PPTD and to indicate the extent to which these difficulties have been overcome. The Government is also requested to provide information on the progress made in gathering labour market data and on the manner in which such data are taken into consideration when formulating and implementing employment policy.***

Article 3. Participation of the social partners in the formulation and application of policy. The Government referred in its previous report to the importance of the involvement of the social partners, in both the formulation and implementation of employment policies and in the preparation of the PPTD. ***In this regard, the Committee requests the Government to provide information in its next report on the steps taken to achieve the priorities of the PPTD, indicating the mechanisms and regularity of the consultations held with the representatives of the persons concerned, in particular with the representatives of employers and workers, on the subjects covered by the Convention. Please also indicate the initiatives that have received ILO support for the promotion of the objectives of the creation of productive employment, as set out in the Convention (Part V of the report form).***

Ethiopia

Private Employment Agencies Convention, 1997 (No. 181) (ratification: 1999)

The Committee notes the Government’s report received in November 2008 referring again to the Employment Agency Proclamation No. 104 of 1998, which has already been examined in previous comments. The Committee also understands that in June 2007 the Office reviewed a draft proclamation aimed at strengthening the authority of public authorities in dealing with private employment agencies and to revise the regulations concerning the operation of those agencies. The draft proclamation was also discussed in tripartite workshops with government authorities and other stakeholders. ***In this context, the Committee asks the Government to provide a report including the text of any new legislative text enacted concerning the application of the Convention and information on the matters raised in its previous comments.***

Article 8 of the Convention. Protection of migrant workers. The Government indicates that to implement the Convention, the Ministry of Labour consulted with the Ministry of Foreign Affairs and Ethiopian embassies. An inter-ministerial committee has been established including representatives of the Ministry of Justice, the Emigration Office and the federal police. The Government also mentions the provisions of section 598 of the Criminal Code to combat unlawful recruitment. The Committee reiterates its concern regarding the protection of Ethiopian workers recruited or placed either through regular or irregular private agencies for employment outside the country and the prevalence of trafficking in persons. ***The Committee asks the Government to report on the measures taken by the inter-ministerial committee to provide adequate protection and prevent abuses of workers recruited in Ethiopia for employment abroad and law cases.***

Please also provide particulars of cases when section 598 of the Criminal Code has been applied to abusive recruiters. Please also specify if the most representative organizations of employers and workers have been consulted in this matter (Article 8, paragraph 1). It also again requests the Government to provide information on bilateral labour agreements concluded to prevent abuses and fraudulent practices in the recruitment, placement and employment of Ethiopian migrant workers abroad (Article 8, paragraph 2).

Article 9. Trafficking of children. The Government states in its report that, according to section 15(4) of the procedure prepared by the Ministry of Labour and Social Affairs, recruited workers should not be less than 18 years and that this would be safeguarded by routine inspection systems. *The Committee refers to its comments on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), and requests the Government to indicate the measures taken to ensure that child labour is not used or supplied by private employment agencies.*

The Committee reiterates its interest in receiving detailed information in the Government's next report on the measures adopted to apply the provisions of the Convention which are referred to specifically in a direct request.

[The Government is asked to reply in detail to the present comments in 2010.]

Guinea

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in February 2004. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information in reply to the points raised in the Committee's 2004 observation, which set forth the following matters:

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. In its report received in February 2004, the Government provided information on the establishment of the "employment" component of the poverty reduction strategy approved in 2002, including its plans to enhance the range of vocational and technical training available, promote small and medium-sized enterprises, promote labour-intensive work and improve access to employment for women. The Committee also noted the objectives of the Labour and Employment Statistical Information Network (RISET), the establishment of which was already noted in its previous comments. *The Committee requests the Government to provide up to date information on the measures taken to guarantee that employment, as a key component in poverty reduction, is at the heart of macroeconomic and social policies. It asks the Government in particular to provide information on the results achieved by group, such as for young people and for women, by the measures taken to improve the range of vocational and technical training available, on the promotion of small and micro-enterprises and on the jobs created by labour-intensive programmes.*

Article 3. Participation of the social partners in the formulation and application of policies. The Committee recalled in 2008 that *Article 3* of the Convention requires consultations with all interested parties – in particular, representatives of employers and workers – in the establishment and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries. *The Committee trusts that the Government will include detailed information in this regard.*

Part V of the report form. ILO technical assistance. *The Committee once again asks the Government to indicate the actions taken to implement an active employment policy within the meaning of the Convention, further to the technical assistance received from the ILO.*

[The Government is asked to reply in detail to the present comments in 2010.]

Iceland

Employment Policy Convention, 1964 (No. 122) (ratification: 1990)

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. The Committee takes note of the information provided in the Government's report received in September 2009. The Government reports that its economy went into a major crisis in October 2008 when the banking system collapsed as a result of the global credit crunch, and that this recession will become even more severe in 2009. The Government further reports, that this crisis reduces the effectiveness of its monetary policies, and that repayments of credits can no longer be controlled. The Committee notes that, while there was little change in gross domestic product (GDP) in 2007 and 2008, forecasts allow for a contraction in GDP of up to 11 per cent in 2009. One of the consequences of the collapse of the banking system on the labour market is a great increase in unemployment, which rose from 1.3 per cent in September 2008 to 9.1 per cent in April 2009. The Government anticipates an average rate of unemployment for 2009 between 8 and 9 per cent. The Government also envisions unemployment benefits will be more than five times greater in 2009 than they were in 2008, i.e., about 25 billion Icelandic krona (ISK). The Government further hopes that the economy will recover with a rate of 2–3 per cent each year as from 2010, achieving a budgetary surplus in 2012. The Committee notes new programmes

that the Government has implemented, such as a measure to amend the rules of the Icelandic Student Loan Fund, to meet the needs of those who have suffered financial setbacks. The Government has also begun a new development project, Starfsorka, which consists of a three-sided agreement between the Directorate of Labour, a company, and a jobseeker for an engagement in a position that involves innovation and development together with the payment of unemployment benefits. The aims of this project are to, (i) support new ventures and development within companies; (ii) establish contact between jobseekers and companies; (iii) support entrepreneurs who have ideas for new ventures; and (iv) support jobseekers and facilitate their search for employment. ***The Committee invites the Government to continue to provide***

Education and training policies. The Government reports that the Vocational Education Council disburses grants from the Ministry of Social Affairs Vocational Education Fund. In this regard, employers' and workers' organizations, companies, vocational education councils in the individual sectors and educational establishments, in collaboration with the above parties, are entitled to apply for grants. The Government further reports that the amount available for disbursement from the fund in 2009 is ISK35 million. ***The Committee requests the Government to continue to provide in its next report information on the measures taken in the area of education and training policies and on their relation to prospective employment opportunities.***

Business and household developments. The Committee notes that the Government is reconstructing the banking system. It is also providing grants to those with innovative ideas for enterprise creation or growth. The Government reports that it has made partial unemployment benefit payments available where recipients were employed part time, and that remedial measures are now available for jobseekers. The Government also reports that it prioritizes supporting households, protecting welfare and preserving "safety nets", that its Housing Financing Fund has a variety of means to lighten the burden of mortgage holders and other financial institutions, and that it prioritizes the full-strength functioning of businesses as means to resuscitate the national economy. To this end, the Government has reduced customs duties and its value added tax, has introduced construction projects financed by the State, and has granted the Housing Financing Fund broader authorizations to grant loans for maintenance projects that create employment. ***The Committee asks the Government to provide information in its next report on the impact of the measures to facilitate business growth and household prosperity. In addition, the Committee requests the Government to include information regarding the remedial measures it provides to jobseekers, and the effects of the above measures on lasting and productive employment.***

Article 3. Participation of social partners in the formulation and application of policies. The Committee notes that the Ministry of Social Affairs and Social Security appoints local seven-member labour market councils. Each council consists of two members who are nominated by workers' organizations, two members who are nominated by the employers' associations, and representatives of the Minister of Education, Science and Culture, the Minister of Health and the local authorities' association. These labour councils are to submit annual reports to the Directorate of Labour in November, along with proposals on the labour market measures they wish to prioritize the following year. ***The Committee asks the Government to report on the progress achieved for the implementation of the Convention by these councils. It trusts that the Government will continue to provide information on the consultations held on the matters covered by the Convention with the social partners, including details of their contribution to the implementation of an active employment policy.***

Ireland

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

The Committee notes with ***regret*** that the Government's report has not been received since 2005. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information on the following matters.

Articles 1 and 2 of the Convention. Employment trends and labour market policies. ***The Committee invites the Government to provide an assessment of the impact of its active labour market measures. It would also appreciate receiving information on how the measures taken to promote full and productive employment operate within a "framework of a coordinated economic and social policy", including information on the achievements of the National Action Employment Programme, in terms of employment generation.***

Article 3. Participation of the social partners. ***The Committee asks the Government to provide information on the consultations held with representatives of the persons affected, both at the stage of the formulation of employment policies and in relation to the implementation of the measures adopted under such policies.***

[The Government is asked to reply in detail to the present comments in 2010.]

Japan

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 1992)

Follow-up to a representation submitted under article 24 of the ILO Constitution. The Committee notes that, at its 304th Session (March 2009), the Governing Body adopted on 18 March 2009, the recommendations of the tripartite committee established to examine the representation alleging non-observance by Japan of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), made under article 24 of the Constitution of the ILO by the National Union of Welfare and Childcare Workers. These recommendations entrust the Committee with following up the application of the Convention in respect of the questions raised in the representation (document GB.304/14/6). **Accordingly, the Committee invites the Government to reply to its 2005 direct request and to provide detailed information on the matters raised in the conclusions of the tripartite committee in its next report, which is due in 2010.**

Kyrgyzstan

Employment Policy Convention, 1964 (No. 122) (ratification: 1992)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its last report received in June 2005. The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee's 2005 observation, which sets forth the following matters.

Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction. The Government enumerated the aims of the National Employment Policy, which was established in the context of the national poverty reduction strategy 2003–05, and was approved by Decree No. 126 on 14 March 2005. The objectives of the employment policy aimed, among others, at assisting unemployed citizens in choosing an occupation and placement; improving vocational training and retraining of the unemployed; organizing temporary employment and voluntary work; preventing the rise of unemployment by eliminating or reducing the effect of the factors which lead to mass unemployment; and supporting entrepreneurship and self-employment. **The Committee asks the Government to provide information on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies.** Indeed, the Committee considers that it is essential from the outset for employment objectives to be included “as a major goal” in the formulation of economic and social policy if these objectives are truly to be an integral part of the policies that are adopted. **The Committee requests the Government to provide detailed information on the results and progress achieved with the implementation of the measures envisaged by the National Employment Plan, including information on the employment situation of socially vulnerable groups such as women, young persons and older workers.**

The Committee also requests the Government to include in its next report information on the following matters that were raised in its 2004 observation:

- training and retraining measures for workers affected by structural reforms (such as the declining of the Kumtor gold mine);
- the impact of the different programmes adopted by the Government concerning specific groups of workers, such as the “National programme ‘Zhashtyk’ on youth development until 2010” and the “State programme ‘New Generation’ for the protection of children’s rights”.

Article 3. Participation of the social partners in the formulation and application of policies. The Government reported that a tripartite committee has been created to regulate issues of employment promotion, which held its first session on 17 May 1999. The basic tasks of the tripartite committee: were the preparation of the National Employment Policy up to 2010; the development of corresponding measures to determine future directions in reducing tensions in the labour market; and the development of proposals to introduce amendments in Kyrgyz legislation on employment promotion and other regulatory acts in application of employment policy. **The Committee asks the Government to provide specific information about the operation of the abovementioned tripartite committee, as well as the involvement of social partners in the formulation and implementation of the National Employment Plan. It also requests information regarding the measures taken or contemplated to involve in the consultations required by the Convention.**

[The Government is asked to reply in detail to the present comments in 2010.]

Lithuania

Employment Policy Convention, 1964 (No. 122) (ratification: 2004)

The Committee notes the Government's report received in September 2008 which mirrors the information already provided in its report for the period ending in June 2006. It also notes the information concerning the measures taken to implement the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the

Promotion of Cooperatives Recommendation, 2002 (No. 193), provided by the Government in its replies to the questionnaire for the General Survey on employment. The Committee also refers to its 2009 observation on the application of the Human Resources Development Convention, 1975 (No. 142).

Articles 1 and 2 of the Convention. Employment trends. The Government indicates that the employment rate was 63.6 per cent in 2006, increasing to 64.9 per cent in 2007, and that the unemployment rate, harmonized amongst 15–74 year-olds, was 5.6 per cent in 2006, falling to 4.3 per cent in 2007. The Government refers to the National Reform Programme and the working groups established to monitor and evaluate its implementation under the National Lisbon Strategy. The Committee notes the Council of the European Union's March 2009 analysis set forth in its country-specific recommendations for Lithuania, which establishes that, in 2008, employment growth turned negative and unemployment was expected to increase to over 5 per cent. Large-scale employee dismissals were on the increase, affecting in particular the lower skilled, low-qualified, young persons, rural residents and older workers. Finally, the analysis predicts that regional differences in unemployment may become more pronounced. The Committee notes the deterioration that has taken place in the employment situation since its last comments. It understands that the Government intends to support full employment in the context of the European Lisbon Strategy for jobs and growth. ***The Committee requests the Government to specify in its next report how, pursuant to Article 2, it keeps under review the measures and policies adopted according to the results achieved in pursuit of the objectives specified in Article 1. It recalls that, in the terms of Article 1, an active policy designed to promote full, productive and freely chosen employment should be pursued "as a major goal". As required by Article 3, the Committee hopes that the Government's report will also provide information on consultation and cooperation with employers' and workers' organizations in the formulation and implementation of employment policies to alleviate the current employment situation.***

Regional development. The Government indicates that it has prepared a draft programme for promoting the migration of workforce in the country, which serves to: (i) encourage territorial mobility of its citizens; (ii) increase employability of population; (iii) coordinate workforce supply and demand; and (iv) support enterprises in recruiting relevant employees. The Committee also notes that a suggestion was made to implement measures of the programme in 2008–10. ***The Committee invites the Government to include in its next report information on the implementation of this programme, as well as other specific activities undertaken to promote employment in disadvantaged regions, including the enhancement of labour mobility.***

Small and medium-sized enterprises. Cooperatives. The Government reported that, in the 2007 Law on Small and Medium-sized Business Development of the Republic of Lithuania, it established more specific criteria to define very small, small and medium-sized enterprises and provided for new forms of state support for their business activities. The Department of Statistics is collecting and publishing data on cooperative enterprises. ***The Committee invites the Government to supply further information in its next report on the impact of this new law on the promotion of small and medium-sized enterprises as well as on the measures adopted to support cooperatives on employment creation.***

Corporate social responsibility. The Government indicates in its report that, since 2004, it has promoted corporate responsibility for all enterprises as a way to integrate social and environmental concerns and enable interactions with stakeholders. The Committee notes that the Government elaborated upon the draft measures promoting corporate social responsibility in 2006–08 and launched the National Responsible Business Award, which honoured, inter alia, enterprises that managed to establish safe, healthy, high quality and attractive jobs for their employees. The National Gender Equality Programme 2005–09 was established to increase opportunities for women to start and develop businesses and to promote their economic activity. In the context of employment deterioration, the Committee notes that corporate social responsibility promotes the development of enterprises by fostering a positive environment and dialogue amongst businesses and other stakeholders, in particular authorities responsible for designing and implementing active labour market measures and workers' organizations. The Committee therefore welcomes this innovative way in promoting productive employment. ***The Committee invites the Government to continue fostering programmes in pursuit of corporate social responsibility and to provide in its next report any information available on the impact of the National Responsible Business Award and the National Gender Equality Programme on employment generation by small and medium-sized enterprises.***

Youth employment. Other vulnerable categories of workers. The Committee notes that, in 2006–07, the Lithuanian Labour Exchange implemented measures promoting learning, job search and selection of professional opportunities for young persons. The Government reports that it has ten youth labour centres, and that three of the centres were opened in 2007. The Committee notes that, in 2007, a new strategy of youth job centres was approved, which seeks to facilitate the integration of youth into the labour market. In addition, the development of skills necessary for competition in the labour market, and motivating the youth to lifelong learning as part of the strategy. ***The Committee invites the Government to specify in its next report the impact of the measures taken aimed at finding lasting employment for young workers entering into the labour market.*** The Government reports that, in 2007, more than 42,000 unemployed persons over 50 years of age were registered in its territorial labour exchange, and that it placed 23,600 of those workers into jobs. ***The Committee also invites the Government to include information on measures taken to ensure the return of long-term unemployed persons and older workers to the labour market.***

Madagascar

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee notes the Government's report received in October 2008, which contains brief replies to the observation of 2007. The Government indicates in its report that the Madagascar Action Plan (MAP) 2007–11, which places employment promotion and poverty reduction at the heart of economic priorities, is supervised by the Ministry of Labour, which is responsible for integrating it with the programmes of all ministries. The Government also indicates that the National Employment Support Programme (PNSE) has been disseminated in approximately ten regions by ministry staff with the support of UNDP experts and that the National Agency for the Implementation for the PNSE (OMPE/VATSI) has been established as a support structure. The Integrated National Monitoring and Evaluation System (SNISE) has also made it possible to evaluate the implementation of the MAP, with the indication that the promotion of full employment was less dynamic during the first half of 2008. Data recorded on employment by the Malagasy Employment and Training Observatory (OMEF) indicate that, while unemployment affected 6 per cent of the workforce, namely 483,000 persons, underemployment (disguised unemployment) remains very high, affecting 60 per cent of the active population. The numbers of new jobseekers have also increased by 4 per cent per year, i.e. an annual average of 382,000 persons of working age (15–65 years) entering the job market. Moreover, according to UNDP estimates, more than two-thirds of the population of the country (68.7 per cent) still live beneath the poverty line and nearly three-quarters of those living in poverty are in rural areas, where nearly 80 per cent of the population live. The Committee also notes that the draft Decent Work Country Programme for 2008–12 stipulated that improvements in employment policy must be based on strengthening the employability of vulnerable groups, such as young persons, women and rural residents, by means of vocational training and the matching of skills to the requirements of the labour market. The Committee cannot overemphasize the key role of an active employment policy in economic and social policies for reducing poverty and creating productive employment. ***The Committee requests the Government to supply detailed information in its next report on the results achieved in the context of the MAP in terms of the creation of lasting employment, reduction of underemployment and poverty reduction. The Committee also requests the Government to provide up to date information on trends in the labour market, particularly regarding the general situation, and levels and trends relating to employment, underemployment and unemployment throughout the country, stating what steps have been taken to promote employment among the most vulnerable categories (women, young persons and rural workers).***

Coordination of education and training policy with employment policy. The Government indicates that the Malagasy Employment Promotion Office (OMEP) and the employment promotion programme, implemented with UNDP support, give priority to targeting young persons, women and disabled persons, particularly in the informal sector. The Committee notes that, according to UNDP estimates, underemployment affects more than 45 per cent of the workforce in rural areas and that the level of illiteracy remains a source of concern. The latter affects 47 per cent of the population, particularly the female population, and affects nearly 31 per cent of young persons. Despite significant progress in education, nearly 27 per cent of the population over 15 years of age is illiterate, according to figures for 2006, and an even greater proportion has not received basic schooling. Furthermore, 94 per cent of workers have not received any vocational training. ***The Committee requests the Government to provide information in its next report on the results achieved through the actions taken by the Government to ensure the coordination of education and vocational training policies with employment policy. It requests the Government to communicate the results achieved in terms of access to lasting employment for young persons leaving university.***

Collection and use of employment data. The Government states that the National Strategy for the Development of Statistics has been established with the participation of the Ministry of Labour. The National Employment Information System (SNIE) is operational owing to the establishment of the OMEF, which has a web site on which employment offers and requests may be consulted. The Government points out that training organized by the ILO in 2008 on the MAP/PNSE information system and monitoring indicators was of particular benefit to managerial staff at the Ministry of Labour and the OMEF. ***The Committee requests the Government to supply information on the progress made to establish reliable statistical data, thereby enabling the formulation and implementation of an employment policy pursuant to the requirements of the Convention.***

Article 3. Participation of the social partners in the formulation and implementation of policies. The Government describes the functions of the National Labour Council (CNT) and the National Monitoring Committee for the Promotion of Employment and Poverty Reduction (CNSPERP), two tripartite bodies concerned with employment policy. ***The Committee requests the Government to supply full information on consultations conducted under the auspices of the CNT and the CNSPERP with a view to the formulation and implementation of an active employment policy. It also requests the Government to supply information in its next report on consultations conducted with the representatives of workers in the rural and informal sectors, and also on the outcome of these consultations with regard to employment policies.***

Mongolia

Employment Policy Convention, 1964 (No. 122) (ratification: 1976)

Implementation of an active employment policy. The Committee notes the information provided by the Government in its report received in November 2008, including information in reply to the Committee's previous comments. The Government indicates that it has been implementing the National Programme on Employment Promotion, the National Programme on Improving Occupational Safety and Health Environment, and the National Programme on Supporting Living Standards of Households, which lead to the creation of 81,172 new jobs in 2007. The Government indicates that the overall unemployment rate was 3 per cent in 2007, of which 56.2 per cent were female. The number of registered unemployed jobseekers stood at 30,800. The Committee notes that the Government declared 2007 as the "Year of Job Creation", whereby a set of activities and measures were developed to promote efforts towards job creation, to improve employment conditions through the distribution of labour market information to all citizens, to reduce poverty, to develop effective and efficient employment services in rural areas, and to revise the legal environment for employment promotion. The Committee also notes that the Mongolian National Development Policy Paper, as approved by Parliament in 2008, provides for a policy directed at implementing the Millennium Development Goals. The Government indicates that the National Development Policy will be implemented within the context of the mid- and short-term development programmes and action plans, the Government Action Plan and other programmes. ***The Committee asks the Government to provide information in its next report on the results of the implementation of the aforementioned national programmes and the National Development Policy Paper, with particular regard to employment generation. It also hopes that the information provided in the next report on active employment policy measures implemented by the Government will enable the Committee to examine the means by which economic growth translates into better labour market outcomes and poverty reduction (Articles 1 and 2 of the Convention).***

Vocational training and education. The Committee notes that the Government is making revisions to the system of vocational training and education so as to provide for greater participation of the private sector and social partners in all stages of activities, such as the definition of vocational training requirements, the formulation of a training policy, the development of training standards and the contents thereof, the organization of trainings, testing of the level and quality of vocations, and to provide training participants with jobs. To this end, the following reforms were envisaged: (i) the development of a legal framework on vocational education and training and for its implementation; (ii) increased finances from the state budget for vocational education and training; (iii) the formulation of standards for vocational training of the population; (iv) development of school buildings; (v) training and retention of foreign teachers; and (vi) the development of a methodological system of management for vocational education. The Committee understands that the Law on Technical and Vocational Training was adopted in February 2009 and that the Government established a 16-member national authority for vocational education and training which will be responsible for working with employers to determine the demand for vocational training and technical education among their employees and consult on issues concerning vocational education, training and employment. ***The Committee asks the Government to continue to provide information in its next report on the policies and measures being implemented to improve skills levels and coordinate education and training policies with prospective employment opportunities. The Government is also invited to supply information on the results of the implementation of the Law adopted in February 2009 and on the activities of the National Authority for Vocational Education and Training.***

Employment services. The Government indicates that, as a result of the Social Security Sector Strategy Paper adopted in 2003, the Employment Promotion Law was revised in 2006 so as to provide for State employment services targeted at vulnerable categories of workers, employees in the informal sector and herders, increased types of State employment services, and revised revenues and expenditures of the Employment Promotion Fund. ***The Committee asks the Government to continue to provide information on the activities of the employment services, and how they contribute towards implementing active labour market policies.***

Youth employment. The Committee notes that youth unemployment is higher than that compared with other age groups. The unemployment rate of young persons aged 15–17 was 18 per cent, and that of persons aged 20–24 was 21.2 per cent. The Government indicates that the draft National Plan on Youth Employment for 2008–15 was formulated with a view to promoting school-to-work transition and to support the employment of young persons. In this context, micro-credit programmes for the promotion of student employment were being carried out in connection with XAC bank. In 2007, the Employment Promotion Fund disbursed 200 million tugriks as micro-credit for employment promotion, which enabled the provision of job opportunities to graduates. ***The Committee invites the Government to continue to provide information on the measures taken to implement the National Plan on Youth Employment, and to report on the effect such measures have had on increasing the access of young people to sustainable employment.***

Persons with disabilities. The Committee further notes that, as part of its efforts to implement the objectives of the National Programme on Support for Disabled Persons, the Government has been working to provide guidance to organizations so as to encourage the employment of persons with disabilities. ***The Committee asks the Government to continue to provide information on the results of the implementation of the National Programme on Support for Disabled Persons in addressing the employment needs of persons with disabilities.***

Herders. Further to the Policy on Support for Herders in Entrepreneurship, a programme was formulated and approved to encourage herders to become entrepreneurs, and to share herding practices and experiences with young herders. The programme also sought to support herders to run their enterprises effectively and to deliver appropriate employment services and measures for them. ***The Government is invited to continue to provide information on the measures taken to address the particular needs of herders.***

Workers in the informal economy. The Committee notes the Government's statement that it has defined policies on informal economy employment, which is one of the challenges facing the labour market. Further to the National Policy on Informal Employment, measures were taken to coordinate the State's approach to workers in the informal economy, to provide them with information on the laws on employment and social security, to enable such workers to participate in social and health insurance, to organize training courses to provide workers in the informal economy with knowledge of labour relations, occupational safety and health, social welfare. The Government indicates that, in order to formalize records and develop information services for informal workers, the Aimag and the labour and social welfare service agencies carried out a survey on informal workers in 2007. As a result of this survey, 80,000 people were registered and given an identity card. The Committee welcomes such approach to address the needs of workers in the informal economy. ***The Committee invites the Government to include information in its next report on the implementation of measures to enable the progressive transfer of workers from the informal economy to the formal economy, and any measures to promote complementary relationships between the formal and informal economy and to provide greater access of undertakings in the informal sector to resources, product markets, credit, infrastructure, training facilities, technical expertise and improved technologies (Part V of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

Migrant workers seeking employment abroad. The Government indicates that amendments were introduced to the law on sending workers abroad and receiving workers and professionals from abroad, which are pending parliamentary approval. The proposed amendments provide for the development of a registration system for compiling information about workers sent abroad, and those foreign workers and professionals working in Mongolia. The amendments also seek to address the duties, responsibilities and requirements incumbent on mediation organizations, revises the procedure for giving special licences, refines the monitoring scheme, and improves state services for mediation organizations. The Committee further notes that steps are being taken to develop a legislative initiative on migrant workers, with the assistance of the Office. ***The Committee invites the Government to include information in its next report on the implementation of the aforementioned amendments to the law on sending workers abroad and receiving workers and professionals from abroad, including measures taken within the framework of an active employment policy to prevent abuse in the recruitment of migrant workers (Part X of the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)).***

Consultation with the persons affected. The Committee notes that the Tripartite National Committee on Labour and Social Dialogue was established to influence the formulation and implementation of State social policy on labour issues, to develop a tripartite social dialogue system, to monitor the implementation of the Tripartite Labour and Social Dialogue Agreement and to discuss economic and social issues. The Government also indicates that a National Council of Employment was established as a supernumerary organization of representatives from governmental organizations, which represent the rights and legal interests of the Government, employers and workers. The National Council of Employment is tasked with discussing issues relating to employment and unemployment, unemployment insurance and related issues of economic and social policy at the national level. It is intended to influence the formulation and implementation of State policy on unemployment insurance, to monitor budgets of revenues and expenditures of the Employment Promotion Fund, to develop conclusions and recommendations on employment issues, and to submit relevant matters to the competent authority for decision. ***The Committee asks the Government to report on the activities of the Tripartite National Committee on Labour and Social Dialogue and the National Council of Employment in respect of employment policies and the steps taken to ensure that the views of representatives of social partners (including representatives of the rural sector and the informal economy) are fully taken into account for the purposes of formulating and enlisting support for employment policies.***

Morocco

Employment Policy Convention, 1964 (No. 122) (ratification: 1979)

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee notes the indications provided by the Government in its report supplied in August 2008 in reply to the questions raised in the 2007 direct request. The Government indicates that stability of the macroeconomic framework is considered to be an essential prerequisite for the development of a healthy economy, and that it offers greater visibility to national and international investors by making the Moroccan economy more attractive. Accordingly, the Government reports that this will increase its potential for job creation. The Government also provides information on the positive developments achieved in 2006 by the Moroccan economy, including a decrease in unemployment from 11.5 per cent in 2005 to 9.7 per cent in 2006. The efforts made have had a positive impact on poverty reduction, with the poverty level falling by 6.3 percentage points between 2001 and 2007. The relative poverty rate accordingly fell from 15.3 per cent in 2001 to 9 per cent in 2007. The

Committee notes that 1.7 million Moroccans emerged from poverty, and 1.2 million from vulnerability. In 2008, despite the crisis, economic growth reached 5.8 per cent. *The Committee hopes that the Government will describe in its next report the monetary, budgetary and trade policies that are contributing “within the framework of a coordinated economic and social policy” to the attainment of the objectives of full employment set out in the Convention. It emphasizes in this respect the importance of collaboration between the principal national institutions responsible for the implementation of employment policy, and hopes that the next report will also contain information on the arrangements for cooperation between the National Agency for the Promotion of Employment and Skills (ANPEC) and the other ministerial administrative departments participating in the formulation and implementation of measures which have an impact on employment.*

The Government indicates that it has established for the period 2006–08 an “Employment–Initiatives”, plan of action with the goal of the integration of 200,000 jobseekers through three active programmes: IDMAJ (Integration), TAEHIL (Qualification) and MOUKAWALATI (My Enterprise). The Committee notes that, between January and the end of May 2008, the “Integration” programme, the aim of which is to enable young persons to develop skills through a first professional experience in enterprises, helped 19,233 young graduates. The “Qualification” programme, which is aimed at improving the employability of jobseekers, helped 23,000 persons. The “My Enterprise” programme is aimed at the creation of enterprises. An impact evaluation of the plan of action is due to be conducted in 2009 by the National Employment Observatory. *The Committee invites the Government to provide an evaluation in its next report of the results achieved by the three active programmes of the “Employment–Initiatives” plan of action in terms of the integration of jobseekers. The Government is also invited to supplement its report with data on the evaluation of the implementation of the MOUKAWALATI programme in terms of the number of enterprises created, the economic sectors concerned and the proportion of women and young persons who have benefited, as well as its impact on employment and unemployment.*

Women’s employment. The Government indicates in its report that the vocational training system is not characterized by any structural discrimination against girls. No regulations limit or prohibit the access of girls to any type of training, and all the options are now legally open to them. The Government further indicates that it takes measures to eliminate any discrimination against girls in the vocational training system. The Government also provided data on the proportion of women in the various levels of training. *The Committee asks the Government to supply information on any active measures taken to increase the participation of women in the labour market, and the impact of any measures adopted in this respect, as well as the employment opportunities available to beneficiaries following training.*

Employment promotion in small and medium-sized enterprises. The Government recalls the implementation of measures to encourage and finance the creation of small enterprises, including the Charter for Small and Medium-sized Enterprises. In the replies to the questionnaire for the 2010 General Survey on employment, the Government indicates that the promotion of small enterprises is an area that requires particular attention from the public authorities, in view both of the role that these enterprises play in strengthening the national economic fabric and their capacity to adapt to the constraints of competition on the international market. In the framework of the “My Enterprise” programme, by the end of May 2008, over 1,000 small enterprises with 3,320 jobs had been created. *The Committee invites the Government to provide more detailed information in its next report on the various forms of financing established for the development of small and medium-sized enterprises, the number of beneficiary enterprises and the economic sectors concerned.*

Article 3. Participation of the social partners in policy formulation and implementation. The Government indicates in its report that it has established a Higher National Employment Promotion Council and regional and local councils. The Higher National Employment Promotion Council is an advisory body of which the social partners are members. At its first meeting in December 2007, the Council adopted a number of recommendations for the evaluation of employment promotion measures, the formulation of new measures and the strengthening of the role of the social partners. *The Committee asks that the Government provide information on the activities of this tripartite body and on the manner in which it is consulted in the formulation and review of employment policies and programmes. Please also indicate the manner in which the views are taken into account of the “representatives of other sectors of the economically active population”, and particularly workers in the rural sector and the informal economy, with a view to obtaining their full cooperation in the formulation of employment policies and their help in securing support for such policies.*

Mozambique

Employment Policy Convention, 1964 (No. 122) (ratification: 1996)

Implementation of an active employment policy. The Committee notes the information provided in the Government’s report received in October 2008 including detailed replies to its 2007 observation. The Government reports on the adoption of a new Labour Code by Act No. 23 of 1 August 2007 and the implementation of the Employment and Vocational Training Strategy (EEFP). The Committee notes with *interest* that the EEFP was adopted as the guiding instrument for government policy up to 2015. By implementing the EEFP the Government intends to strengthen the role of the State in the promotion and monitoring of actions aimed at protecting vulnerable groups. The EEFP also advocates the maximization of the employment variable in all development programmes and projects aimed at combating absolute

poverty; increasing employment-creation and income-generation opportunities for the population; the introduction of vocational information and guidance to maximize equality among jobseekers in terms of potential and capacities, and improving the operation of the employment services working alongside the private employment agencies. The Committee further notes that the ILO is contributing to the implementation of the EEFP through the “Working out of Poverty” (WOOP) programme developed to promote decent work, greater awareness and application of international labour standards, the strengthening of social dialogue and income-generating opportunities for designated target groups. ***The Committee welcomes this approach and looks forward to examining in the Government’s next report further information on how the EEFP has improved employment opportunities and where it has failed to meet these expectations.***

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. From data available in the ILO, the Committee notes that the level of unemployment remains very high. In 2004–05, the urban population had an employment rate of 31 per cent and the unemployment rate in the rural areas was 13 per cent. The Government states in its report that the economy of Mozambique has shown impressive and encouraging signs of recovery over the last ten years and prospects for the future are extremely promising. However, the enormous challenge that unemployment poses, together with the high levels of poverty in the country, demonstrate that a large segment of the population is not benefiting from the economic recovery. The Committee notes that the plan of action for the Reduction of Absolute Poverty Programme (PARPA) would be finalized in 2009. ***The Committee asks the Government once again to provide information in its next report on the results of the implementation of PARPA. It reiterates its interest to examine information on the extent to which economic growth translates into the creation of lasting employment and poverty reduction for the most vulnerable workers, such as women, young workers and those in the informal sector.***

Women. The Committee notes that, according to the available data, the unemployment rate for women (22 per cent) is much higher than that of men (15 per cent) and that their levels of educational attainment are very low compared to those among men. Furthermore, women appear to be affected by HIV/AIDS by a much higher percentage. ***The Committee asks the Government to include information in its next report on the efforts made to improve the employment situation of women, especially in rural areas, with particular reference to the measures which are being implemented under PARPA.***

Youth employment. The Committee notes the high level of youth unemployment, particularly in urban areas where it stands at 57 per cent for persons aged 20–24. The Committee understands that active employment measures targeted at newly graduated young people and young workers are being implemented and that a special focus on youth has been placed in the context of local initiatives for developing training and employment opportunities supported through cooperation with district governments. ***The Government is invited to include in its next report information on the implementation of measures and programmes at the national and local levels aimed at supporting the social inclusion and labour market integration of young workers.***

Article 2(a). Collection and use of employment data. The Government reports that various public and private sector institutions, coordinated by the Ministry of Labour, are responsible for collating information on the labour market. However, due to lack of resources and a shortage of qualified staff, the accuracy of the data currently available is not satisfactory. The Government indicates that the Labour Market Information System has now been set up, which will allow analysis of data concerning economic growth and jobs created under the EEFP. ***The Committee invites the Government to include statistics on the situation and trends on employment in its next report, and to specify how these statistics are used in deciding on, and reviewing, employment policy measures.***

Education and vocational training. In reply to previous comments, the Government indicates that the school network has been expanded on an unprecedented scale and there is now access to general, vocational and higher education in all provinces and districts. In this regard, the Committee notes the adoption of the Education Sector Strategic Plan, which aims at widening access to education and vocational training and at modernizing the technical vocational schools, bringing curricula and programmes in line with economic realities, so as to establish strong links with the productive sector. The Committee further notes that, under the Integrated Programme for Vocational Education Reform (PIREP), a Skills Development Fund (FUNDEC) has been created to support technical and vocational training projects in public and private sector institutions and community organizations at the district level. ***The Committee asks the Government to provide further information on the results of the measures implemented under PIREP.***

Workers in the informal economy. Support to small-sized and micro-enterprises and to cooperatives. Concerning the measures taken under the EEFP to promote employment creation through micro-, small and medium enterprises (MSMEs) and to integrate informal economic activities into the formal sector, the Committee notes the establishment of an MSME Development Fund coordinated by the Ministry of Planning and Finance, the introduction of fiscal incentives as well as the wider access to government procurement schemes granted to local enterprises. The Committee also notes that the Government refers in its report to the adoption of active employment measures supporting associations and cooperatives in the field of production in order to favour, inter alia, the social inclusion of the vulnerable members of the population. ***The Committee asks the Government to continue to provide such information on the measures taken to improve the legislative and regulatory basis for micro-, small and medium-sized enterprises and cooperatives, as well as on efforts made to shift activities from the informal economy to the formal economy.***

Article 3. Participation of social partners in the formulation and application of policies. In reply to previous comments, the Government states that the active participation of representatives of workers' organizations in the formulation of the employment policy has contributed to labour market flexibility and the promotion of fair labour conditions while strengthening social dialogue on issues related to employment and vocational training. Social partners participate in the mobilization of resources for the creation of an Employment and Vocational Training Fund as well as in the establishment of a Vocational Training Centre for Metalwork. They are also actively involved in the campaign for the adoption of new legislation to protect the rights of persons living with HIV/AIDS. ***The Committee would appreciate if the Government would continue to provide information on the participation of social partners in the formulation of the employment policy as well as on their involvement in the activities of vocational education and training institutions. Please also indicate the measures taken or contemplated to involve, in the consultations required by the Convention, the representatives of other sectors of the active population, such as persons working in the rural sector and in the informal economy.***

Myanmar

Unemployment Convention, 1919 (No. 2) (ratification: 1921)

Advisory committees on the operation of free public employment agencies. The Committee notes the Government's report received in August 2009, including its replies to the 2006 observation. The Government reports that the Department of Labour provides a free employment service through its network of 77 township labour exchange offices, and that, also through these offices, the Department of Labour provides manpower supply services to industries and establishments in public, cooperative and private sectors. The Government adds that measures are being taken to review the existing labour laws, including those relating to unemployment. ***The Committee refers to its previous comments and reiterates its hope that the future legislation will ensure the establishment of free and independent workers' organizations for the purposes of consultation on the operation of free public employment agencies, as required by the Convention. It asks the Government to specify the measures taken to combat unemployment in the country (Article 1 of the Convention).***

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

Netherlands

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

Implementation of an active employment policy. The Committee notes the information provided in the Government's report for the period ending in June 2008, and the comments provided by the Trade Union Confederation of Middle and Higher Level Employees' Unions (MHP), the Netherlands Trade Union Confederation (FNV), and the National Federation of Christian Trade Unions (CNV) received in August 2008. The Government indicates that economic growth was robust over the period 2006–08, with GDP rising by 2.75 percentage points in 2006, 3 percentage points in 2007 and 2.25 percentage points in 2008. The Government indicates that the positive economic developments also translated into the labour market, with increasing labour shortages caused by rising vacancies with rapidly falling unemployment. Furthermore, due to labour market tightness, people previously disengaged from the labour market found their way into employment. The Government projects, however, that the financial turmoil is likely to disrupt the economic outlook from 2008 onwards. As of 2007, the total participation rate was 76 per cent. In view of the ageing society, the Cabinet committed itself to achieve a participation rate of 80 per cent in 2016, and intends to make a substantial step in that direction by 2011. In its comments, the MHP questions the link between the entry of severely disengaged persons into the labour market and labour productivity. In this regard, the MHP states that people who are severely disengaged from the labour market have yet to find employment, and that there was still a clear need in the Netherlands for ever greater innovation so as to encourage productivity. The FNV observes that there has been an increase in unemployment, and considers that structural unemployment in the lower segments of the labour market will persist, which will require specific measures to be taken in response. Furthermore, the FNV expresses its doubts as to whether the Government's policies are compatible with the requirement that the policy ensures freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his/her skills and endowments in, a job for which he or she is well suited. ***The Committee asks the Government to continue to provide information on the impact of the active labour market measures on the current employment situation and in particular to indicate how such measures are decided on and kept under periodical review within the framework of a coordinated economic and social policy. The Committee also invites the Government to provide its observations on the concerns raised in respect of the compatibility of the employment policy pursued with the requirements of the Convention.***

Older workers. The Committee notes that the labour participation rate of persons aged between 55 and 64 rose to 50.9 per cent in 2007. The Government indicates that this increase in employment among older workers is an indication that policies aimed at extending working lives are effective. The Government has drawn up a "45 plus" action plan which is aimed at reducing unemployment among people aged 45 years and above. The Ministry of Social Affairs and Employment is supporting the implementation of the action plans by means of a national action team whose task it is to intensify cooperation between regional and local parties involved in the reintegration processes. The Centre for Work and

Income is also deploying 300 advisers to provide services for people in this age group. As of February 2008, the goal of 30,000 additional placements was achieved, however efforts continue to be made to further reduce unemployment in this age group. Furthermore, the Government indicates that it set up a Steering Group (Grey Works) to provide a national communication programme in order to remove prejudices against older workers, to promote exchange of practical solutions among employers and employees and to reach agreements with and between social partners on stimulating employees to work longer. The Government also refers to the temporary subsidy scheme for employers and branches to encourage age-awareness policies by developing innovative human resources policies in order to improve sustainable employability of older workers, which will end in the middle of 2010. In its comments, the CNV expresses its belief that it should be made easier for people to be able to work after the legal age of retirement, i.e., 65. In this regard the CNV indicates that it promotes the removal of any “forbid” rules in the Collective Labour Agreements that make working after the age of 65 more difficult. The MHP has also expressed its concern on the implementation of the old-age insurance levy and its impact on stimulating older workers to work longer. ***The Committee asks the Government to continue to provide information on these and other measures implemented to retain older workers in the labour market.***

Youth employment. The Government indicates that unemployment among young people has continued to fall in recent years, falling from 13.5 per cent in 2004 to 9.2 per cent in 2007. The rate of youth unemployment is still twice as high as the average unemployment level. The Government indicates that the Youth Unemployment Task Force reached its target of helping 40,000 young persons find jobs, and was accordingly disbanded in the spring of 2007. The Task Force advised the new Cabinet to sustain its efforts to reduce youth unemployment, and made recommendations for tackling the hard core unemployed youth at the local level, introducing national evaluation criteria for preparatory secondary vocational education and upper secondary vocational education. The Government indicates its intention to implement these recommendations. The Government also indicates that it has appointed a Minister for Youth and Family, in consideration that a comprehensive approach to youth and family policy is extremely important. On 28 June 2007, the Minister of Youth sent his programme “All opportunities for all children”, including policies relating to the transition from school to work, to Parliament for its consideration. In this regard, the CNV refers to the Government’s initiative, “Work-Learn Duty” for persons under 27 years of age, whereby persons of this age group either learn at school, or have jobs, or a combination of the two. The CNV indicates that it agrees with this proposal in so far as it means that municipalities have the duty to assist young persons with an offer of a relevant learning trajectory or a suitable job. The CNV states that this does not mean that pushing young persons as fast as possible into any job is always the right solution from the perspective of long-term participation in the labour market. The CNV also indicates that there should be scope for the introduction of exceptions to this initiative, for example young single parents. Furthermore, the CNV states that provision should be made for persons who have not been offered a job or learning trajectory to claim benefits. The MHP also indicates that the Government’s plans to require employers to allow their workers to obtain a national starting qualification if they do not already possess one offers a comprehensive way forward. ***The Committee asks the Government to continue to report on measures taken to meet the needs of young persons, and how these ensure that young persons have the fullest possibility to qualify for and to use their skills and endowments for jobs for which they are well suited.***

Ethnic minorities. The Government indicates that, while the labour market position of ethnic minorities is less favourable than that of other nationals, there have been some positive developments. A broad-based programme is being developed to reduce language disadvantage and prevent early school leaving. The Social and Economic Council observed that the problem was not lack of a policy, but rather a need to improve the implementation of existing policy. The drive to combat early school leaving will continue and will be reinforced through cooperation between Government, parents, schools, businesses, social workers, youth services, municipalities, police and the Ministry of Defence. The Government also indicates that it supports the recommendation of the Social and Economic Council to develop a strategy aimed at raising awareness of prejudices and reinforcing positive perceptions across society. The Government is presenting its Integration Delta Plan aimed at improving the quality of integration so that more people will be able to complete the integration process at a higher level and participate economically, socially and culturally in society. In addition, the Government has subsidized several projects, many of which involved the close cooperation of social partners and the rest of civil society, aimed at improving the labour market position of ethnic minorities. ***The Government is requested to continue to provide information on the measures to promote the access by ethnic minorities to the labour market, including information on the steps taken to ensure better implementation of such measures.***

Article 3 of the Convention. Cooperation with social partners. The Committee notes that the Government, social partners, provinces, municipalities, implementation offices, as well as individual employers and employees are jointly responsible for the functioning of the Dutch labour market and the Dutch employment policy. The Government further indicates that a Participation Summit was held in June 2007 where the Government consulted with the labour foundation (central employers’ and employees’ organizations) and with the Association of Dutch Municipalities. The Participation Summit resulted in a tripartite policy commitment by which all partners acknowledged the urgency, challenges and outcome of the analysis related to the labour market, and committed themselves to raising effective labour participation rate to 80 per cent, to increase the adaptability of the labour market and to create labour market opportunities for vulnerable groups. ***The Government is requested to continue to report on similar such initiatives to ensure that representatives of employers’ and workers’ organizations and representatives of other sectors of the economically active population are involved in the formulation and implementation of active employment policies.***

New Zealand

Employment Service Convention, 1948 (No. 88) (ratification: 1949)

The Committee notes the information provided in the Government's report received in August 2009, including its reply to the 2005 observation as well as comments of the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand.

Articles 1 and 3 of the Convention. Contribution of the employment service to employment promotion. The Government indicates that Work and Income is part of the Ministry of Social Development. Its role is to help to find work and to pay income support on behalf of the Government. Work and Income has over 4,000 employees with 143 service centres nationwide, regional offices in 11 regions and a national office based in Wellington. Work and Income has also five contact centres located across the country. The NZCTU states that the current economic recession is accompanied by higher levels of redundancies and rising unemployment. It expresses its concern that the statements of the Government on the assistance to be provided to workers facing unemployment have not been backed up by substantive action. In particular, the NZCTU refers to the budget cuts envisaged for tertiary education, including adult and community education, despite the increased training needs for the unemployed having been laid off due to the crisis. The NZCTU also points out that the situation is particularly difficult for young workers; the current youth unemployment rate being just under 20 per cent. The Government indicates that it has introduced a comprehensive range of economic stimulus and social assistance measures to help the country respond to the current global economic situation. These measures include a job support scheme and a specific youth opportunity package aimed at creating new work, education and training opportunities for young persons. The Committee notes the NZCTU's comments concerning the measures recently taken to implement the Social Security Amendment Act 2007, which require parents or guardians of school-age children to plan for, or take up employment, despite the existing shortage of affordable quality childcare. The NZCTU also expresses concern over the partial restructuring of the employment service proposed by the Government, including plans to close the Child, Youth and Family centres in the provinces. The Government clarifies that the current restructuring is being carried out primarily at the national level and aims at refocusing the operations of the Child, Youth and Family service by strengthening frontline service delivery, whereas no changes are being made to the regional structure of the public employment service. ***The Committee refers to its comments on the Employment Policy Convention, 1964 (No. 122), and invites the Government to provide information, in its next report, on the measures taken to achieve the best possible organization of the employment market, in particular by adapting the network of the public employment service to the needs of the economy and the active population.***

Articles 4 and 5. Cooperation of employers' and workers' representatives. The NZCTU reiterates that there are no advisory committees on general employment services, or employment policies and practices, with representation of the NZCTU or other unions. It emphasizes the need for the Government to consult in a more systematic way, and to directly involve, workers' representatives in the development of employment policies and practices that will deliver effective measures to respond to pressures caused by the economic recession. While acknowledging that representatives of the Ministry of Labour meet regularly with the NZCTU officers to discuss a range of issues and that irregular consultations are held on specific topics, the NZCTU considers that this does not constitute full and meaningful consultation as required under *Article 4* of the Convention. As a consequence, unions are not provided with an overview of future developments, nor are they enabled to suggest improvements to employment service policy and practice. In its reply, the Government indicates that it regularly consults the social partners, and that advisory committees or working parties may be established for specific projects where such a focus is required. In this regard, the Committee recalls that the Convention requires that suitable arrangements should be made through advisory committees for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy, and that the representatives on these committees should be appointed after consultation with representative organizations of employers and workers. Furthermore, the general policy of the employment service in regard to referral of workers to available employment should be developed after consultation with representatives of employers and workers through these advisory committees. ***The Committee asks the Government to include in its next report further information on the consultations which have taken place with regard to the adoption of measures to give full effect to the essential requirements provided under Articles 4 and 5 of the Convention.***

Article 6, paragraphs (b)(iv) and (c). Movement of workers. In its comments, the NZCTU refers to the difficult situation of many migrant workers who had been encouraged by immigration services to move to New Zealand and who are now facing termination of their contracts and whose temporary work visas are not renewed. The NZCTU suggests that skill shortages lists be reviewed to ensure that migrant workers are not provided misleading information. The Government indicates that its immigration policy has always been based on ensuring that citizens have been given priority in hiring; however, it points out that New Zealand still needs skilled migrants and that these needs are reflected in skill shortages lists, which are reviewed yearly based on extensive consultations with key government departments, employers' groups, training organizations and unions. ***The Committee invites the Government to include in its next report information on the measures taken to facilitate any movement of workers from one country to another, as well as on the measures adopted to ensure that the fullest available information on the situation of the employment market and its probable***

evolutions, including skill shortages in specific sectors, are made available to the public authorities, the social partners and the general public.

Employment Policy Convention, 1964 (No. 122) (ratification: 1965)

The Committee notes the Government's detailed report for the period ending in May 2009, including replies to the 2007 observation, as well as comments of Business New Zealand and the Government's corresponding reply.

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. In its previous observation, the Committee asked the Government to keep providing information on the results of its employment strategy, Better Work Working Better (BWVB), launched in 2004. The Government refers to the economic and social indicators used to measure progress towards the goals of BWVB and notes that the steady macroeconomic performance has seen reductions in the official unemployment rate and increases in the participation rate since December 1999, which have resulted in progress towards meeting these goals until the end of 2007. In 2007, there was a registered employment growth of 2.5 percentage points, with employment standing at a record high of 2,173,000 persons and the labour force participation rate reaching 68.8 per cent, the highest rate recorded over the last 21 years. According to Statistics New Zealand, after a record low of 3.4 per cent in October–December 2007, the unemployment rate has progressively increased to reach 4.7 per cent at the end of 2008. With reference to the work–life balance work programme, the Government recognizes that improved work–life balance contributes to increased workplace productivity, improved wellbeing and quality of life, and addresses skill and labour shortages by encouraging labour market participation. The Committee notes that the Employment Relations (Flexible Working Arrangements) Amendment Act 2007 provides employees with caretaking responsibilities with the right to request a variation to their working hours, days of work, or place of work. ***The Committee asks the Government to continue to provide evaluations in its next report of the impact of the various labour market reform measures undertaken on the current employment situation.***

Education and training policies. The Committee notes the detailed information provided in the Government's report on education and training policies, focusing in particular on the Unified Skills Strategy 2008–12 which is based on a collaboration and commitment to social partnership through the active engagement of the NZCTU and Business New Zealand, government agencies and other stakeholders, including education and training providers. The strategy aims at lifting labour productivity through skills development. Among the priorities set to be achieved within the framework of the tertiary education strategy, the Committee notes that a special focus is placed on increasing literacy, numeracy and language levels for the workforce, as around 1.1 million New Zealanders have low literacy skills. With reference to the initiatives taken to increase employment opportunities for Maori, Pacific peoples and new immigrants, the Government indicates a number of legislative and other measures that are being implemented, including support mechanisms to increase skills levels, employment schemes benefiting Maori jobseekers through partnerships with local and regional councils, and policy measures to facilitate the temporary entry of foreign seasonal workers. ***The Committee asks the Government to continue providing information, including statistical data, on the measures taken to coordinate education and training policies with employment opportunities for vulnerable categories of workers, specifically Maori, Pacific peoples and new immigrants.***

Entrepreneurship. The Government reports on workshops organized jointly by employers and industry partners which were attended by over 3,000 firms for the implementation of the Workplace Productivity Agenda (WPA). The Government further underlines that the most representative workers' and employers' organizations have been active in promoting these workshops to their members. ***The Committee would welcome receiving information in the next report on the results obtained in increasing workplace productivity and information on measures taken to create employment by the promotion of entrepreneurship of small and medium-sized enterprises.***

Article 3. Participation of the social partners in the formulation and application of policies. Business New Zealand indicates that although the Government undertakes regular consultations with employers' representatives on employment-related issues, their views are rarely taken into account, which might have an adverse effect on the job opportunities that the policy measures taken are supposed to promote. In this regard, the Government indicates that, while both employers and employees generally agree that workplace flexibility is positive, the views of other stakeholders are divergent. The Government recalls that, in November 2006, a general consensus on the importance of flexible work for all New Zealanders has been reached, not only including parents or persons with caretaking responsibilities. ***In this regard, the Committee would appreciate continuing to receive information and data on successes, problems encountered and lessons to be learned from the experience of social partners in New Zealand with regard to the application of the Convention.***

Nicaragua

Employment Policy Convention, 1964 (No. 122) (ratification: 1981)

Articles 1 and 2 of the Convention. Adoption and implementation of an active employment policy within the framework of a coordinated economic and social policy. The Government indicates that, in accordance with Decree No. 30-2006 establishing the national employment policy, macroeconomic, wage-related, fiscal, financial and public expenditure measures have been taken into account to generate productive and stable employment. Furthermore,

the Government supports the creation of productive and decent employment through the strengthening of the domestic market and the promotion of policies which provide an attractive environment for national and direct foreign investment in traditional and non-traditional sectors. The Committee notes the adoption of the Decent Work Country Programme 2008–11 which aims to contribute to the economic and social development of Nicaragua through the generation of employment and decent work in a sustained manner within a framework of efficiency, productivity, competitiveness and social justice. The Committee notes that programmes have been adopted under the National Employment and Decent Work Policy (PNETD) to generate employment, provide vocational training and support the integration of women into the labour market. The Committee also notes that in view of the international economic crisis, in January 2009, the Government adopted the Plan for the protection of production, growth and employment, the five central components of which include maintaining financial stability, public investment in infrastructure projects, encouraging private investment and production, the protection of solidary employment through consensus on wages policy and the promotion of local jobs, and fiscal austerity. ***The Committee once again notes with interest the manner in which the Government has proposed that the Convention be applied and requests that it provide information in its next report on how the measures taken under the programmes implemented as part of the National Employment Policy and the Plan for the protection of production, growth and employment have contributed to generating productive, stable and high-quality employment.*** In this regard, the Government has indicated that the economic crisis has had a considerable impact on employment in the export processing zones and that the Plan for the protection of production, growth and employment includes measures to facilitate exports. ***The Committee requests the Government to continue providing information on developments relating to employment in export processing zones and on the measures taken to ensure that these zones offer lasting and high-quality employment.***

Coordination of employment policy and poverty reduction. According to the estimates available, in 2007, poverty affected 46 per cent of the total population, while 15 per cent were living in extreme poverty. In November 2007, unemployment in Nicaragua stood at 5.2 per cent, while underemployment stood at 34.1 per cent. A total of 62.7 per cent of employed persons were working in the informal economy, which represents an increase of 3.9 percentage points since 2005. According to the statistics included in the Government's report, women accounted for only 37.2 per cent of the total employed population. The Committee also notes that under the Zero Hunger programme productive vouchers are offered to help those living on limited resources. ***The Committee requests the Government to continue providing information in its next report on the situation, level and trends of employment, unemployment and underemployment, indicating the extent to which they effect the most vulnerable sectors and the results achieved by the measures taken to combat poverty. The Committee also requests the Government to continue providing information on the steps that it is taking to increase employment opportunities and improve working conditions in the informal economy.***

Promotion of small and medium-sized enterprises for job creation. The Committee notes with *interest* that in January 2008, Act No. 645 on the promotion and development of micro, small and medium-sized enterprises (MSMEs) was adopted, which aims to formalize MSMEs through the creation of support centres and a single decentralized register. A National Council for Micro-, Small and Medium-sized Enterprises (CONAMYPE) was established as an advisory body for dialogue and consensus, tasked with determining national priorities, programmes, measures and activities aimed at promoting the sector. ***The Committee requests the Government to provide information in its next report on the results of the measures taken to develop the productivity and competitiveness of MSMEs and the progress made in achieving the objective of turning MSMEs into sources of sustainable, high-quality employment and income.***

Article 3. Participation of the social partners. The Committee notes that the priorities defined in the Decent Work Country Programme include, in particular, strengthening the National Labour Council (CNT) so that it contributes to devising and implementing employment and decent work policies and programmes. ***The Committee requests the Government to continue including information on the experience of the social partners in applying the Convention and specifically on the consultations held with representatives of the rural sector, the informal economy and those working in exports processing zones.***

Nigeria

Employment Service Convention, 1948 (No. 88) (ratification: 1961)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation, which read as follows:

Contribution of the employment service to employment promotion. In its 2004 observation, the Committee requested the Government to report in detail on the application of the Convention. In June 2006, the Government reported that a total of 6,640 applicants were registered in the Employment Exchange and Professional and Executive Registries in 2005. Of these, 1,516 applicants were placed in employment, while a total number of 1,989 vacancies were notified. In reply to a request by the Office for supplementary information, the Government provided, in August 2006, figures on the impact of the National Economic Empowerment and Development Strategy (NEEDS) concerning the training of youth under the Vocational Skills Development Programme between 2002 and 2005. The Committee notes that NEEDS covers small-scale enterprise programmes, rural employment promotion programmes, assistance for self-employment, special public work programmes and women's cooperatives. The Committee notes again, as pointed out by NEEDS, that since manufacturing is stagnant there are few jobs for the growing urban population, and urban unemployment was estimated at 10.8 per cent in 2004. NEEDS policies are expected to create about 7 million new jobs by 2007, by making it easier for private enterprises to thrive by training people in skills relevant

for the world of work and by promoting integrated rural development in collaboration with the States. The Committee hopes that the Employment Exchange and Professional Executive Registries will effectively perform their essential task within the meaning of the Convention, that is, of ensuring, in accordance with *Article 1(1) of the Convention*, the best possible organization of the employment market for the achievement and maintenance of full employment and for the development and use of productive resources. ***The Committee therefore requests the Government to report on the measures taken, in cooperation with the social partners, so that the public employment service is run efficiently and free of charge, and that it comprises a network of offices sufficient in number to meet the specific needs of jobseekers and employers countrywide. It also asks the Government to describe in its next report the activities of the employment service and the effects noted or expected on employment as a result of implementing its poverty reduction strategy.***

The Committee further requests the Government to include in its next report statistical information published in annual or periodical reports on the number of public employment offices established, applications for employment received, vacancies notified and persons placed in employment by such offices (Part IV of the report form). Please also provide information on the following matters:

- *consultations held with representatives of employers and workers on the organization and operation of the employment service and the development of employment policy (Articles 4 and 5);*
- *the manner in which the employment service is organized and the activities which it performs in order to carry out effectively the functions listed in Article 6;*
- *the activities of the public employment service concerning the various occupations and industries, as well as particular categories of jobseekers that are in socially vulnerable positions, in particular workers with disabilities (Article 7);*
- *measures proposed by the employment service to assist youth in finding suitable employment (Article 8);*
- *measures proposed by the employment service, with the cooperation of the social partners, to encourage the full use of employment service facilities (Article 10);*
- *measures taken or envisaged by the employment service to pursue cooperation between the public employment service and private employment agencies (Article 11).*

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

Pakistan

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2006 observation, which read as follows:

Part II of the Convention. Progressive abolition of fee-charging employment agencies conducted with a view to profit. The Government refers in a report received in February 2006 to the operation of the Overseas Employment Corporation (OEC), which operates in the public sector and has been able, to date, to dispatch 125,000 Pakistanis in various professions for employment abroad. The OEC is utilizing modern techniques by striving to obtain maximum job opportunities for Pakistanis abroad. Foreign employers are required to ensure completion of the necessary documentation and to seek permission from the concerned Protector of Emigrants. Foreign employers initiate the process of recruitment by inviting applications from the general public, including interviews and tests. Neither regional nor provincial quotas are followed in the selection of workers. The Government also states that the Overseas Employment Promoters (OEPs) operate in the private sector and have established an association, that is, the Pakistan Overseas Employment Promoters' Association (POEPA), along with provincial and regional heads. The POEPA deals with the issues and grievances confronted by the OEPs while processing the recruitment of Pakistanis for placement abroad. There exists a close liaison between POEPA and the Ministry of Labour, Manpower and Overseas Pakistanis to resolve issues and problems that are faced from time to time. The Ministry – under section 12 of the Emigration Ordinance, 1979 – has issued 2,265 licences – out of which 1,180 are actively functioning in the recruitment business.

In relation to the abolition of fee-charging employment agencies, as required by *Part II of the Convention*, the Government reiterates that draft rules have been framed to regulate the operation of fee-charging employment agencies. The Government also confirms that the policy of renewal of licences for OEPs is made for a period of one, two or three years. In relation to *Article 9* of the Convention, the Government indicates that due to the economic conditions of Pakistan, levies have been established for migrant workers. Therefore, the Government is not in a position to adopt a policy of abolishing fee-charging employment services for migrant workers. It also adds that punitive action is taken against those OEPs that are involved in violations of the Emigration Ordinance, 1979, and Emigration Rules, 1979.

The Committee recalls the comments made by the All Pakistan Federation of Trade Unions (APFTU) on the application of the Convention, which were forwarded to the Government in June 2005. The APFTU stated that agencies are allowed to charge fees for recruitment abroad and that some of them are involved in human trafficking.

The Committee also recalls that in 1977 it noted the enactment of the Fee-Charging Employment Agencies (Regulation) Act, 1976, which provided for the licensing of fee-charging employment agencies and empowered the public authorities to prohibit all or any fee-charging employment agencies in any area where a public employment service has been set up. According to section 1(3) of the Act, the Act would come into full force when the federal Government notified the same in the *Official Gazette*. The Committee has from time to time requested the Government to take the necessary steps to bring the Act into operation in order to achieve the aim of *Part II* of the Convention, that is the progressive abolition of fee-charging employment agencies conducted with a view to profit. ***Taking into account the lack of progress in achieving the abolition of fee-charging employment agencies, the Committee asks the Government to provide information in its next report on the following issues:***

- *the measures taken to abolish fee-charging employment agencies, the numbers of public employment offices and the areas served by them (Article 3(1) and (2));*
- *the measures taken to consult employers' and workers' organizations as regards the supervision of all fee-charging employment agencies (Article 4(3));*

- *with regard to overseas employment promoters, the measures taken to ensure that these agents may only benefit from a yearly licence renewable at the discretion of the competent authority (Article 5(2)(b)) and charge fees and expenses on a scale submitted to and approved by the competent authority (Article 5(2)(c)).*

Revision of Convention No. 96 and protection of migrant workers. The Committee recalls that, in March 2006, a *Multilateral Framework on Labour Migration* has been published by the ILO which includes non-binding principles and guidelines for a rights-based approach to labour migration. It provides particularly for the licensing and supervision of placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188). Convention No. 181 recognizes the role played by private employment agencies in the functioning of the labour market. The ILO Governing Body invited the States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which would involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). ***The Committee invites the Government to provide information on any developments which, in consultation with the social partners, might occur to ensure full application of the relevant international labour standards for the placing and recruitment of workers abroad (Article 5(2)(d) of the Convention).***

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

Paraguay

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

The Committee notes the detailed document prepared by the National Employment Service, received in September 2009, in reply to its previous comments.

Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. The Government provides detailed statistics on employment characteristics and developments in Paraguay. In 2008, the period of relative economic growth continued, while both the economically active population and the rate of unemployment remained at similar levels to those of 2007 (69.5 per cent and 5.6 per cent respectively). The population of working age registered sustained growth between 2003 and 2008 (increasing from 62.9 per cent to 66.2 per cent) and unemployment among young persons aged between 15 and 19 years (13.6 per cent) and between 20 and 24 years (10.2 per cent) is considerably higher than in other groups, confirming the trend of previous years. The Government indicates that since August 2008, based on the new guidelines of the government plan, the generation of permanent employment has been considered as a means of reducing extreme poverty. A National Employment Plan has been drawn up with advice from the Inter-American Development Bank and efforts are being made to strengthen the National Employment Service (SNE), which devises, implements and oversees employment policy. A new organizational structure for the SNE has been proposed to provide it with a network of employment offices, a section responsible for vocational training, a labour observatory and a planning division. The Committee notes the Decent Work Country Programme, approved by tripartite agreement in February 2009, which includes the priorities of formulating and implementing an employment strategy and generating employment through public investment. The Committee also notes that the Ministry of Justice and Labour's Strategic Plan for 2008–13 includes decent work as one of the areas to be addressed. ***The Committee requests the Government to include information in its next report on the results achieved through the implementation of the National Employment Plan and the Decent Work Country Programme in achieving the objective of full and productive employment set out in the Convention. The Committee also requests the Government to include quantitative information in its report on the activities of the National Employment Service. Please also indicate the manner in which it has been ensured that the social partners and the representatives of other groups concerned, such as workers in the rural sector and the informal economy, participate in the formulation and implementation of employment policies.***

Regional dimension of employment policy. The Committee notes the information included in the report concerning the agreement reached by the Ministers of Labour of the MERCOSUR countries during Paraguay's Presidency. At the 98th Session of the Conference (June 2009), MERCOSUR expressed its support for the Global Jobs Pact agreeing to maintain the MERCOSUR Employment Growth Strategy (GAN Empleo) as devised by the High-level Employment Group. The Committee notes with *interest* the declaration signed on 17 June 2009 by the Ministers of Labour of the MERCOSUR countries on the protection of employment against the crisis, which asserts "the right to work as a fundamental human right generating both social and economic wealth in harmony with productive capital". The MERCOSUR initiatives include proposals to expand unemployment protection systems; link the extension of social protection to employment with training activities; develop measures to protect and formalize jobs with the agreement of employers and trade unions to prevent the crisis from having a negative impact on workers; strengthen the institutional framework of public employment services by promoting their coordination in the region; support and strengthen employment programmes for vulnerable groups, especially young persons; and support the operation of micro and small enterprises and individual undertakings. ***The Committee requests the Government to continue providing information on the manner in which the MERCOSUR initiatives aimed at promoting active employment policies within the meaning of the Convention have been implemented.***

Youth employment. The Committee also notes that, with ILO assistance, the National Round Table for the Generation of Youth Employment has been established. The Round Table is an inter-institutional tripartite body encompassing various legislative and policy initiatives aimed at increasing job opportunities for young persons. The initiatives include the establishment of departmental committees in all regions, the proposal for a comprehensive labour

integration system, the identification of vulnerable groups and the establishment of tripartite bodies to ensure the implementation of the policies. The National Committee drew up a bill on the integration of young persons into the labour market which provides for the integration into employment of young persons aged between 18 and 29 years through training, work placements, work scholarships, starter employment contracts and part-time contracts. ***The Committee requests the Government to include information in its next report on the impact of the decisions of the National Committee for the Generation of Youth Employment, including information on the adoption of the draft legislation designed to promote the productive employment of young persons.***

Coordination of employment policy with education and vocational training policies. The Committee notes with interest the participation of the Ministry of Education and Culture in the National Committee for the Generation of Youth Employment, which has in turn established a vocational training, education and labour committee. The working group on rules relating to vocational training has received support from the ILO. The Committee notes that the working group refers to the overlap between the efforts of the bodies under the Ministry of Justice and Labour responsible for training (the National Vocational Promotion Service and the National Vocational Training System). The working group also mentions the lack of coordination of both bodies with the Ministry of Education and Culture. ***The Committee reiterates its interest in receiving information on the efforts made to improve the coordination of education and vocational training policies with employment policy.***

Peru

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

Articles 1, 2 and 3 of the Convention. Formulation of an active employment policy. In reply to the observation of 2007, the Government states in its report for the period ending in May 2008 that, although no national employment plan is in force, the Ministry of Labour and Employment Promotion has developed Guidelines on Social and Labour Policy 2007–2011. The Guidelines are for management purposes and aim to improve the performance of the labour administration and the promotion of employment and micro- and small enterprises. According to the Guidelines, the Ministry's role is to build capacity to direct the implementation of policies and programmes to generate productive employment and to encourage the creation and/or "formalization" of micro- and small enterprises, to facilitate access to business information and other business and financial development services, to contribute to improving employability and/or labour market integration, particularly among vulnerable sectors of the population and to contribute to improving the production, quality and dissemination of social and labour-related information. According to an opinion from the Autonomous Confederation of Peruvian Workers (CATP) which was included in the Government's report, since there is no national employment plan, implementation of the Guidelines on Labour and Social Policy 2007–2011 is very difficult. The Committee refers the Government to Article 1(1), of the Convention, which requires an active policy to be declared and pursued in order to promote full, productive and freely chosen employment. Furthermore, according to Article 3 of the Convention, the full cooperation of the social partners must be enlisted in formulating the abovementioned policy and the necessary support obtained for its implementation. ***The Committee hopes that, in the Government's next report, it will find information indicating the manner in which implementation of the Guidelines on Social and Labour Policy 2007–2011 has contributed to attainment of the Convention's objectives. The Committee further hopes that the next report will include the texts in which, with the participation of the social partners, an active employment policy has been defined, as required by the provisions of the Convention.***

Labour market trends. The Committee observes that in 2008 the persistently high growth rates boosted expansion of the demand for labour. Employment in urban areas registered an 8.7 percentage point improvement between January and October 2008 over the same period in 2007. Furthermore, the Household Survey of metropolitan Lima shows that the unemployment rate dropped from 8.8 per cent to 8.6 per cent in the first three quarters of 2007 and 2008, respectively, with a 0.4 percentage point reduction in the employment rate. According to the National Statistics Institute (data published in May 2008), poverty rates have dropped since 2004. According to the National Household Survey, in 2007, 39.3 per cent of the population were living in poverty, 64.6 per cent of whom were to be found in rural areas and 25.7 per cent in urban areas. The Committee notes with ***interest*** that these figures indicate a 5.2 percentage point drop in poverty rates as compared with the figures for 2008 and 2006. Furthermore, extreme poverty levels have likewise fallen. While in 2006, 16.1 per cent of the population lived in extreme poverty, in 2007 this figure dropped to 13.7 per cent. The Committee notes that one of the strategies set forth in the Guidelines on Labour and Social Policy 2007–2011 is to promote the development of employment-generating programmes for the most vulnerable population groups. According to the Government, the RED CIL Pro-Employment Programme has extended its coverage nationwide by strategic alliances with public and private institutions involved in employment promotion, both in urban and in rural areas. The Government also provides information on the work done to strengthen the strategies for rural action, with emphasis on self-employment, so as to enable rural inhabitants to improve their standards of living and join the labour market on an independent footing. In the CATP's view, progress is insufficient in terms of job quality, as can be seen from the high rate of employment in the informal sector. The CATP states that there are gender and age-group differentials, young people being among the most vulnerable groups.

The Committee refers to the information received in September 2009 in the report on the Employment Service Convention, 1948 (No. 88). The Government states that in January 2009, 15 sets of guidelines agreed on in an Anti-Crisis Task Force were approved to counteract the effects of the international crisis in the economy, production and the labour market. The Committee notes with *interest* that the proposals agreed on include the implementation of a programme designed to retrain workers laid off as a result of the crisis and place them in new jobs. ***The Committee asks the Government to include information in its next report on the implementation of the proposals to counteract the effects of the international crisis in the labour market.***

The Committee notes in this connection that work is being done to identify the information needs of vulnerable groups (older and disabled persons) and mechanisms for dissemination in order to provide relevant information so that they can render adequate decisions facilitating their access to the labour market. The RED CIL Pro-Employment Programme has developed and implemented measures for intermediation focused on the regions of Ica, La Libertad, Piura and Lambayeque to respond to the needs of the agro-industrial sector employing unskilled labour, organizing workshops to improve their employability and facilitate access to job offers. Work has been done to strengthen the strategies for rural action, with emphasis on self-employment, which will enable rural dwellers to improve their standards of living and join the labour market on an independent footing. However, according to the document attached to the report produced by the Technical Secretariat of the National Council for Labour and Employment Promotion (CNTPE), the Operational Plan for the Agricultural Sector has not been revised in a tripartite framework. ***The Committee requests the Government to provide information in its next report on the measures taken (and results achieved) to enable vulnerable groups to obtain productive employment, particularly in rural areas, where poverty rates are still very high. The report should provide information on the nature, extent and trends of employment, unemployment and underemployment in the urban as well as the rural areas of the country.***

Training and employment promotion policies. The Government states that, since 52.7 per cent of the population is affected by underemployment, conditions must be created that are conducive to appropriate training for employment so that the demand for jobs can be met. The Committee observes that the strategies set out in the Guidelines on Social and Labour Policy 2007–2011 include improving levels of occupation adjustment so as to match skills supply and demand. The objective is to develop permanent monitoring machinery and disseminate information on occupational training needs. In July 2006, national policy guidelines for vocational training were approved which involved the design of regional policies for vocational training and approval of a regional vocational training plan for every region in the country. ***The Committee requests the Government to provide information in its next report on progress made in designing regional policies and plans to facilitate the coordination of education and vocational training policies and employment prospects.*** The Committee notes the proposals and diagnoses carried out by the Technical Committee on Vocational Training and the policy proposals for systematizing vocational training programmes prepared in conjunction with the CNTPE. The National Directorate for Employment has conducted studies on the quantitative and qualitative qualification of human resources in the textile, plastic, pharmaceutical, tourism, agro-industry and maritime and dock work sectors. In 2008, a study was launched on the manufacturing sector. ***The Committee hopes that the next report will contain information on coordination that has been set up to link the various initiatives mentioned above in order to meet the training needs identified to improve the skills of the workers in the sectors concerned.*** According to the CATP, employers do not provide training for their workers because it is not tax deductible, despite the submission of proposals to amend the tax law. The CATP also suggests that the State does not invest in improving the education of its citizens or prepare young persons for the world of work. ***The Committee hopes that the next report will also include information on support obtained in this area from the social partners.*** It refers in this connection to the Human Resources Development Recommendation, 2004 (No. 195), in which members are invited to “define, with the involvement of the social partners, a national strategy for education and training, as well as establish a guiding framework for training policies at national, regional, local and sectoral and enterprise levels” (Paragraph 5(a) of Recommendation No. 195).

Informal economy. The Committee notes from the ILO data published in *Panorama Laboral 2008* that, between 2006 and 2007, Peru’s informal economy has shrunk more than in other countries of the region. This is due to the growth of financial establishments and to the manufacturing industry, two sectors with a high number of registered workers. The Government states in its report that in June 2007 a special tripartite committee was set up to address the problems of the informal economy in Peru. The special committee established criteria for defining the economy and informal employment and analysed statistics allowing it to characterize informal workers. The studies carried out by the special committee show that due to the large proportion of informal jobs in micro-enterprises, the cost of joining the formal economy would be too high. Many of the informal micro-enterprises in rural areas have workers with little training and virtually no management capacity, and they see little point in paying taxes or contributions to services in the formal sector to which they have no access. Micro-enterprises in the urban sector likewise have a high proportion of informal jobs, as they opt not to join the formal sector because of the high costs involved. According to the Government, the 2006 National Household Survey shows that 53 per cent of the active population work in micro- and small enterprises and inadequate access to training and on-the-job training is one of the major problems currently affecting the sector, where 89 per cent of the workers have gone no further than secondary school. The Committee notes that the National Promotion and Formalization Plan for the Competitiveness and Development of Micro- and Small Enterprises 2005–2009 has been implemented only in part. ***The Committee requests the Government to provide information on the progress made in establishing and formalizing micro- and small enterprises, facilitating access to business information, advisory and other business and financial***

development services that foster the expansion of such enterprises in a favourable environment, and the implementation of policies and programmes that contribute to making them more productive.

Cooperatives. The Committee notes that in April 2008 a new general Cooperatives Act was drafted. The Committee refers to the Promotion of Cooperatives Recommendation, 2002 (No. 193), the provisions of which encourage governments to “introduce support measures, where appropriate, for the activities of cooperatives that meet specific social and public policy outcomes, such as employment promotion or the development of activities benefiting disadvantaged groups or regions”. *The Committee hopes that the next report will include information on the manner in which cooperatives have contributed to the promotion of productive employment in Peru.*

Philippines

Employment Policy Convention, 1964 (No. 122) (ratification: 1976)

Articles 1 and 2 of the Convention. Employment trends and active labour market measures. The Committee notes the Government’s detailed report received in August 2008, including its replies to the 2007 observation. The Committee also notes the replies provided by the Government to the questionnaire for the General Survey on employment in May 2009. The Government reports that it is concerned by the trend of employment lagging behind economic growth. Over the period 2004–07, the gross domestic product grew at an average annual rate of above 6 per cent. However, average annual growth in employment grew at only 2.6 per cent. The service sector grew by 4.1 per cent and continues to account for the majority of employment, while growth in the combined agriculture, fishery and forestry sectors was marginal. The Government reports that the quality of employment improved, as reflected by the rise in wage and salary employment to 5 per cent, the increase in full-time employment to 4.7 per cent, and the decline in the rate of underemployment, from 22.6 per cent to 20.1 per cent. The Government also reports that underemployment remains a more serious problem than unemployment, and that it affects one in every five Filipinos, cutting across age and gender. The rate of unemployment decreased from 8 per cent in 2006 to 7.3 per cent in 2007. The Committee notes that underemployment is more prevalent in less developed regions, where the agricultural and self-employment sectors dominate. The rate of unemployment in urbanized areas and among young workers remains higher than the other categories of workers. The Government reports that it has established the Worktrep Entrepreneurship Program (Unlad Kabuhayan Program Laban sa Kahirapan) to assist marginalized self-employed workers in the informal sector who wish to expand or make their small livelihood undertakings grow into feasible and sustainable business enterprises. The Committee notes that the Government has also established the Magna Carta for Small Enterprises, which aims to promote, support, strengthen and encourage the growth and development of micro-, small and medium enterprises engaged in industry and agro-business and/or services, whether single proprietorship, cooperative, partnership or cooperation. The Committee welcomes the Government’s analysis of the labour market, including level and trends of employment and underemployment. *The Committee asks the Government to provide further information on how its policy measures are implemented within a framework of a coordinated economic and social policy (Article 2(a)). As requested in the previous observation, please specify how the four major employment promotion strategies: employment generation, preservation, enhancement and facilitation that were articulated in the Medium-Term Development Plan (2004–10) have been executed and whether special difficulties have been encountered in attaining the objectives of the strategies announced. The Committee also invites the Government to specify in its next report the impact of the Worktrep Entrepreneurial Program on assisting workers in the informal sector to enter into sustainable business enterprises.*

Youth employment. The Government reports that, in 2007, it established the Philippine Program for Youth to align youth-related programmes with other youth-related goals and strategies of the Department of Labor and Employment (DOLE). The Government also reports that it envisions Filipino youth to be productive and competitive workers by 2010. The Working Youth Centre (WYC) has been re-engineered to respond more effectively to new challenges and needs of the working youth. The WYC has facilitated the organization of 2,048 working clubs, with 56,860 members. In 2008, the Youth Entrepreneurship Support projects, subsumed under the WYC programme, were developed and implemented to provide entrepreneurial opportunities to graduates and would-be graduates of agricultural-related and technical-vocational students who could not be absorbed by wage employment. The Government also reports that it implemented the Youth Education–Youth Employability (YE–YE) project to respond to the urgent need to create more opportunities for the youth to study and to enhance their employability. *The Committee invites the Government to continue providing information on the measures the Government has taken to provide employment to young workers entering the labour market.*

Coordination of training policies with employment opportunities. The Government reports that the Technical Education and Skills Development Authority (TESDA) manages the Technical Vocational Education and Training (TVET) in the country. The Government also reports that one of its TVET policies is the SEEK-FIND-TRAIN paradigm, which aims to: (i) seek business opportunities and jobs through domestic and international labour market intelligence; (ii) find suitable persons for the jobs; and (iii) train the right persons for the available jobs using quality standards developed in consultation with the industry. The Committee notes that the Government has implemented the National Technical Education and Skills Development Plan (NTESDP), 2005–09, which targets: (i) improved access to and equity in TVET; (ii) improved assessment and certification; and (iii) enhanced employability of TVET graduates. The Committee also notes the Pangulong Gloria Scholarships, launched in 2009, which expanded the coverage of the previous Pangulong

Gloria Macapagal-Arroyo Training for Work Scholarship Program. The Government reports that these scholarships will provide free training, training support funds and free competency assessment to support job creation and job preservation. The programme objectives are to: (i) produce a pool of qualified and globally competent workers who are ready to take a job; (ii) develop skills and competencies of the unemployed and underemployed; and (iii) empower the public and private training providers in expanding their absorptive capacities and to enable them to offer programmes for various qualifications including higher levels of technology. *The Committee would be grateful if the Government would continue to provide information on the vocational training and programmes executed by the TESDA, and asks the Government to indicate in its next report the measures taken to adopt a training strategy. The Committee would also appreciate receiving information, disaggregated by gender and age, concerning education, training and lifelong learning.*

Article 3. Participation of social partners in the formulation and application of policies. The Committee notes that with respect to local government, private recruitment and placement agencies are licensed to operate by the DOLE regional office. The Government reports that, during the process of amending the rules and regulations governing private recruitment and placement agencies for local employment, a series of formal consultations with workers' organizations, recruitment agencies, concerned non-governmental organizations and relevant government agencies took place to ensure that practical changes in the rules were properly deliberated. The Committee notes that policy recommendations affecting labour and employment are subjected to consultation with the Tripartite Industrial Peace Council (TIPC), which is composed of representatives of employers' organizations, workers' groups and government organizations. *The Committee asks the Government to further elaborate in its next report on the role that the social partners have had in establishing new conditions to promote cooperation between the DOLE and private employment agencies. Please also include information on the policy recommendations made on the matters covered by the Convention within the TIPC and how representatives of workers of the rural sector and in the informal economy were involved in the formulation and implementation of the employment measures.*

Poland

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Implementation of an active employment policy. The Government reports that, similar to the years 2005–06, one of the main objectives of the employment policy in the years 2007–08 had been, inter alia, to increase employment and improve its quality, decrease the unemployment rate and improve human capital. At the end of May 2008 the overall number of unemployed had decreased to 1.5 million persons and the registered unemployment rate was 10 per cent. In this regard, the Committee notes the increased efficiency of the employment services achieved through further decentralization, as laid down in the National Reform Programme 2005–08. It also notes a further improvement in the cooperation between the public authorities and the social partners and their consultation on budgetary matters and matters concerning education and vocational training. Furthermore, NGOs – including representatives of organizations of the unemployed – were included on the voivodeship level. The National Action Plan for Employment 2008 re-emphasizes the Government's endeavours to reintegrate vulnerable groups, such as persons with disabilities and workers over 50 years of age, into the workforce, resulting in 674,300 unemployed being provided with active labour market programmes in 2007. While persons with disabilities benefited significantly from these programmes, the reintegration of workers above 50 years of age into the labour force, whose share is increasing, remains difficult due to skill mismatches with labour market requirements. The Government further reported that results achieved in 2007 through measures aimed at increasing employment and limiting unemployment proved to be better than anticipated. This was substantially influenced by subsidies received from the European Community and the overall economic conditions. The Committee notes that Poland is continuing its transition from an agricultural to an industrial and service economy but that a large amount of persons were employed in the informal economy (2004: 1.317 million persons) and would thus not appear in the statistics. It further notes that, despite dropping significantly from 13.9 per cent in 2006 to 9.6 per cent by the end of 2007 – the lowest unemployment rate since 1992 – Poland's overall unemployment rate was still the second highest in the Organisation for Economic Co-operation and Development (OECD). Only in the second quarter of 2008, with 7.3 per cent, the unemployment rate was below the OECD average for Europe of 7.7 per cent. It further notes that, although the participation rate of the population above 15 years of age slightly dropped in 2007 to 53.7 per cent, by the first quarter of 2008 this had risen to 58.3 per cent. *The Committee asks the Government to continue providing evaluations in its next report of the impact of the various labour market reform measures undertaken on the current employment situation and the involvement of the social partners in the design and implementation of an active employment policy in accordance with Articles 1, 2 and 3 of the Convention. The Committee further invites the Government to provide information in its next report on the results achieved through active labour market measures to provide employment for the long-term unemployed.*

Youth unemployment. The Committee notes that, despite more favourable demographical conditions, the employment rate of persons between 15 and 24 years of age remains low at 25.8 per cent in 2007. Although a significant decrease of 8.1 percentage points in the youth unemployment rate had been achieved, at the end of May 2008, 23.8 per cent (i.e. 289,000 persons) of employment seekers were below 25 years of age. The Government reports that this was partly caused by this age group's delayed entry into the labour market due to the continuation of education. The low

employment rate would be addressed through various actions outlined in the 2007 Act amending, inter alia, the Act on Employment Promotion and Labour Market Institutions of 2004. In 2007, 268,900 unemployed persons below 25 years of age had participated in active labour market programmes. This is equivalent to 40 per cent of the overall number of unemployed youths, and represents an increase of 14,000 persons, i.e. 5.5 percentage points as compared to 2006. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of young persons, and the results achieved in terms of job creation, particularly as a result of the actions adopted under the 2007 Act amending the Act on Employment Promotion and Labour Market Institutions of 2004.***

Women. The Committee notes that, despite an increase of 2.9 percentage points, which is on par with that for men, the employment rate among women remains significantly lower than that of men. In 2006, the employment rate for men stood at 67.6 per cent, the employment rate of women was 56.8 per cent. This situation was further reflected in the unemployment rate: in 2007, 889,100 women and 636,500 men were without employment. The Government is aware of the fact that the unemployment rate for women registered in labour offices decreases at a slower pace than that of men. The “activation programmes” launched in 2007 were aimed to remedy this situation. Some 381,000 women benefited from the programme, resulting in an increase of women participating in community services and trainings. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of women, and the results achieved in terms of job creation as a result of the 2007 activation programmes.***

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) (ratification: 2004)

Articles 3 and 7 of the Convention and Part V of the report form. Implementation of a national policy on vocational rehabilitation and employment of persons with disabilities. The Committee notes the detailed information forwarded by the Government in its report received in September 2009, in reply to the 2007 direct request, listing numerous measures adopted in the context of the national policy on vocational rehabilitation and employment of persons with disabilities. The Committee notes that, since the introduction in 2004 of remuneration subsidies, there has been a significant increase in the number of persons with disabilities employed in the open labour market, which rose from 28,000 to 40,000 in January 2009. The number of persons with disabilities in companies receiving state support for their employment also rose from 173,000 to 180,000. Finally, the Government indicates that the impact of the measures adopted following the passing of the Act amending the Act on social and vocational rehabilitation and employment is already evident from the data registered between December 2008 and February 2009, when the employment of persons with disabilities increased by 20,888 individuals. ***The Committee invites the Government to continue supplying in its next report information on the application in practice of the measures taken in the context of the national policy on vocational rehabilitation and employment of persons with disabilities, with specific reference to educational and training opportunities. Please also provide any other document containing statistics, studies or surveys on the matters covered by the Convention.***

Article 4. Effective equality of opportunity and treatment between men and women workers with disabilities and other workers. The Committee notes the comments transmitted by the Independent and Self-Governing Trade Union “Solidarność” in July 2009, expressing concern over the practice followed by employment offices, dividing job offers into two different groups depending on whether they are addressed to all jobseekers or, more specifically, to persons with disabilities. In addition, Solidarność indicates that, in several employment offices, vacancies addressed to persons with disabilities are displayed in a different space than job offers generally addressed, which may limit in practice their access to offers and their chances to find a job. The Committee notes the measures introduced by the Government in 2008, through amendments to the 2004 Act on employment promotion and labour market institutions, which also targeted persons with disabilities, including special programmes for the selection and activation of people with special needs in job searching. It also refers to cross-regional and nationwide projects implemented under the Human Capital Operational Programme (HC OP) and co-financed by the European Social Fund, to facilitate access to the labour market of persons with disabilities. The Committee notes that a number of targeted measures have been implemented in 2007 and 2008 through funds allocated under the State Fund Rehabilitation of People with Disabilities (PFRON), in the area of job counselling and advisory services (including the use of a vocational coach), and training with a view to increasing employment opportunities for this category of workers. ***The Committee invites the Government to continue providing information on the impact of special positive measures aimed at effective equality of opportunity and treatment for men and women workers with disabilities and other workers.***

Portugal

Employment Policy Convention, 1964 (No. 122) (ratification: 1981)

Articles 1, 2 and 3 of the Convention. Implementation of an active employment policy. The Committee takes notes of the detailed report provided by the Government for the period ending May 2008 which contains comments from the General Confederation of the Portuguese Workers – National Trade Unions (CGTP-IN) and the General Workers’ Union (UGT). In its previous observation, the Committee asked for information on the manner in which the employment

objectives of the National Action Programme for Growth and Employment 2005–08 (PNACE) have been obtained, particularly in terms of reducing the number of long-term unemployed and improving the efficiency of the employment services. According to the CGTP-IN, there has been no improvement in the employment situation since the adoption of the PNACE, as economic growth is still far below the EU average and the employment rate has been progressively rising. The CGTP-IN points out that the precariousness in employment was also on the rise as non-permanent contracts increased, rising from 19.8 to 22.4 per cent. Referring to the process of restructuring undergone by enterprises to adapt to increasingly globalized markets, the UGT stresses the importance of creating joint committees to follow up upon the implementation of agreements, in particular as regards employment planning and personnel training plans, so that representatives of workers may participate more effectively in the restructuring process. While recognizing that the overall unemployment rate has showed a rising trend since 2001, the Government underlines that long-term unemployment decreased in 2007, which confirmed the effectiveness of the measures specifically targeting young persons, and adults, and are being implemented to modernize the public employment services. The Committee notes with *interest* the Tripartite Agreement on a New System of Labour Regulations, Social Protection and Employment in Portugal, signed on 25 June 2008, which envisages the adoption of active employment measures to facilitate the transition from unemployment to employment, namely for long-term unemployed and workers from disadvantaged groups. The Committee notes that the Tripartite Agreement also provided for a reform of the Labour Code in order to modernize employment protection by introducing greater flexibility in the employment relationship and that this reform has been adopted through Law No. 7/2009 of 12 February 2009. The Committee notes with *interest* that the objectives of full and productive employment were set forth in the tripartite agreements. ***The Committee invites the Government to provide information in its next report on the extent to which the difficulties encountered in attaining the objectives of the Convention have been overcome and on the effects of legislative and other measures adopted to improve employment security for workers who have benefited from the provisions of Act No. 7 of 2009.***

Measures to promote employment among vulnerable workers. The CGTP-IN states that the employment situation has further deteriorated for disadvantaged workers. Unemployment among women is increasingly higher than among men, especially long-term unemployment, and significant inequalities still exist between men and women in the labour market. The CGTP-IN also indicates that unemployment and precariousness in employment among young persons and migrant workers has been rising since 2004, whereas the percentage of Portuguese workers leaving the country to work abroad has increased. In its report, the Government describes in detail the measures implemented for particularly disadvantaged categories of workers, such as women, young persons, older workers, persons with disabilities, socially excluded groups and immigrants. ***The Committee invites the Government to include updated information in its next report on the results achieved by the measures adopted to promote employment for vulnerable categories of workers, with particular regard to the implementation of the relevant provisions of the Tripartite Agreement of 25 June 2008.***

Education and training policies. The CGTP-IN states that adolescent school drop-outs have decreased only slightly between 2004 and 2007 and that only 52.9 per cent of youngsters aged 20 to 24 had attained secondary education levels in the second semester of 2007. Participation of adult workers aged 25 to 65 in continuous training had declined as the Government did not take measures to ensure the observance of the legislation allowing workers to benefit from a minimum of 35 hours of vocational training every year. The CGTP-IN also reports that workers with higher qualifications still have greater access to continuous training than low-skilled workers. The Government refers to the adoption of the Tripartite Agreement on the Reform of Vocational Training concluded on 14 March 2007 with the aim, among others, of creating the conditions needed to attain the objectives of the initiative *Novas Oportunidades*, namely increasing the secondary-school enrolment rate and improving youth and adult qualifications. ***The Committee welcomes the information provided in the Government's report on the application of the Human Resources Development Convention, 1975 (No. 142), and asks the Government to continue to provide updated information on the measures taken to coordinate education and training policies with employment in the context of the recent reform of vocational training, with particular reference to the implementation of the right to training provided under the Labour Code.***

Russian Federation

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee notes the information contained in the Government's brief report received in October 2008. In its previous comments, the Committee requested information on the results of the implementation of the social and economic development programme on employment generation, and how employment policy measures were reviewed regularly within the framework of a coordinated economic and social policy. The Committee also requested information on measures taken to reduce labour market differences among categories of workers and how unemployment benefits have been expanded in order to cover a greater number of unemployed persons and promote the re-entry into employment of beneficiaries. In its brief reply, the Government indicated that Decision No. 194 of 23 March 2008 was adopted to establish the level of the minimum (781 roubles) and maximum (3,124 roubles) amounts of unemployment benefits. The Committee also notes the measures envisaged under the Anti-Crisis Programme of the Government of the Russian Federation for 2009 which prioritizes, among other things, developing human resources; maintaining and developing industrial and technological capabilities for future growth; stimulating domestic demand for Russian goods as the basis for revitalizing economic

growth; stimulating innovation and restructuring the economy; creating the environment for economic growth by improving the key market institutions and lifting barriers to business operation; and ensuring macroeconomic stability and preserving the trust of Russian and foreign investors. The Committee notes that regional governments are implementing the same set of anti-crisis policies, including measures co-financed by the federal Government and other measures, independently financed from regional and local budgets. The key goals of the anti-crisis policies implemented by the regions include, among other things, joint implementation of an employment support programme. To this end, the federal Government will provide employment support and unemployment relief subsidies to the regions for: vocational training and retraining of employees threatened by mass layoffs; organization of community work, temporary employment, internship and experience-gaining programmes for unemployed persons and individuals seeking jobs, such as new graduates and employees threatened by mass layoffs; targeted support of persons wishing to move to a different location where jobs are available, including jobs created under targeted federal programmes and investment projects; and, support for small and medium-sized businesses and self-employment of jobless persons. *As in its previous observation, the Committee requests that the Government report in detail, in its next report, on the measures taken to promote full employment within a “framework of a coordinated economic and social policy” (Article 2(a)). The Committee invites the Government to provide in its next report information on the impact in terms of employment creation of the measures taken through the 2009 Anti-Crisis Programme. The Committee requests that information be supplied on the situation, level and trends of employment, unemployment and underemployment, both aggregated and disaggregated, with respect to particular categories of workers, including young persons, women jobseekers, older workers and workers with disabilities.*

Article 3. Participation of the social partners in the formulation and implementation of policies. The Committee recalls that the Convention asks for consultations with all persons affected by the formulation and implementation of employment policies, in particular, the representatives of employers and workers. It is the joint responsibility of governments and employers’ and workers’ organizations to ensure that the most vulnerable and marginalized groups of the active population are represented and associated in the formulation and implementation of measures of which they would be the prime beneficiaries. *The Committee trusts that the Government will supply detailed information on this important matter in its next report.*

Part V of the report form. ILO technical cooperation. The Committee recalls that the cooperation programme between the ILO and the Russian Federation 2006–09 provided that improvements in employment policy must be based on changes in social policy. *The Committee asks the Government to include in its next report information on the initiatives undertaken with ILO support to promote the objective of the creation of productive employment as set out in the Convention.*

San Marino

Employment Service Convention, 1948 (No. 88) (ratification: 1985)

The Committee notes with *regret* that the Government’s report has not been received since 1998. The Committee hopes that a report will be supplied and that it will contain full information on the matters raised in its 1998 direct request, in which it noted the provisions of sections 46 and 47 of a Bill respecting placement and vocational training as they relate to the responsibilities, composition and functioning of the Placement Commission. The Committee considered that the establishment of this Placement Commission would meet the requirements of *Articles 4 and 5 of the Convention* with regard to the “suitable arrangements” which were to be made for the cooperation of representatives of employers and workers in the organization and operation of the employment service and in the development of its general policy. *The Committee had therefore requested, in 2005, a copy of the Act replacing the Bill. Since there has been no response, the Committee asks the Government to transmit a detailed report so that it can re-examine the situation in the light of the texts which are in force.*

Sao Tome and Principe

Employment Service Convention, 1948 (No. 88) (ratification: 1982)

The Committee notes that the Government’s report has not been received. *Contribution of the employment service to employment promotion.* The Committee notes the Government’s report received in April 2007 in reply to its 2006 observation, which includes a brief statement that there is no formal cooperation between the public employment services and representatives of employers’ and workers’ organizations and that the public employment services have not yet been properly organized to act in accordance with the Convention. The Committee understands that human resources development and access to basic social services are one of the five principles set out in the National Strategy for Poverty Reduction (NSPR – *Estratégia Nacional De Redução de Pobreza*), which was validated in December 2002 and approved in January 2003. From the information contained in the update of the NSPR published in January 2005, urban and rural unemployment in the country is still a matter of serious concern. *In this context, the Committee emphasizes the need to ensure the essential function of employment services, which is to achieve the best possible organization of the labour market, including its adaptation to meet the new needs of the economy and the active population (Articles 1 and 3 of*

the Convention). It requests the Government to provide the statistical information available in published annual or periodical reports concerning the number of public employment offices established in the district of Agua Grande and in rural areas, the number of applications for employment received, the number of vacancies notified and the number of persons placed in employment, disaggregated by gender and the location of the offices concerned (Part IV of the report form).

Cooperation of the social partners. The Committee refers once again to the provisions of Articles 4 and 5 of the Convention and asks the Government to report on the manner in which the representatives of the social partners have been associated with the operation of the public employment service. The Committee recalls that for many years, it has been pointing out that the above provisions of the Convention require the establishment of advisory committees to secure the full cooperation of representatives of employers and workers in the organization and operation of the employment service.

The Committee recalls again that the Office is available to provide the Government with technical advice and assistance for the implementation of a public employment service within the meaning of the Convention.

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

Senegal

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1962)

The Committee notes that the Government's report in reply to its 2007 observation has not been received.

Regulation of fee-charging employment agencies. Articles 10–14, Parts III and V of the Convention. The Committee noted the observations made by the National Confederation of Employers of Senegal (CNES) and the National Confederation of Workers of Senegal (CNTS) on the 2006 Government report. To remedy the abuses, the CNTS requested the Government to establish rules governing the operation of employment agencies, in particular definitions of employers in connection with the protection of workers. Based on the information provided by the Government in the questionnaire for the General Survey on employment (2010), the Committee notes that the procedure for the adoption of the decree defining the obligations of employment agencies and the protection of workers employed by temporary work agencies under section L226 of the Labour Code is still ongoing and that the country would appreciate assistance from the Office for the application of the decree once adopted. *The Committee requests the Government to provide a copy of the decree when adopted, as well as information on other regulations on fee-charging employment agencies and on the manner in which the Convention is applied in practice including, for instance, extracts from official reports. It further requests the Government to indicate any other measure taken to regulate all fee-charging agencies and ultimately to abolish fee-charging agencies conducted with a view to profit.*

Revision of Convention No. 96. The Committee notes the Government's statement that the issue of the ratification of the Private Employment Agencies Convention, 1997 (No. 181), is being examined. *The Committee recalls that Convention No. 181, which takes into account the flexibility in the operation of labour markets, is the most up to date standard on the role and operation of private employment agencies and it again invites the Government and the social partners to examine the possibility of ratifying Convention No. 181, which would result in the immediate denunciation of Convention No. 96.*

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

The Committee notes that the Government has not provided information since the report received in September 2006. The Committee trusts that the Government will be able to provide a report, including information in reply to the points raised in the Committee's 2007 observation, which sets forth the following matters:

Articles 1 and 2 of the Convention. Coordination of employment policy and poverty reduction. The Government indicated that the urban unemployment rate remains very high, although it fell to 12.7 per cent in 2001, compared with 14.1 per cent in 1994. The Committee noted the Growth and Poverty Reduction Strategy Paper (GPRSP) 2006–10, of October 2006, which indicated that the principal problem of the employment market is visible underemployment, which is at the rate of 21.8 per cent of the population. The Government reported that it has formulated, in a participatory manner, a new national employment policy (PNE), which was being validated. In this respect, the Committee noted from the GPRSP 2006–10 that, with a view to promoting a decent employment policy, the State will implement a policy of productive and inclusive employment, which has the following specific objectives: (i) promoting the improved management and employability of the labour force; (ii) reinforcing the effectiveness and transparency of the employment market; (iii) promoting self-employment in rural and urban areas; (iv) increasing the employment content of growth; (v) reinforcing and intensifying the contribution of productive sectors to employment creation and poverty reduction; (vi) developing and modernizing the public employment system; (vii) promoting an improved organization of the participation of migrant workers; (viii) promoting labour-intensive works; (ix) improving the economic and social situation of persons experiencing difficulties on the employment market; and (x) improving the health and living conditions of workers. *The Committee requests the Government to provide a report containing detailed information on the manner in which the employment policy objectives set in the context of the GPRSP 2006–10 have been achieved. It also requests the Government to provide information on the results achieved by the measures adopted in the context of the poverty*

reduction strategy, with particular reference to young persons and women, and through any other measures implemented to promote full, productive and freely chosen employment.

Compilation and utilization of employment data. The Government indicated that the employment market is characterized by a lack of visibility, with no coordination between the various sources of information. To remedy this situation, the Government indicates that a project has been developed for the establishment of a national observatory of employment and vocational skills (ONEQP). The Committee noted that the Government has also received ILO assistance for the initiation of other projects, such as the operational list of occupations and jobs (ROME). In this respect, the National Federation of Independent Trade Unions of Senegal (UNSAS) reported slowness and delays in the implementation of the National Employment Agency, ONEQP and ROME. **The Committee therefore requests the Government to indicate in the next report the progress achieved in the compilation of employment data, with an indication of the employment policy measures adopted as a result of the establishment of the Statistical Agency and the ONEQP.**

Article 3. Participation of the social partners in the design and formulation of policies. In reply to the comments of the UNSAS, the Government emphasized that tripartism is used systematically in all phases of the design, implementation and evaluation of all employment programmes. It adds that the National Employment Policy Monitoring Committee has been replaced by the Intersectoral Committee to follow up the implementation, supervision and evaluation of the statement by Heads of State and Government of the African Union on employment and combating poverty. The Government indicated that this tripartite committee has held several meetings with a view to formulating the new national employment policy. **The Committee requests the Government to provide examples in its next report of the consultations held with the social partners, among others in the context of the intersectoral follow-up committee, on the subjects covered by the Convention, with an indication of the opinions expressed and the manner in which they have been taken into account. The Committee recalls that the consultations envisaged by the Convention require the consultation of representatives of all of the persons affected, including those in the rural sector and the informal economy, and it requests the Government to indicate the measures envisaged with a view to ensuring that the latter collaborate fully in the design and implementation of employment policies.**

Part V of the report form. ILO technical assistance. **The Committee requests the Government to provide information on the action taken as a result of the technical assistance received from the ILO, with a view to the implementation of an active employment policy within the meaning of the Convention.**

[The Government is asked to reply in detail to the present comments in 2010.]

Slovakia

Employment Policy Convention, 1964 (No. 122) (ratification: 1993)

Articles 1 and 2 of the Convention. Active labour market measures. Youth unemployment. The Committee notes the Government's report received in November 2008, replying to the observation of 2007. It notes that youth unemployment has decreased (from 26.6 per cent in 2006 to 20.3 per cent in 2007) due to more targeted active labour market policy measures and increased participation in education and training. The Government refers to the school leavers' work experience programme as an efficient active labour market tool designed to prevent long-term unemployment of young persons under 25 years of age. This programme allows school leavers to acquire vocational skills and practical experience through work experience in a job which corresponds to the educational level they have achieved. The Committee further notes that under the National Reform Programme for 2008–10, a set of new active labour market policy measures were adopted in 2008 with the objective of decreasing regional differences in employment rates, especially in underdeveloped regions with high unemployment rates. It notes that long-term unemployment remains the highest in the European Union (EU) area (8.3 per cent in 2007 with the overall unemployment rate standing at 11 per cent) and the share of older workers in the labour force is far below the EU average. As regards other measures taken to ensure coordination between lifelong learning policies and prospective employment opportunities, the Committee notes that, by Resolution No. 382 of 25 April 2007, a Strategy of Lifelong Learning and Lifelong Counselling was established. **The Committee asks the Government to include information in its next report on the impact of the measures taken in tackling regional disparities and long-term unemployment with specific reference to the measures implemented under the Strategy of Lifelong Learning and Lifelong Counselling in favour of young unemployed.**

Roma minority. In reply to previous comments, the Government indicates that a number of pilot projects are being carried out to create employment opportunities for members of the Roma community through partnerships with regional governments, employers, Roma organizations, NGOs and public employment services. These measures include educational activities, financial support for the establishment of municipal social enterprises, and the provision of financial subsidies for job creation under the state budget. In this connection, the Government states that the objective to create job opportunities for the Roma minority and to offer education and training in line with the needs of the local labour market has been achieved to a modest extent. The Committee notes that a special focus has been placed on improving the level of educational attainment of the Roma minority with the adoption in 2008 of a new programme for upbringing and education of the Roma children and pupils, including promotion of their secondary and tertiary education. **The Committee requests the Government to continue to report on the activities undertaken with a view to promoting productive employment of**

the Roma population, in particular with regard to the measures implemented to increase their success in achieving appropriate levels of qualifications and skills.

Article 3. Participation of the social partners in the formulation and application of policies. The Government reiterates that the comments of social partners are duly taken into account in the elaboration of legislative and other measures to be taken in relation to employment policy, notably through consultations carried out at the national level within the tripartite Economic and Social Council. It states that representatives of disadvantaged groups, including the Roma minority, have been consulted on the implementation of employment-related measures designed for disadvantaged jobseekers. The Committee also understands that under the National Reform Programme for 2008–10 the Government intends to review the labour legislation and that consultations with the social partners are expected to play a key part in this process. ***The Committee again asks the Government to provide indications in its next report on the progress made in involving the social partners in the design and application of employment policies.***

Spain

Employment Service Convention, 1948 (No. 88) (ratification: 1960)

Contribution of the employment service to employment promotion. Skills and training of employment service personnel. The Committee notes the Government's report received in September 2009. The Government refers to the working of the Public Employment Services Information System implemented in May 2005 to collect information produced as a result of the management of the public employment services of the State and the autonomous communities. The Government also provides statistics on the mediation role played by the public employment services.

In February 2009, the Office sent the Government a communication from the Independent Federation of Civil Servants (CSI-F), which expressed concern at the lack of skills among staff responsible for occupational guidance in the Autonomous Community of Galicia. The CSI-F refers to the provisions of *Article 9 of the Convention*, and states that the Executive Council of Galicia, through the Labour Council, hired personnel who had no specific qualifications for guidance work. This, in the CSI-F's view, has serious consequences, such as the de-professionalization of the public service of Galicia, poor quality in the supply of these services to the public, and the demotivation of those who do have proper qualifications.

The Committee also notes the comments by the Trade Union Confederation of Workers' Commissions (CC.OO.) of Andalucia, appended to the Government's report. This organization alleges failure to implement the agreements signed by the Government of Andalucia concerning the increase in staff for the offices of the Andalusian Employment Service and the lack of any provision to fill vacant posts, to the detriment of performance and quality of the services. In the view of the CC.OO. of Andalucia, poor human resources management and the lack of professionalism are causing great dissatisfaction among the users of employment offices because the quality of the public service is declining.

The Committee requests the Government to provide information on the measures that ensure the operation of employment offices sufficient in number to meet the needs of employers and workers in each of the autonomous communities. It furthermore invites the Government to include in the report precise information on the manner in which it is ensured that the staff of the employment services in the Autonomous Communities of Andalucia and Galicia have the necessary skills to perform the duties set forth in the Convention and that they have received adequate training. The Committee points out that the report form for the Convention requests the Government, under Article 9, to provide particulars of the arrangements made for subsequent training of employment service staff, and that this is particularly important in view of current circumstances in the labour market in Spain.

[The Government is asked to reply in detail to the present comments in 2010.]

Sri Lanka

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1958)

In relation to the 2004 observation, the Committee notes the Government's report received in September 2009 and the statement of the National Trade Union Federation (NTUF).

Part III of the Convention. Regulation of fee-charging employment agencies. The Committee notes with *interest* the National Labour Migration Policy for Sri Lanka, adopted in October 2008 and formulated by a Tripartite Steering Committee. The policy document was developed with the support of the ILO and articulates the State policy regarding Sri Lankans working overseas. The Government also continues to provide in its report detailed information on the system of licensing and supervision of domestic private employment agencies mediating Sri Lankan employees abroad. Besides a continuation of inspections in the countries where Sri Lankan employees are working, the Sri Lanka Bureau of Foreign Work endeavours to prevent illegal migration through protective and welfare schemes aimed at reducing irregularities and exploitation faced especially by women migrant workers. The Committee also notes with *interest* that, as indicated by the NTUF, Sri Lankan trade unions have signed agreements with Middle Eastern trade unions to protect and assist Sri Lankan housemaids working in the region. ***The Committee welcomes this approach and invites the Government to continue***

providing information on the measures taken to implement the National Labour Migration Policy for Sri Lanka to effectively combat the illegal placement of nationals abroad (Article 10(d)). It further invites the Government to continue to communicate relevant information on the application of the Convention in practice, also in regard to private employment agencies acting domestically (Part V of the report form).

Revision of Convention No. 96. The Committee again draws the Government's attention to the Private Employment Agencies Convention, 1997 (No. 181), which recognizes the role played by private employment agencies in the functioning of the labour market. In this regard, the Committee recalls that the ILO Governing Body invites member States that have ratified Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which will, ipso jure, involve the immediate denunciation of Convention No. 96 (document GB.273/LILS/4(Rev.1), 273rd Session, Geneva, November 1998). ***The Committee invites the Government to include in its report information on any developments which, in consultation with the social partners, might occur in this regard.***

Sudan

Employment Policy Convention, 1964 (No. 122) (ratification: 1970)

Articles 1 and 2 of the Convention. Policies to promote employment and coordination with poverty reduction. The Committee notes the Government's report received in October 2008. In its 2005 observation, the Committee requested detailed information on the measures taken to ensure that employment, as a key element of poverty reduction, was central to macroeconomic and social policies. The Government refers to a strategy adopted for the period 2007–13, through which the Ministry of Labour intends to optimize the use of human resources within a framework of institutions and social justice, and which is aimed at realizing a solid legal framework in the country. According to the Government, the employment policy occupies a central axis in the five-year plan for 2007–11. In this context, a poverty reduction strategy and programmes were adopted for the employment of university graduates and rural workers. The Committee notes that, according to a Joint World Bank–UNDP evaluation, about 60–70 per cent of the population in the North and 90 per cent in the South of the country are estimated to be living below the poverty line, with incomes of less than US\$1 per day. Persons living in rural areas, in particular women and internally displaced populations, are the hardest hit by poverty. Beyond the state of Khartoum, the infrastructure (roads, railways, power and water) is either non-existent or underdeveloped across the country. The Committee recalls that the UN adopted a policy for post-conflict employment creation, income generation and reintegration which stresses that, in post-conflict situations, employment is vital to short-term stability, reintegration, economic growth and sustainable peace. ***The Committee therefore invites the Government to report on the measures taken to develop and implement an active employment policy within the meaning of the Convention, with the assistance of the ILO and other international agencies. The Government is also asked to provide information on how it intends to meet, in the context of the five-year plan for 2007–11, the employment needs of vulnerable categories of workers such as women, young persons, older workers and persons with disabilities.***

Collection and use of employment data. The Government indicates that it carried out a population census in 2008 so as to compile information needed by planners and policy-makers. It further indicates that the results of this exercise would be released in 2009 and that this population data would lead to the preparation of a survey for the collection of data and information on the labour market. It further reports that, in September 2008, a workshop was held with the participation of experts, specialists and representatives of workers' and employers' organizations on data collection. The Committee also notes that the ILO was requested to provide technical assistance so as to carry out the labour market survey. ***The Committee invites the Government to provide an account of the progress made to improve the labour market information system and to include in its next report detailed statistics on the situation and trends in employment, specifying the manner in which the collected data has been used to determine and review employment policy measures.***

Article 3. Participation of the social partners in policy preparation and implementation. The Committee notes the Government's statement indicating that no decision is taken without the participation of employers and workers. The Committee can only emphasize once again the importance of giving full effect to Article 3, specifically for Sudan which experiences a very high and persistent unemployment. ***The Committee hopes that the next report will include information on the consultations held with the representatives of social partners in order to secure their cooperation in the formulation and implementation of employment policy programmes and measures.***

Swaziland

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1981)

Revision of Convention No. 96. The Committee notes the Government's statement in the report received in September 2009 indicating that there has been no change in the legislation but that the Employment Bill will be re-tabled in Parliament. The Government is considering the proposal made by the Committee to denounce Convention No. 96 and consider ratification of the Private Employment Agencies Convention, 1997 (No. 181). The Committee notes that the

proposal will be discussed at the Labour Advisory Board and the Government will keep the Committee informed of developments in this regard. ***The Committee welcomes this approach and hopes that the Government will soon be in a position to communicate the Labour Advisory Board's recommendation regarding the ratification of Convention No. 181.*** The Committee invites the Government and the social partners to refer to its General Survey on employment (2010) which contains an overview of Convention No. 181 and makes an assessment of this Convention's provisions. ***The Committee recalls that the provisions of Convention No. 96 remain in force until the ratification of Convention No. 181 becomes effective.***

Sweden

Employment Policy Convention, 1964 (No. 122) (ratification: 1965)

The Committee notes the Government's report for the period ending in June 2008 including replies provided to the 2007 direct request. It further notes the observations submitted by the Swedish Confederation of Professional Associations (SACO), the Swedish Trade Union Confederation (LO) and the Swedish Confederation of Professional Employees (TCO), which were forwarded to the Government in December 2008.

Articles 1, 2 and 3 of the Convention. Active labour market policies. Consultation with the social partners. The Government recalls in its report that after a period of substantial economic growth, the international economy has been increasingly characterized by a turbulent financial market. In its autumn 2008 Budget Bill, the Government underlined the importance of conducting a responsible policy to cushion the negative effects expected in the wake of financial worries. According to the Organisation for Economic Co-operation and Development (OECD) figures, in 2007 the employment rate of the population aged between 16 and 64 stood at 75.7 per cent, an increase by 1.2 percentage points – equivalent to 111,000 persons – as compared to 2006. Similarly, the participation rates increased from 70.8 per cent in 2006 to 71.1 per cent in 2007, cumulating in a total of 4,892,000 persons in the first half of 2008. The Government reports that at the same time, the number of persons in social exclusion fell by 121,000. It states that this was the largest reduction in 40 years and had favourable effects on persons that, inter alia, had been unemployed, on sick leave and on subsistence allowance. It further indicates that the “Activity guarantee” was discontinued, labour market policy programmes had been sharply reduced and that the remaining programmes had been restructured. As part of the new policy programme, a new public employment service was created. This was aimed at improving opportunities for control and enhancing operational efficiency and focused especially on those who traditionally had most difficulties to enter into, or return to the labour market. The SACO saw some of the measures taken as counterproductive and questioned the competence of the public employment service for providing qualified services for skilled jobseekers. The Committee further notes that the new labour market policy allowed for fixed-term contracts and that the reduction of the income tax was an incentive to hire new employees. The policy further included an adjustment of the Swedish education system to meet the demand of the labour market. An additional part of this policy was a reform of the unemployment system through a raise of premiums, the reduction of benefits and the raise of the threshold for entering into the insurance system. The LO and the TCO criticized the Government of “making it more worthwhile to work” as having mainly been put in practice through the Government's reductions of spending in the welfare system. While the Government's strategy has been to reduce income taxes for those who are working, persons who do not work, such as pensioners and students, have not benefited from cuts in the income taxes. In addition, the LO and the TCO observed that making it easier and less costly to take on new employees was a strategy directed to employers, not to employees. The Committee refers to Article 1(1), which requires stimulating economic growth through active labour market policies. ***The Committee hopes that in its next report, the Government will outline how the difficulties that have been encountered in attaining the objectives of the Convention have been overcome. It further requests the Government to reflect in detail in its report how the views expressed by the social partners have been taken into account in formulating and enlisting support for the policies undertaken.***

Youth, long-term unemployed, immigrants and workers with disabilities. The Government reports that despite the overall downward trend of unemployment rates, youth unemployment showed a slight increase and unemployment among foreign-born persons remained twice as high (11.9 per cent) as among persons born in Sweden. Employment of persons with disabilities is also significantly lower than in the rest of the population: only 50 per cent among women and 54 per cent among men of this group are employed. The new policy measures targeting these groups – such as the “New Start Jobs” programme aiming at the youth, the “Step-in Jobs” focusing on asylum seekers with residence permits, the “Job and development guarantee”, directed toward the long-term unemployed and the 2007 Spring Fiscal Bill appropriating incentives to hire workers with disabilities – have brought some improvements. The Committee notes that nearly 40,000 young persons, aged 16–24, and 34,000 persons born outside of Sweden benefited from the increase of employment in 2007. Furthermore, 18,000 workers between 55–74 years found employment in the reporting period. The TCO and the LO saw the reform of the unemployment benefits system as detrimental principally for young workers and for women, as these groups dominated the low-skilled labour market with its high fluctuation rate and temporary nature. The SACO further notes that the employment situation of immigrants still gave reason for concern. ***The Committee asks the Government to continue providing detailed information in its next report on the efforts made to improve the employment situation of youth, long-term unemployed, immigrant and workers with disabilities and how possible detrimental effects of the aforementioned measures observed by the workers' organizations are remedied.***

Women. The Government reports that since 2006, employment has increased more rapidly among women than among men, yet also states that unemployment has declined more steeply for men than for women. While the overall labour force participation rate increased in 2007, the labour force participation rates for women as compared to men were 68.3 versus 73.9 per cent. The Government reported that it had expanded the “New Start Jobs” programme to better cater for women’s needs, which led to a 50 per cent participation rate in the public sector. However, the increase was slower in the private sector and stood at 36 per cent at the end of June 2008. The TCO and the LO observed that the Government did not sufficiently consider the specific needs of female workers, since in addition to the general detrimental aspects of the unemployment insurance system, this group was particularly affected by the exemption of parental leave. ***The Committee asks the Government to continue providing information on the results achieved as a result of the measures adopted to promote female employment, particularly in regard to the “New Start Jobs” programme.***

Thailand

Employment Policy Convention, 1964 (No. 122) (ratification: 1969)

The Committee notes that the Government has not provided any information on the application of the Convention since its last report received in April 2007. The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee’s 2008 observation, which sets forth the following matters.

Articles 1 and 2 of the Convention. Employment policy and social protection. The Committee recalls that, as noted in its previous comments, an unemployment insurance scheme was launched in 2004. The Government’s report indicates that, between July 2004 and February 2007, out of a total of 403,403 persons registered under the scheme, 111,568 persons – representing 27 per cent of the beneficiaries were re-employed within six months following registration, and a remaining 722 persons were referred to further skills training. Research studies conducted during 2004–05 indicate that there are 15,500,000 workers in the informal economy that are not covered by any form of social protection. To address this, and as reflected in the Ninth National Economic and Social Development Plan (2002–06), workers from the informal economy receive benefits to the same extent as other insured persons upon registration. The Committee also notes a communication forwarded by the National Congress of Thai Labour in April 2007, which insists that there are many workers in the informal sector including the service industry as well as self-employed persons who are not covered by the social security system. In a communication received in October 2007, the Government indicates that concrete measures and plans will soon be introduced to better serve and protect workers in the informal economy. ***The Committee requests the Government to include in its next report information on the extent, terms and type of coverage reaching workers in the informal economy under the revised scheme as well as any other steps taken to coordinate the employment policy measures with unemployment benefits.***

Coordination of employment policy with poverty reduction. The Committee notes that the Government established a policy on employment promotion to increase income, as shown by the priority given to three strategies in its development plan – development of human potential and social protection strategy, sustainable restructuring of rural and urban development strategy and upgrading national competitiveness strategy. The policies implemented under these strategies include job creation for self-employed persons as well as enabling small business ventures through skills training for unemployed persons and enhancing access to credit from cooperative funds. It also includes skills training to generate job opportunities in the informal sector, remote areas as well as to promote overseas employment. Furthermore, online labour market information systems have been set up to assist jobseekers. ***The Committee would appreciate receiving information on how the measures taken to promote employment under the three mentioned strategies operate within the framework of a coordinated economic and social policy.*** In this respect, the Ministry of Labour in cooperation with the Faculty of Economics of Chulalongkorn University, has conducted research on the impact of free trade agreements on labour in seven industrial sectors. According to these studies, labour standards are often compromised as a result of highly competitive practices associated with free trade agreements. The Ministry of Labour expects to improve the employment situation using the information and recommendations of research done in collaboration with the Faculty of Economics of Thammasat University. ***The Committee would welcome receiving information on labour market programmes implemented to match labour supply and demand.***

Labour market and training policies. The Committee notes that the skills training offered by the Department of Skills Development (DSD) focuses on pre-employment training, upgrading training and retraining. Moreover, such programmes are designed based on the market needs. The DSD biannually surveys the needs of the public and private sectors at the provincial and national level and designs programmes accordingly. The Government’s report also provides that a quality assurance system was introduced in 2003 to ensure that skills development will be gradually expanded to cover all the regional institutes and provincial skill development centres by 2008. ***The Committee asks the Government to continue to provide information on the results achieved by the measures taken by the Ministry of Labour and the Ministry of Education to coordinate education and training policies with prospective employment opportunities.***

Article 1, paragraph 2(c). Prevention of discrimination. Women. The Government indicates that employers were encouraged to appoint female labour advisers in their establishments. In addition, female workers have also been provided with equal opportunities to the same extent as male workers in accessing services of the DSD. In 2006, 102,990

trainees finished vocational skills training courses organized by the DSD; 100,141 were women, mostly employed in the clothing and textile industries and service sectors. The Ministry of Social Development and Human Security also provided courses for women and young female workers and to those at risk of being, or have been, laid off are unemployed or poor. In rural areas, a special project known as “Building New Life for Rural Women” has been organized with the aim of providing vocational training and increasing income. ***The Committee requests the Government to continue to provide detailed information in its next report on the impact of the measures adopted to ensure that progress is achieved in raising the participation rate of women in the labour market. Please also indicate the gender distribution of trainees in the training courses of the DSD.***

Persons with disabilities. According to the Government’s statistics, the relative number of persons with disabilities that have found job placements increased in 2006. Other interventions include providing vocational training courses for persons with disabilities; occupational development services to help those that have completed vocational training develop practical skills, as well as family and community welfare services to provide care and support for children with disabilities. ***The Committee would appreciate continuing to receive information on the impact of the training programmes for persons with disabilities, in particular, the number of people that completed the programme and were able to find employment in the open labour market.***

Migrant workers. The Government indicates in its report that the registration of thousands of migrant workers has improved their situation. The Committee also notes the statistics for the period 2004–06 on the implementation of bilateral Memoranda of Understanding with neighbouring countries including Cambodia, Lao People’s Democratic Republic and Myanmar. It also notes the observation submitted by the National Congress of Thai Labour, which indicates that illegal foreign workers, especially from Myanmar, are increasing and are paid below minimum wage. In its reply, the Government indicates that irregular migrant workers tend to get lower wages than the minimum rates announced by the National Wages Committee because of their illegal status. ***On this important issue, the Committee refers again to the tripartite discussion that took place during the International Labour Conference in June 2006 on the application of the Convention by Thailand and asks the Government to continue to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand.***

Workers in the rural sector and the informal economy. The Government indicates that homeworkers in the informal sector can register at provincial employment offices to receive basic training to enhance their skills. It also initiated a project in 2006 to reach agricultural sector workers and improve working and living conditions and raise awareness of labour protection. ***The Committee requests the Government to also provide information in its next report on the implementation of rural employment policies and programmes and on any other measures it has taken to promote employment and improve the quantity and quality of employment opportunities for homeworkers. It also reiterates its interest in examining information on the measures taken to reduce the decent work deficit for men and women workers in the informal economy and to facilitate their absorption into the labour market.***

Article 3. Consultations with representatives of the persons affected. The Committee notes that, in issuing policies on employment and labour protection, the Ministry of Labour has given opportunities for all parties concerned to participate. Draft copies of policies and regulations are open for public comment. In certain provinces, the Provincial Offices of Labour Protection and Welfare have collaborated with local government authorities, NGOs and foundations in order to access those migrant workers more easily and provide protection more efficiently. ***The Committee invites the Government to provide information in its next report on any recommendations made by the abovementioned mechanisms in relation to the formulation and implementation of employment measures.***

[The Government is asked to reply in detail to the present comments in 2010.]

Turkey

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) (ratification: 1952)

Part III of the Convention. Regulation of fee-charging employment agencies. The Committee notes the detailed information contained in the Government’s report received in November 2008, in reply to its 2007 observation. The Government reports that, in April 2008, 230 private employment agencies were operating in the country on the basis of a licence granted by the Turkish Employment Agency (İŞKUR). Between the second half of 2004 and 2007, private employment agencies ensured the placement of 122,070 jobseekers. The results of the inspections carried out show that the activities of most of the private employment agencies were in accordance with the requirements set out in the 2003 Labour Act No. 4857 and the 2003 Turkish Employment Agency Law No. 4904. In reply to previous comments, the Government also refers to the outcomes of the “Operating and Auditing of Private Employment Offices Project” launched in 2005 by the Labour Inspection Board, with the cooperation of the European Union’s Administrative Cooperation Fund with a view to harmonizing the Turkish system of private employment agencies with European Union standards. ***The Committee invites the Government to continue providing in its next report information on the measures adopted by İŞKUR to supervise the activities of the agencies covered by the Convention, providing summaries of inspection reports***

and information on the number and nature of contraventions reported, and any other particulars bearing on the effective implementation of Part III of the Convention.

Revision of Convention No. 96. The Committee notes from the report provided on the Employment Policy Convention, 1964 (No. 122), that the Government intends to encourage the opening of private employment agencies and the diversification of their activities. It further notes that new legal and regulatory provisions governing private employment agencies including amendments to the Labour Act are under preparation. The Committee reiterates that *Article 10(b)* of the Convention provides for fee-charging employment agencies to be in possession of a yearly licence renewable at the discretion of the competent authority whereas section 17 of Chapter 5 of the Turkish Employment Agency Act provides that private employment agency permits are valid for a period of three years and may be renewed for further three-year periods. The Committee recalls that the Private Employment Agencies Convention, 1997 (No. 181), in particular Article 3 thereof, provides more flexible provisions for the supervision of private employment agencies. The 273rd Session of the ILO Governing Body, held in November 1998, invited States parties to Convention No. 96 to contemplate ratifying, as appropriate, Convention No. 181, the ratification of which will involve the immediate denunciation of Convention No. 96. Accordingly, the Committee notes that, until such time as Convention No. 181 has been ratified, Convention No. 96 remains in force, and thus the Committee shall continue to examine the implementation of *Part III* of Convention No. 96 in national law and practice. ***The Committee invites the Government to report on any consultations that may have been held with social partners concerning the ratification of Convention No. 181.***

Employment Policy Convention, 1964 (No. 122) (ratification: 1977)

The Committee notes the Government's report received in November 2008 including detailed contributions by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİSK).

Articles 1 and 2 of the Convention. Implementation of an active employment policy. In its 2007 observation, the Committee asked the Government to provide information on the active employment policy measures implemented, in order to be able to examine the extent to which economic growth translated into better economic outcomes and poverty reduction. The Government reports that following Turkey's economic crisis of 2001, which caused a decrease in employment, the overall employment rate has progressively increased over the period 2004–06 and the unemployment rate decreased. The Committee notes from statistical data available in the ILO that the unemployment rate, which was slightly below 10 per cent in 2006, is envisaged to reach 15 per cent in 2009 while the employment rate is envisaged to decrease below 40 per cent. The Government indicates that a significant step towards increasing employment was made with the entry into force in May 2008 of Law No. 5763 containing an "Employment package" as part of a labour market reform programme entailing amendments to the Labour Law and other legislative acts. The measures to be implemented under the employment package include, among others, a reduction of the administrative and financial burden on employment to promote job creation, especially for women, young workers and persons with disabilities, and an increase in unemployment benefits. New active labour market policies will be developed by the Turkish Employment Agency (İŞKUR) and funded under the Unemployment Insurance Fund to help reduce the mismatch between skills on offer and in demand in the labour market. The Committee notes that the Government's Medium-Term Programme covering the period 2008–10 envisages to create employment for approximately 1.4 million people. The TÜRK-İŞ stresses the importance of speeding up the process for redesigning the education and training system so as to reflect labour market needs. ***The Committee invites the Government to provide information in its next report on the results achieved and difficulties encountered in implementing the measures set out under the employment package to promote full employment and combat unemployment.***

Women. The Committee notes that the female employment rate in Turkey is still low. In December 2008 the employment rate for women was around 21.3 per cent (as compared to 61.5 per cent for men). The Government indicates in its report that the new Employment Package places a special emphasis on the promotion of job opportunities for women through a reduction of the employers' social security contributions. A national action plan is being prepared by the general directorate on the status of women, which is to address gender issues in employment. Women have been granted wider access to active employment measures whereas social services, especially childcare, have been further developed. Support is also given to female entrepreneurship and access to micro credit. The Committee notes that the improvement of female employment is referred to as one of the decent work country priorities in a Memorandum of Understanding signed in February 2009 with the ILO. It further notes that the ILO, in cooperation with the İŞKUR, has launched a project on active labour market measures for enhancing employment for women to be carried out in three pilot provinces where female labour participation rates are low (Ankara, Gaziantep and Konya). ***The Committee asks the Government to continue providing information in its next report on the efforts made to improve the employment situation of women and the results achieved in terms of job creation as a result of the measures adopted.***

Youth employment. The Committee notes that the high level of youth unemployment (19.6 per cent in 2007) continues to be a matter of concern for Turkey. The Government indicates that the employment package envisages a reduction of employers' social security contributions over a period of five years in order to increase employment opportunities for young workers. It further indicates that 71 per cent of the participants in the training courses regularly organized by the İŞKUR in 2006 and 2007 were young persons aged 15–29. In this regard, the TİSK observes that a national youth employment policy should be developed in collaboration with the social partners and other stakeholders. The Committee notes that the Memorandum of Understanding concluded with the ILO includes youth employment among

the country's priorities. ***The Committee asks the Government to continue providing information in its next report on the efforts made to improve the employment situation of young persons, and the results achieved in terms of job creation as a result of the measures adopted.***

Small and medium-sized enterprises and the informal economy. The Government indicates in its report that one of the objectives of the employment package is decreasing informal employment. In this connection, the Committee notes that, based on funds provided by the Administration for the Development and Support for Small and Medium-sized Enterprises (KOSGEB), interest-free credit is granted to small and medium-sized enterprises which is proportional to the number of qualified workers or newly graduated young people that they hire, with a view to encouraging employment formalization. The employment of 25,146 workers has been supported by the KOSGEB over the period 2006–08. In their comments the TÜRK-İŞ and the TİSK emphasize the high level of unregistered employment. Out of the total 21.6 million employed persons in the country, almost half (46 per cent in 2007) is not registered. ***The Committee asks the Government to supply further information in its next report on the results of the measures adopted with a view to increasing employment opportunities in the non-declared economy and facilitating the gradual integration of its workers into the labour market.***

Article 3. Participation of social partners in the formulation and application of policies. In reply to previous comments, the Government states that the efficiency of the national Economic and Social Council (EKOSOK) will be increased. The Government also indicates that under the new employment package, the labour market monitoring functions of the provincial employment boards operating under the İŞKUR, where the social partners are represented, have been redefined so as to cover vocational education and that the number of the board's members have been decreased to make them more efficient. The Committee notes with ***interest*** several projects jointly implemented by the social partners aimed at strengthening their involvement in the modernization of the vocational education and training system, developing the İŞKUR's institutional capacity and services as well as improving the efficiency of labour market monitoring mechanisms at provincial level. In its comments on the report for the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the TİSK stresses the need to approve, without delay, the Bill on the new composition of the EKOSOK prepared in consultation with the social partners in order to ensure a participatory approach in the development of employment policies. In this connection, the TÜRK-İŞ observes that although under the existing legislation EKOSOK should meet every three months, it has held only one meeting over the period 2006–08. The TÜRK-İŞ also indicates that the composition of the provincial employment boards operating under the İŞKUR has been changed and that social partners have been excluded. ***The Committee asks the Government to provide in its next report further information on how social partners are involved in the formulation and implementation of active employment policies, particularly through such mechanisms as EKOSOK and other bodies operating at local level, so as to fully take into account their experiences and views.***

Part V of the report form. ILO technical assistance. The Committee notes with ***interest*** the information included in the report on the programmes implemented by the ILO as part of its technical cooperation activities in Turkey. A pilot programme to strengthen social dialogue in order to combat unregistered employment is being implemented in the provinces of Çorum and Gaziantep. Under this programme the Government and the social partners have developed employment strategies targeted at specific local contexts and studies have been conducted to identify factors causing unregistered employment. A pilot project to improve employment services has been implemented in the province of Koçaeli to serve as a model for the entire country with the specific objective to increase the effectiveness of social dialogue through the İŞKUR's local employment committees. Labour market analyses are being carried out with the aim of developing appropriate labour market policies and the İŞKUR officials have been trained in restructuring, redundancy management and job counselling. Under an ILO–EU textile training project, workers and managers in factories supplying multinational enterprises in the textile and clothing sector have been trained on issues related to quality, productivity and workplace conditions with a focus on worker–management relations in order to raise awareness on the importance of social dialogue. ***The Committee would appreciate continuing to receive information on the employment policy measures implemented as a result of the ILO technical cooperation activities.***

Uganda

Employment Policy Convention, 1964 (No. 122) (ratification: 1967)

The Committee notes that the Government has not provided any information on the application of the Convention since its last report received in June 2004. The Committee trusts that the Government will be able to provide a detailed report on the application of the Convention, including information in reply to the points raised in the Committee's 2008 observation, which sets forth the following matters:

Articles 1 and 2 of the Convention. Coordination of employment policy with poverty reduction. The Committee recalls that the draft National Employment Policy was to be submitted by the Ministry of Labour and Social Welfare to Cabinet in July 2004 for consideration and adoption. ***The Committee requests the Government to provide detailed information in its next report on the measures taken to ensure that employment, as a key element of poverty reduction, is central to macroeconomic and social policies. It asks the Government to report on the status of the draft National***

Employment Policy and the Poverty Eradication Action Plan, as well as any evaluation on the impact of its programmes to combat unemployment focusing on university graduates.

The Committee emphasizes the importance of establishing a system for compilation of labour market data and requests the Government to report on any progress made in this field. ***It asks the Government to provide in its next report disaggregated data on trends in the labour market, including information on the situation, level and trends of employment, underemployment and unemployment throughout the country and the extent to which they affect the most vulnerable categories of workers (such as women, young persons and rural workers).***

Article 3. Participation of the social partners. The Government indicated that during the development of the draft National Employment Policy, the views of all affected persons were taken into account through the various workshops held. The Committee recalls that *Article 3* of the Convention requires consultations with representatives of all persons affected, and particularly representatives of employers and workers, in the formulation and implementation of employment policies. It is the joint responsibility of the Government and the representative organizations of employers and workers to ensure that representatives of the most vulnerable and marginalized groups of the active population are associated as closely as possible with the formulation and implementation of measures of which they should be the prime beneficiaries. ***The Committee would appreciate receiving information on the involvement of the social partners in the matters covered by the Convention.***

[The Government is asked to reply in detail to the present comments in 2010.]

Ukraine

Employment Policy Convention, 1964 (No. 122) (ratification: 1968)

Articles 1 and 2 of the Convention. Implementation of an active employment policy. The Committee notes the Government's report received in August 2008 generally referring to the measures taken in 2007 for the implementation of the main directives of the implementation of the state employment policy for the period up to 2009 and the regional programmes for the employment of the population. The priority tasks include: assisting regions facing unfavourable labour situations and promoting employment in mono-functional towns, coalmining regions and rural regions. In 2007, approximately 1.4 million persons were unemployed. According to the Government, the unemployment rate decreased from 6.8 per cent in 2006 to 6.4 per cent in 2007. New jobs were created for more than 1 million persons, two-thirds of which found jobs in the service sector and self-employment. The Committee notes the data supplemented by the ILO Subregional Office indicating that, during the reporting period, employment rates were higher in rural areas than those in urban areas, where the majority of the people live. The Committee notes that underemployment was notable in the agricultural sector where the average wage is less than half of those in the industrial and services sectors, and self-employed owners and contributing family members account for more than one third of the average wage in the industrial and service sectors. It further notes that the employment rate of young people was 36.5 per cent and that the unemployment rate for older workers was 61.8 per cent. The Committee recalls that in its 2007 observation it requested the Government to provide a report including information that will enable the Committee to examine the extent to which economic growth translates into improved labour market outcomes and poverty reduction. ***The Committee asks the Government to provide a report indicating the measures implemented as part of an active policy intended to promote full, productive and freely chosen employment (Article 1(1)).***

The Committee recalls the other points raised in its 2007 observation, for which it again requests the Government to reply in detail on the following matters:

- ***training programmes and initiatives taken to promote the return of unemployed persons to employment;***
- ***measures taken to coordinate education and training policies and prospective employment opportunities;***
- ***measures taken to collect information on the labour market and on how the data was used in deciding on, and reviewing, employment policy measures;***
- ***measures taken to ensure lasting employment to assist miners who were laid off as a result of the closure of mines;***
- ***measures taken in the field of employment in favour of persons and regions affected by the accident in the nuclear plant of Chernobyl; and***
- ***measures taken to consult the representatives of the social partners, including those working in the rural sector and the informal economy, in the formulation and implementation of the employment policy.***

The Committee notes that the preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to evaluate the achievement of the objectives of full and productive employment under the Convention. In this regard, the Government might wish to request technical assistance from the relevant units of the ILO to address gaps in the implementation of an active employment policy in the sense of the Convention.

United Kingdom

Employment Policy Convention, 1964 (No. 122) (ratification: 1966)

Employment trends. The Committee notes the Government's comprehensive and detailed report received for the period ending May 2008, including information on the measures taken in Northern Ireland and Wales. In its 2005 observation, the Committee took note of a strong labour market situation with a high level of employment and record levels of unemployment. This trend was again noted in the 2007 direct request in which the Committee observed the new historic favourable conditions of the labour market. In its last report, received in September 2008, the Government indicated new unprecedented high levels of employment (in May 2008 the number of persons in employment was 29.59 million). The favourable employment trends, however, began to reverse towards the end of the reporting period. The United Kingdom economy experienced almost 16 years of unbroken gross domestic product (GDP) growth up to the second quarter of 2008, when the economy recorded negative growth. As indicated in May 2009 by the Office of National Statistics (ONS) in its analysis of the impact of the recession on the labour market, the unemployment rate was 7.1 per cent for the three months to March 2009; during this period, the number of unemployed persons increased by 244,000 over the quarter and 592,000 over the year, reaching 2.22 million. The West Midlands has been hardest hit by the recession, with high levels of redundancies combined with high unemployment and large decreases in vacancies. Men have been more affected by the recession than women. According to the analysis of the ONS, the discrepancy may be explained by the greater tendency for men to work in the private sector. Young persons have experienced the largest percentage point increase in unemployment compared with any other age group. The Committee notes the deterioration that has taken place in the employment situation since its last comments. It understands that the Government intends to support employment by stimulating growth. ***The Committee requests the Government to specify in its next report how, pursuant to Article 2 of the Convention, it keeps under review the measures and policies adopted according to the results achieved in pursuit of the objectives specified in Article 1. It recalls that an active policy designed to promote full, productive and freely chosen employment should be pursued "as a major goal". As required by Article 3, the Committee hopes that the Government's report will also include information on consultations and cooperation with employers' and workers' organizations in the formulation and implementation of employment policies to address the current employment situation.***

Role of employment services in employment promotion. The Government indicated in its report that there were two key features of its national active labour market policies, namely Jobcentre Plus and the New Deal programmes. Jobcentre Plus offices combined payment of benefits to customers on unemployment benefits with active labour market interventions. The New Deal programmes offer intensive individualized support, delivered through Jobcentre Plus personal advisers. These programmes are primarily directed at those who have been unemployed for long periods of time and offer a number of options. The Committee notes that the New Deal approach has been extended to groups further away from the labour market, including single parents and those on incapacity benefits. It further notes that the programme to roll out Jobcentre Plus across Great Britain was formally completed in July 2007. The Government indicated that, as a result of the programme, a Jobcentre Plus presence was established together with a network of around 800 modern jobcentres for customers seeking face-to-face services, a network of telephone contact centres and a network of benefit delivery centres. ***The Committee asks the Government to continue to provide information on the activities of the employment services, and how they contribute towards implementing active labour market policies.***

Education and training policies. The Government indicated that it seeks to build a joined-up employment and skills system that offers flexible and responsive help which supports individuals in preparing for and securing sustained employment. The Committee notes that a Command Paper entitled "Work skills" was published in June 2008 which sets out proposals for: (a) a skills system shaped by employers that puts the individual in charge of their learning; (b) the extension of the principle of rights and responsibilities to those with skills needs that are preventing them from finding work, so that when they claim benefits they also sign up for skills provision; and (c) a skills system that is less top-heavy, ensuring that delivery systems work more closely together and are driven by those who know best how to shape services to meet local needs. The Committee also notes that Skills for Jobs seeks to help those out of work to gain sustainable employment and progress in both employment and learning. Skills for Jobs encompasses an employability skills programme, developed to enable Jobcentre Plus customers to gain, on a part-time or full-time basis, nationally approved literacy, language, numeracy and employability qualifications delivered in an employment-embedded context with the aim to help customers find a job and progress in work; and other projects run locally to help those out of work or economically inactive. ***The Committee asks the Government to continue to provide information in its next report on the policies and measures being implemented to improve skills levels and to coordinate education and training policies with prospective employment opportunities.***

Youth employment. The Committee notes from the Office of National Statistics that, in the year to March 2009, unemployment rates for 18–24-year-olds increased by nearly 4 percentage points to 16.1 per cent. In this regard, the Committee notes the information provided by the Government on the New Deal for Young Persons, which is a mandatory programme for 18–24-year-olds who have been claiming job support allowance for at least six months. The programme aims to give participants the skills, confidence and motivation to help them find work. They further enter a "gateway" of intensive job search and specialist help to improve their job prospects. ***The Government is requested to continue to***

provide information on the measures taken to meet the needs of young people and on the effect such measures have had on increasing the access of young people to lasting employment.

Persons with disabilities. The Committee notes that the employment rate for persons with disabilities has increased by nine percentage points since 1998 from 39 per cent to 48 per cent in early 2008. The Government attributed this progress to active labour market policies, such as the New Deal for Disabled People and the Pathways to Work provision, alongside a strengthening of the legal rights of persons with disabilities. The Pathways to Work programme seeks to help persons with a disability or a health condition move towards work. The programme provides a series of interviews with a personal adviser, training programmes to increase skills, increase confidence or help to manage a health condition, support once in work and financial incentives to assist in the transition into work or to give a temporary increase in income during the first year in work. The Committee also notes the Work Preparation programme which provides for individually tailored assistance for persons with disabilities to address barriers associated with their disability and prepares them to access the labour market with the necessary confidence to achieve and sustain their job goals. The Work Preparation programme can also be used to help persons who are at risk of losing their job due to their disabilities by helping them overcome difficulties that are affecting their work. ***The Committee asks the Government to continue to provide information on the results of the implementation of the measures designed to address the needs of persons with disabilities.***

Long-term unemployed. The Committee notes that the Local Employment Partnerships project aims to help priority group customers into work through a simple deal between the Government and employers, by which the Government prepares long-term jobseekers for work, while employers agree to give them a fair opportunity to find employment, inter alia, through measures such as guaranteed job interviews, work placements, monitoring, work trials and reviewing recruitment processes to be more inclusive. The Government indicated that the project seeks to integrate both employment and skills, and thus the Government seeks to ensure that people not only find sustained employment but also have opportunities to develop their skills during employment. ***The Government is requested to continue to provide information on the implementation of the Local Employment Partnerships project, and on the effects this has had on promoting the return of long-term unemployed persons to the labour market.***

Uruguay

Employment Policy Convention, 1964 (No. 122) (ratification: 1977)

The Committee notes the Government's detailed report corresponding to the period ending in May 2008 and the information provided in relation to its 2007 observation.

Articles 1 and 2 of the Convention. Implementation of an employment policy in the framework of a coordinated economic and social policy. The Committee notes the increase in the activity and employment rates since March 2005 and the resulting reduction in the level of unemployment. According to the data published by the ILO in the 2008 *Panorama Laboral*, the economic growth was also reflected in positive movements in the main employment indicators. Unemployment continued to fall, both at the national level and in urban areas. During the first 11 months of 2008, the national unemployment rate stood at 7.7 per cent, while the urban rate stood at 8 per cent (1.6 and 1.8 percentage points lower than the figures recorded during a similar period in 2007 respectively). These results were due to a significant increase in labour demand (the national employment rate increased by 1 percentage point to reach 57.6 per cent), which contributed to a slight reduction in labour supply. There was a greater reduction in unemployment among women than among men, but unemployment among women continues to be double of that among men and stands at 10.6 per cent compared to 5.8 per cent for men. The Government is proposing structural reforms such as the reform of the State, the reform of the tax system and the adoption of economic policies aimed at boosting the "productive Uruguay" programme by increasing sources of work and improving workers' qualifications. In labour matters, the Government aims to promote entrepreneurship and business training, encourage the use of technological developments relating to innovation and quality, facilitate geographic decentralization, protect the environment and promote micro-, small and medium-sized enterprises. According to the Government, the financial balance, together with the benefits of international trade and the introduction of regulations and measures benefiting workers, such as the reintroduction of wage boards, have had an effect on working conditions and job creation.

In the context of the implementation of an active employment policy, the Government agreed with the ILO on a Decent Work Country Programme in February 2007. The objective of this Agenda is to facilitate the development of strategies and activities aimed at ensuring fundamental rights at work, in terms of both quantity and quality. One of the specific objectives of the Agenda is the creation of productive employment which includes high formal coverage, social protection and guarantees for the exercise of fundamental rights at work, with special consideration being given to gender equality, young persons and ethnic pluralism. ***The Committee requests the Government to continue providing information on how the measures taken under the Decent Work Country Programme have promoted the objective of full and productive employment under the Convention. Please also indicate whether the objectives of overcoming poverty, reducing social inequalities and ensuring sustainable development, as established under the Decent Work Agenda, have been achieved.***

Workers in the informal economy. The Committee notes that, according to the National Institute of Statistics, informal employment, which is understood to mean employment not involving social security registration, stands at 33.4 per cent. The informal economy is a low-quality employment sector, which provides the Government and social partners with the challenge of devising and implementing policies and legal frameworks to facilitate the integration of these workers into the labour market in appropriate conditions. The Committee notes that the Government has adopted various approaches, including the Domestic Work Act which promotes the registration of workers, the Employment Objective Programme which grants benefits to companies registered under the social security system and the establishment of a committee on informal employment within the context of the National Commitment to Employment, Income and Responsibilities. ***The Committee requests the Government to continue providing information on the measures taken to gradually integrate persons working in the informal economy into the formal labour market. Please also provide information on the recommendations made by the Committee on informal employment relating to the integration of persons working in the informal economy into the labour market.***

Cooperatives. The Committee notes with **interest** that in October 2008, Act No. 18407 on cooperatives was promulgated, which aims to regulate the establishment, organization and operation of cooperatives and the cooperative sector. The Act also creates the National Institute of Cooperatives (INACOOOP) to promote the economic, social and cultural development of the cooperative sector and its integration into the country's development. ***The Committee requests the Government to provide information on the progress being made by INACOOOP to promote labour and social cooperatives, the objective of which is to achieve the social and labour market integration of the heads of households belonging to sectors in which basic needs are not being met, as well as young persons, persons with disabilities, ethnic minorities and any group in a situation of extreme social vulnerability.***

Education policies and the supply of vocational training. The Committee notes the vocational training and labour market integration programmes implemented for young persons (PROJOVEN), rural workers, persons with disabilities (PROCLADIS), women (PROMUJER) and for the strengthening of micro- and small enterprises (FOPYMES), as well as the programme on the establishment of micro undertakings. It also notes the possibility available to companies of deducting their training expenditure from their business tax (IRAE) as a means of promoting ongoing training. ***The Committee requests the Government to continue providing information on training activities for active workers, the recently unemployed and the long-term unemployed.***

Participation of the social partners in employment policies. The Committee notes that in 2007, agreement was reached on the terms of the Bill creating the National Institute of Employment and Vocational Training. According to the Government, the Bill marks substantive progress with regard to the institutional framework and tasks of this tripartite body, includes public funds equal to those contributed by employers and workers and establishes various levels of management at the sectoral level (sectoral employment committees) and at the territorial level (departmental and local employment committees), providing the departmental committees with infrastructure and financial support for their management. ***The Committee requests the Government to provide information in its next report on the progress made in strengthening the mechanisms which allow the development and implementation, in consultation with the social partners, of the employment policy measures required by the Convention.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 2** (Kenya, Morocco); **Convention No. 88** (France, Iraq, Kenya, Republic of Korea, Libyan Arab Jamahiriya, Lithuania, Mauritius, Republic of Moldova, Mozambique, Netherlands, Nicaragua, Romania, Serbia, Sierra Leone, Suriname, United Republic of Tanzania: Tanganyika, Thailand, Tunisia, Turkey, Bolivarian Republic of Venezuela); **Convention No. 96** (Bolivia, Djibouti, France, Libyan Arab Jamahiriya, Luxembourg, Malta, Mexico); **Convention No. 122** (Antigua and Barbuda, Armenia, Bolivia, Bosnia and Herzegovina, Cameroon, Central African Republic, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Denmark: Greenland, Djibouti, France, Georgia, Islamic Republic of Iran, Italy, Jamaica, Kazakhstan, Republic of Korea, Latvia, Lebanon, Libyan Arab Jamahiriya, Mauritania, Republic of Moldova, Montenegro, Netherlands: Netherlands Antilles, Norway, Panama, Papua New Guinea, Romania, Slovenia, Suriname, Tunisia, Bolivarian Republic of Venezuela); **Convention No. 159** (Guinea, Kyrgyzstan, Luxembourg, Malawi, Mexico, Netherlands, Norway, Pakistan, Paraguay, Sao Tome and Principe, Turkey, Uganda, Uruguay, Zambia, Zimbabwe); **Convention No. 181** (Ethiopia, Georgia, Japan, Lithuania, Republic of Moldova, Morocco, Netherlands, Spain, Suriname).

Vocational guidance and training

Argentina

Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)

Implementation of policies and programmes of vocational guidance and training. The Committee notes the report received in September 2008 providing information on the various vocational guidance and training programmes, including detailed information on the employment and training insurance scheme. In reply to the direct request of 2003, the Government indicates that in 2004, an employment and training insurance scheme was created to help the beneficiaries of the Heads of Households Programme and to implement active employment policies which offer support to unemployed workers in searching for employment, by updating their vocational skills and helping them enter the labour market. Between April 2006 and July 2008, a total of 97,405 persons had joined the employment and training insurance scheme. Those interested in the scheme sign a Personal Membership Agreement in which they undertake to attend the Municipal Employment Office regularly to draw up a job-search plan and participate in guidance, training and work experience activities, as well as in other services which help them to improve their job prospects. Furthermore, the beneficiaries undertake to accept job offers that are in line with their experience and vocational skills. The General Employment Promotion Plan (More and Better Work) promotes adaptability to new productive processes by means of ongoing vocational training and technical assistance. Under the Plan, a consensus was reached on the analysis of the employment situation and on measures to improve the employability of unemployed workers and the quality of employment of active workers. Under the Building a future with decent work programme, the Ministry of Education and the Ministry of Labour are developing labour strategies and tools to incorporate the content of the fundamental principles and rights at work and the concept of decent work into the curriculum of secondary schools. The Government also highlights in its report the international cooperation with the Government of Italy and implemented by the ILO in seven regions of the country. The Committee observes the innovative approaches adopted in implementing an employment and training insurance scheme and developing tools to incorporate the fundamental principles and rights at work into the secondary education curriculum. *The Committee asks the Government to continue providing information and statistics in its next report to allow an examination of the results achieved under the various programmes and plans implemented relating to the vocational training and guidance given and the integration of the beneficiaries into the labour market. The Committee would also like to know how the social partners have collaborated in the implementation of programmes created by the Ministry of Labour relating to human resources development.*

Guinea

Human Resources Development Convention, 1975 (No. 142) (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its 2004 and 2008 observations, which read as follows:

Formulation and implementation of education and training policies. In reply to its previous comments, the Government indicates that there are no coordination structures linking the three ministries responsible for the implementation of vocational guidance and training policies and programmes. The Government's report received in June 2004 enumerates the technical and vocational training institutions that exist. It also provides information concerning the implementation of the "employment" component of the Poverty Reduction Strategy approved in 2002. The Committee refers, in this respect, to the comments on the Employment Policy Convention, 1964 (No. 122), and asks the Government to indicate the manner in which the measures adopted or envisaged in the context of the Poverty Reduction Strategy reinforce the links between education, training and employment, particularly through the employment services. It asks the Government to provide information in its next report on the efforts being made to secure coordination among the various institutions responsible for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training. It draws attention once more to the importance of social dialogue in preparing, implementing and reviewing a national human resources development, education and training policy. It would be grateful if the Government would also provide practical information on levels of instruction, qualifications and training activities so that it can assess the application of all the provisions of the Convention in practice.

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

Japan

Human Resources Development Convention, 1975 (No. 142) (ratification: 1986)

Article 1 of the Convention. Formulation and implementation of education and training policies. The Committee notes the information contained in the Government's report, including the comments provided by the Japanese Trade Union Confederation (JTUC-RENGO), received in October 2008. The Government indicates that it is promoting

vocational guidance policies in line with the employment policies set out in the “Basic Principles of Employment Policies” established in February 2008. The Basic Principles of Employment Policies set out the Government’s economic objectives and determine the mid-term policies for the realization of these objectives. The Government indicates that vocational guidance policies are formulated and implemented with due consideration of the employment needs, opportunities and problems. The Committee also notes the Government’s indication that its vocational guidance policies are promoted in line with domestic conditions and in a coordinated manner which allows for mutual adjustability with other policies, such as social security policies, industrial policies, educational policies and measures to address declining birth rates. In its comments, JTUC–RENGO expresses its concern over ongoing discussions in the country over the continued existence of the Employment and Human Resources Development Organization, a core agency which implements measures for the development of occupational skills. JTUC–RENGO considers that the abolition of the Organization might have a serious impact on the application and enforcement of the Convention. ***The Committee asks the Government to provide information on the outcome of deliberations regarding the Employment and Human Resources Development Organization, and on the operation of the machinery in place for the development and implementation of comprehensive and coordinated policies and programmes of vocational guidance and vocational training. The Government might also take into account the relevant comments provided on the application of the Employment Policy Convention, 1964 (No. 122).***

Article 3. Vocational guidance policy. The Government indicates that the Public Employment Security Offices (PESO) provide vocational guidance with a view to supporting the identification of problems that prevent employment, through conducting individual consultations, seminars, career consultations and counselling, in order to solve such problems. Similarly, the PESO provides support to jobseekers, who do not face particular problems in finding employment or in selecting an appropriate job. The Government also indicates that it implements specialized vocational guidance and vocational orientation services in accordance with the conditions of jobseekers, and provides employment information and vocational guidance for new graduates, in cooperation with schools. In particular, the Government and JTUC–RENGO also make reference to the introduction of a “Job Card Scheme” in April 2008 which is aimed at improving the opportunities for disadvantaged persons to take advantage of human resources development measures; and to promote the transition of such persons to sustainable employment. ***The Committee wishes to receive further details on the operation of the “Job Card Scheme”. The Government is invited to include any statistics or data available on the effectiveness of vocational guidance provided through the PESO.***

Article 4. Vocational training systems for women. The Government indicates that it established, in 2006, “Mothers’ Hello work” in the PESOs which provides employment support to women who seek employment while raising children. Efforts have been made to improve vocational guidance by providing vocational consultations which are tailored to the needs of jobseekers, and to provide child-rearing information in coordination with local governments. ***The Committee asks the Government to continue to provide information, including statistical data, on the impact such measures have had on promoting access of women to education, training and lifelong learning.***

Article 5. Cooperation with social partners. The Government indicates that the Basic Principles of Employment Policies, which includes policies for vocational guidance and training, was established in accordance with the conclusions of the subcommittee on Employment Security of the Council on Labour Policy. ***The Committee would appreciate receiving information on the means by which the cooperation of employers’ and workers’ organizations is ensured, including the subcommittee on Employment Security, in the formulation and implementation of vocational guidance and vocational training policies and programmes.***

Lithuania

Human Resources Development Convention, 1975 (No. 142) (ratification: 1994)

Implementation of education and training policies and programmes. The Committee notes the comprehensive information provided in the Government’s report received in September 2008, including replies to the 2004 direct request. The Government reports that new provisions were incorporated into the law on vocational training which came into force in 2008. These new provisions change the concept of vocational training, contributing to the implementation of lifelong learning, and ensuring compliance of qualifications with labour market needs and involvement of the social partners in the management of vocational training. They also establish the Lithuanian Vocational Training Council as an advisory board for consideration of strategic vocational training issues. The Committee also notes that nearly 30,000 persons undergo training in training centres every year, of which about 14,000 are unemployed. Territorial services provide vocational information and counselling for adults, vocational and psychological counselling, elaborate programmes for integration of workers into the labour market, career planning, social adaptation, and vocational and personal development. In 2007, 12 labour market informal vocational training programmes were conducted for older workers. The Government also reported on several vocational programmes and measures targeting women offenders, women aged 55 and older, women returning from a career break and young mothers. ***The Committee would like to continue to receive information on the vocational training and programmes executed by the training centres and territorial services, and invites the Government to provide in its next report further information on the effective coordination established between the***

measures implemented by the Vocational Training Council and public employment service (Article 1, paragraph 1, of the Convention). The Committee also asks the Government to indicate the measures taken with a view to encouraging and enabling women and other vulnerable categories of workers to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations (Article 1, paragraph 5).

Article 2. Education, training and lifelong learning. The Government additionally reports that it elaborated upon and applied more than 50 active job search and occupational skills development programmes. These programmes are divided into groups by the following counselling objectives: professional and self-determination training; development of capacities and skills in order to successfully compete in the labour market; and development of self-awareness, confidence in own capacities and opportunities in the labour market. *The Committee invites the Government to supply further information in its next report on the impact of these new programmes on the establishment of open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training.* The Government reports that it trained 295,600 pupils of 11–16 years of age in 2005, and that this number decreased to 281,000 in 2006, and to 264,100 in 2007. The Government also reports that the number of students trained in higher education rose from 193,900 in 2005 to 195,600 in 2006, and to 200,500 in 2007, of which 80,500 were men and 120,000 were women. *The Committee invites the Government to continue to provide information, disaggregated by gender and age, concerning education, training and lifelong learning.*

Netherlands

Human Resources Development Convention, 1975 (No. 142) (ratification: 1979)

Articles 1–5 of the Convention. Formulation and implementation of education and training policies and cooperation with social partners. The Committee notes the Government's report for the period ending June 2008, and the comments provided by the Trade Union Confederation of Middle and Higher Level Employers' Union (MHP), received in August 2008. The Committee notes that a Working and Learning Project Department was established in March 2005 with a view to increase lifelong learning and to improve matching education with the demand of the labour market. In particular, the Department was established to provide training, retraining and further training for employees and jobseekers. In 2005–07, the Working and Learning Project Department focused on the creation of 15,000 combined working and learning courses, 20,000 Accreditation of Prior Learning trajectories and an infrastructure to facilitate lifelong learning through the establishment of Working and Learning Desks. In order to boost the levels of qualification and, as a corollary, the rate of labour market participation, the tenure of the Project Department was extended until 2011, so as to concentrate on establishing 90,000 working and learning trajectories, with a special focus on young working people with no basic qualifications and jobseekers who are difficult to place. The Project Department will also consider longer term developments in lifelong learning through a specially appointed think tank, a conference on lifelong learning and discussions on training with the social partners. In this regard, the Committee notes the comments from MHP in which it indicates that the Government has been planning to ask the Social and Economic Council for recommendations on lifelong learning for some time. Furthermore, the Government indicates that the Institute for Employee Benefit Schemes (UWV) is making use of a training protocol, which is a series of guidelines indicating when training should be considered for UWV clients. MHP also refers to the consultations held to discuss the preparation of a "training manifesto". Finally, the Government indicates that the incentive scheme to encourage vacancies to be filled by the unemployed and workers threatened with unemployment (SVWW) has been discontinued. In this regard, MHP regrets that this scheme has not been replaced by a similar demand-driven scheme. *The Committee asks the Government to provide in its next report information on the activities of the Working and Learning Project Department, and other machinery for the development of comprehensive and coordinated policies and programmes of vocational guidance and training indicating, in particular, the way in which effective coordination is assured and the manner in which the policies and programmes are linked with employment and the public employment service. The Committee also asks the Government to include information on the development of the "training manifesto" and on other means by which the cooperation of employers' and workers' organizations is ensured, including through the Social and Economic Council, in the formulation and implementation of vocational guidance and vocational training policies and programmes.*

Switzerland

Human Resources Development Convention, 1975 (No. 142) (ratification: 1977)

Articles 4 and 5 of the Convention. Vocational training programmes. Cooperation with the social partners. The Committee notes the Government's report received in September 2009 containing replies to the 2008 direct request, as well as to the comments made by the Swiss Federation of Trade Unions (USS/SGB). In its communication transmitted in September 2008, the USS/SGB referred to the establishment in five cantons of vocational training funds as being an effective tool to promote the creation of training opportunities. The USS/SGB expressed its concern over the federal authorities' lack of support for the creation of other such funds at cantonal level. The Government indicates in its reply

that it opposed the initiative for the establishment of a federal vocational training fund, because the fund-raising as well as the allocation of funds were not demand-driven. The Government recalls that pursuant to section 60 of the Federal Law on Vocational Training, professional organizations may establish sector-specific funds.

As concerns the difficulties encountered by students coming out of compulsory education in entering the vocational training system, which were pointed out in the USS/SGB's comments, the Government indicates that many students do not begin basic vocational training because they still need to fill gaps in their theoretical knowledge, whereas others prefer waiting for apprenticeship opportunities to become available in the field of their choice. In these cases, cantons ensure that students find an appropriate temporary solution. As concerns the measures taken to facilitate the transition from school to the labour market, the Committee notes that the federal and cantonal authorities together with the professional organizations have further developed support tools for low-performance students, namely coaching and mentoring projects, the use of apprenticeship promoters at cantonal level to encourage companies to provide apprenticeship opportunities, as well as measures to help vulnerable young persons find an apprenticeship (case management vocational education).

Finally, the USS/SGB emphasized the need to implement the right to continuous training, as provided under section 64a of the Federal Constitution, to cope with the increasing training needs and to provide greater access to vulnerable categories of workers, such as low-skilled and migrant workers. In this respect, the Government recalls that measures for the implementation of the constitutional provision are presently under discussion. ***The Committee invites the Government to include in its next report further information on the consultations held with social partners in order to obtain their cooperation in the formulation and implementation of human resources development policies and programmes, with specific reference to the measures envisaged to implement section 64a of the Federal Constitution on continuous training.***

Article 3. Vocational guidance. In reply to previous comments, the Government reiterates that under the Federal Law on vocational training, the cantons provide well-developed vocational guidance and career orientation services, including an online service. ***The Committee reiterates its interest in receiving information on the measures taken by cantons to ensure that information and guidance in accordance with the terms of the Convention are made available to all persons concerned.***

United Republic of Tanzania

Human Resources Development Convention, 1975 (No. 142) (ratification: 1983)

Formulation and implementation of education and training policies. The Committee notes the Government's report received in September 2009, indicating that the development of human capital is considered as one of the strategic areas for enhancing the employability of the labour force under the 2008 National Employment Policy. The Policy leads for the Government, employers' and workers' organizations and the private sector in developing and implement mechanisms for skills development and encourages investment in education and skills training programmes. The Committee notes that the competence-based education and training (CBET) approach has been adopted as a tool for implementing demand-driven training. ***The Committee welcomes this approach and invites the Government to provide information in its next report on the impact of the action taken to promote skills under the National Employment Policy. It also asks the Government to provide information on the existing methods for developing comprehensive and coordinated policies and programmes of vocational guidance and vocational training, indicating, in particular, the manner in which the Vocational Education and Training Authority (VETA) contributes to the effective coordination of policies and programmes, and the manner in which they are linked to employment and to public employment services.***

Article 3. Coverage by the vocational training system of vulnerable groups. The Committee notes the information provided by the Government on the increased participation levels in secondary schools and higher learning institutions, particularly the increase in secondary school enrolment from 524,325 in 2005 to 1,222,403 in 2008. It observes, however, that the female participation ratio decreased from 47 to 44.4 per cent in secondary schools, and from 68 to 65 per cent in higher education. The Government indicates that the vocational training policy takes into account the training needs of all groups of workers; however, it refers to difficulties in balancing training provision, especially in the informal sector and between rural and urban areas. The Government also indicates that a skills training programme has been implemented by the Ministry of Labour, Employment and Youth Development, in collaboration with local government authorities, in 111 rural districts. The Committee notes that, among the specific objectives of the National Employment Policy, there is the promotion of equal access to employment opportunities for vulnerable groups, such as women, young persons and persons with disabilities, as well as the enhancement of skills and competencies of workers in the informal sector, especially in rural areas. It further notes that the Decent Work Country Programme 2006–10 includes among its priorities poverty reduction through the creation of employment opportunities with a focus on youth employment issues. ***The Committee invites the Government to provide detailed information on the measures taken to increase gender-balanced access to education and training and to encourage women to develop and use their professional abilities in all branches of economic activity and at all levels of skill and responsibility. Please also indicate the measures taken to promote access to education, training and lifelong learning for persons with specific needs, such as young persons,***

rural workers, workers in the informal economy, and the other categories of vulnerable persons identified in Paragraph 5(h) of the Human Resources Development Recommendation, 2004 (No. 195).

Article 5. Cooperation with the social partners. The Government indicates that the development of policies and programmes of vocational training is achieved in cooperation with all stakeholders. The social partners, together with the Government and the civil society, are represented in the National Vocational Education and Training Board, which is responsible for the development, supervision and implementation of policies at national level. Regional vocational education and training boards, with similar composition, set vocational training priorities and monitor their implementation at regional level. The Committee notes that a Thematic Working Group on Employment was established in 2008 within the National Strategy for Economic Growth and Reduction of Poverty (NEGRP, “MKUKUTA”), which is led by the Ministry of Labour and includes the social partners, other relevant ministries (finance, industry, agriculture, community development and education), the private sector, civil society organizations, and the partners in development under the leadership of the ILO. The working group will facilitate cooperation between development partners and national stakeholders to support the Government’s effort to enhance employment opportunities and achieve decent work for all. ***The Committee asks the Government to continue supplying information on the measures adopted to ensure the collaboration of the social partners and other interested bodies in formulating and implementing education and training policies and programmes.***

Turkey

Human Resources Development Convention, 1975 (No. 142) (ratification: 1993)

Formulation and implementation of education and training policies. The Committee notes the Government’s report received in November 2008 as well as the comprehensive contributions made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employer Associations (TİŞK). The Committee notes the information, including detailed statistics, provided by the Government in reply to the 2004 observation concerning the activities of training centres, the training of apprentices, and the rehabilitation programmes for persons with disabilities. The Government indicates that the implementation of measures promoting human resources development is under way. In this connection, it refers to the establishment of a Vocational Qualifications Authority (MYK) by Law No 5544 of 21 September 2006, which provides for activities relating to the supervision and certification of occupational standards. The new Authority will build up a national system of vocational qualifications in line with the European Union standards in collaboration with the Ministry of Education, the Higher Education Council, representatives of the social partners and of other professional organizations. The Committee notes that the Ministry of Education has undertaken studies conducted under the project for strengthening the vocational education and training system in Turkey (MEGEP) supported by the European Commission. As a result of these studies, modular education programmes have been introduced in all vocational and technical secondary schools and institutions since the education year 2006–07 and vocational education and training information centres have been established. The TÜRK-İŞ expresses its concern over the low level of general education and training of the labour force in Turkey, emphasizing that the development of the education and training system is a primary means of eliminating regional differences and preventing poverty and social exclusion. The Committee also notes the TİŞK’s indication that a draft action plan for vocational and technical education for the 2008–12 period has been prepared by the Ministry of Education which is to be implemented in cooperation with all the parties concerned. ***The Committee asks the Government to provide in its next report information on the systems of general, technical and vocational education, educational and vocational guidance and vocational training. The Committee would appreciate receiving information on how effective coordination has been ensured between employment policy objectives and the policies and programmes of vocational guidance and training taking account of the factors mentioned in Article 1(2)–(4), of the Convention. The Committee asks the Government to continue providing copies of reports, studies and surveys, statistical data, etc., on policies and programmes intended to promote access to education, training and lifelong learning for persons with special needs, such as women, young persons, low-skilled people, persons with disabilities, migrant workers, and also for workers in small and medium-sized enterprises in the informal economy, in the rural sector and in self-employment (Paragraph 5(h) of the Human Resources Development Recommendation, 2004 (No. 195)).***

Article 5. Cooperation with the social partners. The Committee notes that the social partners contribute to the definition of vocational qualifications in accordance with labour market needs within the Vocational Qualifications Authority. The Committee further notes that, under the 2008 Employment Package the provincial employment boards operating under the Turkish Employment Agency (İŞKUR), which are responsible for defining employment policies and conducting labour market research at the local level, have been restructured to include competences in the area of vocational education and training policies. ***The Committee invites the Government to continue reporting on the measures adopted to ensure the collaboration of employers and workers and other interested bodies, in the formulation and implementation of vocational guidance and vocational training policies and programmes at the national and local levels so as to fully take into account their experiences and views.***

Ukraine

Human Resources Development Convention, 1975 (No. 142) (ratification: 1979)

Formulation and implementation of education and training policies. The Committee notes the Government's report received in August 2008 referring to measures taken to establish a flexible system of professional guidance which is responsive to the changing requirements of the labour market. The Government indicates that an Interdepartmental Council on Professional and Technical Education under the Cabinet of Ministers was established, including representatives of the social partners and the educational establishments. It further reports that more than 1,000 State vocational and technical establishments existed in Ukraine which provided education to about half a million persons per annum. More than 900 higher educational institutions provided education to some 3 million persons of whom 1.5 million were full-time students. The Government also refers to round tables, business meetings, extended workshops, national and regional conferences and debates held with the social partners on vocational training and vocational guidance. **The Committee refers to its 2009 observation on the application of the Employment Policy Convention, 1964 (No. 122), in which it asks the Government to report on training programmes and initiatives taken to promote the return of unemployed persons to employment, as well as on measures taken to coordinate education and training policies and prospective employment opportunities. In this respect, the Committee refers to Article 1(1), of Convention No. 142 which requires that Members shall adopt and develop comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. The Committee invites the Government to communicate any extracts from reports, studies, inquiries or statistical data which will allow an examination of the results achieved by the policies, programmes and measures adopted to give effect to Convention No. 142.**

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 140** (Afghanistan, Azerbaijan, Belize, Bosnia and Herzegovina, Brazil, Chile, Czech Republic, Finland, Guinea, Guyana, Hungary, Iraq, Montenegro, Netherlands: Aruba, Nicaragua, Poland, Serbia, Slovakia, Slovenia, Sweden, United Republic of Tanzania, Ukraine, United Kingdom, United Kingdom: Anguilla, United Kingdom: Jersey, Bolivarian Republic of Venezuela); **Convention No. 142** (Afghanistan, Antigua and Barbuda, Azerbaijan, Belarus, Bosnia and Herzegovina, Central African Republic, Egypt, Georgia, Guyana, Hungary, Iraq, Kenya, Republic of Korea, Latvia, Lebanon, Luxembourg, Mexico, Republic of Moldova, Montenegro, Netherlands: Aruba, Nicaragua, Niger, Norway, Poland, Serbia, Tajikistan, Tunisia).

Employment security

Australia

Termination of Employment Convention, 1982 (No. 158) (ratification: 1993)

The Committee notes the Government's detailed report received in September 2009, including information provided by the states and territories, and their replies to the matters raised in its previous observation. The Committee also notes the comments received from the Australian Council of Trade Unions (ACTU) and the Government's response to these comments. In its report, the Government indicates that the Fair Work Act which came into force on 1 July 2009, and which repeals and replaces the Workplace Relations Act, contains provisions relevant to the application of the Convention. The Committee also notes the creation of Fair Work Australia, the national workplace relations tribunal.

The Committee recalls its 2007 observation noting that the Workplace Relations Amendment (Work Choices) Act 2005, exempted businesses employing 100 or less employees from the remedies for unfair dismissal and was therefore inconsistent with the Convention. The Committee notes with *interest* that the 100 employee exemption has been removed under the Fair Work Act. The Committee also notes that the ACTU has welcomed the Fair Work Act's restoration of unfair dismissal rights to most workers in the federal system. Furthermore, the Government indicates that, due to the relatively short time since the coming into force of the Fair Work Act, it is not yet possible to provide an accurate assessment of law and practice associated with it. ***The Committee notes with satisfaction the information provided by the Government and invites the Government to provide updated information on the application of the Convention in practice and examples of court rulings concerning questions of principle relating to the Convention.***

Article 2, paragraph 2(b), of the Convention. Workers serving a qualifying period of employment. The Government indicates that in order to lodge an unfair dismissal application under the Fair Work Act, employees must have served a minimum period of employment. In businesses with 15 or more employees, the minimum employment period required is six months, whereas in small businesses, defined in the Act as employing fewer than 15 employees, the minimum employment period is 12 months. The ACTU indicates that this 12-month qualifying period for workers in small businesses will exclude some small business employees from claiming unfair dismissal and will mostly affect young persons. In response to the concerns raised by the ACTU, the Government indicates that the Fair Work Act provisions balance the need for strong protections against unfair dismissals, while recognizing the special circumstances of small businesses. The Government further indicates that while employees in small businesses are subject to a longer qualifying period, they are nevertheless covered by the unfair dismissal protections from the Fair Work Act. ***The Committee invites the Government to provide information concerning the effects of these legislative changes on small businesses with regard to unfair dismissal claims.***

Article 4. Valid reasons for dismissal. The Committee recalls that under the Workplace Relations Act, a claim could be made by an employee of a business with more than 100 employees. However, if the dismissal took place due to "genuine operational reasons", the dismissal was not deemed to be unfair. Under the Fair Work Act, "genuine operational reasons" is no longer a defence from an unfair dismissal claim. Nevertheless, section 385(d) of the Fair Work Act provides that employers can dismiss employees in cases of genuine redundancy. The Government indicates that, in order to satisfy the requirements of genuine redundancy, the Fair Work Act obliges employers to attempt to redeploy an employee and comply with any relevant consultation obligations under an industrial instrument. The ACTU indicates that the Fair Work Act does not require Fair Work Australia to be satisfied that the individuals selected for redundancy are fairly chosen. The ACTU also indicates that there is a risk that employers will be able to unfairly select individuals for redundancy. In response to the concerns raised by the ACTU, the Government indicates that employees who are genuinely made redundant may not make an unfair dismissal claim but a general protections claim in case the reason for which they were considered as being redundant contravenes the general protections. These reasons include prohibited reasons for termination, including the choice to join or not join a union, or to participate in industrial actions. ***The Committee asks the Government to provide information concerning this provision of the Convention, including information on current cases of terminations of employment which satisfy the requirements for genuine redundancy.***

Article 7. Procedure prior to or at the time of termination. The Committee notes that the Small Business Fair Dismissal Code, which came into operation on 1 July 2009, is also relevant to the application of the Convention. The Code contains the basic principles that a small business employer with less than 15 full-time equivalent employees needs to follow in order to ensure that Fair Work Australia considers a dismissal to be fair. These principles include providing the employee with a warning and an opportunity to rectify their behaviour, and guidance on when summary dismissal for serious misconduct is warranted. If a small business employer can prove to Fair Work Australia that they complied with the Code, a dismissal will be found to be fair. The ACTU is concerned that the Code does not ensure that employees in small businesses are treated fairly. For example, the Code suggests that an employer may summarily dismiss an employee if they believe that the employee has engaged in a single act of theft, fraud, or violence. The Government indicates that the Small Business Fair Dismissal Code does not take away unfair dismissal protection – its purpose is to facilitate a fair dismissal process. ***The Committee invites the Government to provide information on the application of the Small***

Business Fair Dismissal Code with regard to workers' opportunity to defend themselves against the allegations made prior to termination.

Articles 8 and 9. Procedure of appeal against termination. Under the Fair Work Act, if a dismissed employee believes the dismissal was harsh, unjust or unreasonable, they may submit an unfair dismissal application for remedy to Fair Work Australia. With regard to summary dismissals in small businesses, the ACTU indicates that it is unclear whether Fair Work Australia will be able to inquire into the reasonableness of the employer's opinion in cases concerning possible theft, fraud, or violence. In response to these concerns, the Government indicates that when an employee in a small business submits an unfair dismissal claim, Fair Work Australia will first determine compliance with the Code. The Code requires that in cases of summary dismissal for serious misconduct, it is sufficient that the employer has reported the misconduct to the police. However, the Code requires that the employer must have reasonable grounds for reporting the misconduct to the police. ***The Committee asks the Government to provide information on the effect given to these provisions of the Convention, more specifically, with regard to workers in small businesses.***

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

Cameroon

Termination of Employment Convention, 1982 (No. 158) (ratification: 1988)

Articles 12, 13 and 14 of the Convention. Severance allowance. Collective dismissals. The Committee previously noted a communication of the General Union of Workers of Cameroon (UGTC), forwarded to the Government in October 2008, in which the UGTC referred to the dismissal of 215 workers in a shipyard enterprise without consultation. The Government indicates that the restructuring process of the reorganized or liquidated state enterprises has led to the creation of several committees in which representatives of the Ministry of Labour and Social Security participated. At the end of this process, a total of 22,553,594,820 Communauté Financière Africaine francs (XAF) was paid to 13,310 former employees of 49 companies. The Committee notes Decision No. 06/1438/CF of 10 July 2006 on the creation, organization and operation of the tripartite committee set up to assess the balance of social rights of the former employees of the liquidated or restructured state companies. The severance allowances of the workers dismissed from the liquidated or restructured state companies were assessed by a tripartite committee. Once that work had been completed, the Committee sent a report to the minister responsible for finance and the procedure for the settlement of those entitlements is now under way. ***The Committee requests the Government to indicate in its next report whether the dismissed workers are paid their severance allowance and to provide information on the measures taken to mitigate the adverse effects of dismissals, such as those envisaged in Paragraphs 25 and 26 of the Termination of Employment Recommendation, 1982 (No. 166).***

Article 4. Determination of valid reasons for termination of employment. The Government indicates that full effect is given to the provisions of Article 4 through the relevant provisions of the Labour Code, which are reproduced in collective agreements. The Committee notes several court decisions handed down by the High Court in which the reasons given were not regarded as valid reasons, namely:

- termination of employment for early retirement which is not based on the worker's will or a negotiated agreement;
- termination of the employment of a staff representative without requesting the opinion of the joint managers and without the authorization of the competent labour inspector; and
- termination of employment not justified by professional misconduct on the part of the worker.

The Committee requests the Government to continue providing up to date examples of court decisions on cases of wrongful dismissal.

Article 5(c) and (d). Invalid reasons for termination. The Government indicates that the reasons set out in section 39 of the Labour Code are not exhaustive and that paragraph 2 of that section provides that the competent court may rule that a dismissal was wrongful following an investigation into the causes and circumstances of the termination of the employment contract and that the reasons which may be mentioned in the court decision include race, colour, sex and marital status. The Government also indicates that sections 9 and 10 of Act No. 2005/006 of 29 July 2005 on the status of refugees in Cameroon strengthens the protection of refugees against termination of employment. The Committee recalls that the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities (*Article 5(c)*), as well as race, colour, sex, marital status, family responsibilities, religion, political opinion, national extraction or social origin of the worker (*Article 5(d)*) do not constitute valid reasons for termination. ***The Committee requests the Government to provide examples of court decisions relating to invalid reasons for termination.***

Article 7. Defence procedure prior to termination of employment. The Committee notes the extracts of the collective agreements applicable to certain categories of workers, such as those working in insurance, road transport and pharmacies, in which workers are given the right to justify themselves before termination of their employment. ***The Committee requests the Government to indicate how it is ensured that all workers, particularly those not covered by collective agreements, have the possibility of defending themselves against allegations made against them with regard to their conduct or performance before their employment is terminated.***

Article 8, paragraph 3. Time limits for the appeal procedure. The Government once again indicates that any appeal against unjustified or wrongful termination automatically results in a claim for wages or damages for breach of contract. The Committee notes that section 74(1) of the Labour Code stipulates a limitation of three years for an action to recover wages or compensation for breach of contract. The Committee asks the Government to communicate the judicial decisions ensuring that the time limit for the appeal procedure against an unjustified dismissal is three years.

Articles 11 and 12, paragraph 3. Definition of serious misconduct. The Government indicates that it does not currently have the material resources to make inquiries to the competent courts to obtain the court decisions handed down relating to termination of employment for serious misconduct. A collection of the leading judgements in labour case law is in the process of being produced under the programme to support the implementation of the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC). The Committee observes that the principal manner in which these important provisions of the Convention are made effective is by means of court decisions. ***The Committee hopes that progress will be made with the assistance of the ILO and that the Government will be able to provide up to date information on the application of the Convention in practice (particularly court decisions), as well as statistics on the number of terminations for economic reasons, the number of appeals against terminations and the compensation granted (Part V of the report form).***

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

Democratic Republic of the Congo

Termination of Employment Convention, 1982 (No. 158) (ratification: 1987)

The Committee notes with **concern** that the Government has not provided information on the application of the Convention since its last report received in June 2002. The Committee understands that the Labour Code was adopted in October 2002. Major changes have occurred in the Democratic Republic of the Congo. In recent years, the Democratic Republic of the Congo has received technical assistance from the ILO and has been a recipient of aid from international financial institutions and other international partners in assisting in the country's transitional process towards political and economic stability. ***The Committee asks the Government to provide up to date and detailed information on the application of the Convention, including court decisions relating to the Convention, available statistics on the activities of bodies of appeal and information on the number of terminations for economic or similar reasons in the context of the current economic reforms.***

Article 12 of the Convention. Severance allowance and other income protection. The Committee recalls its 2002 direct request and notes that the 2002 Labour Code does not provide any indication as to the amount of severance to be paid to workers. The Committee recalls that *Article 12* provides that a worker whose employment has been terminated is entitled to a severance allowance or any other form of income protection or benefit. ***The Committee trusts that the Government will provide information on how it gives effect to this provision of the Convention.***

The Committee notes that the preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to ensure protection against unfair dismissal as provided by the Convention. In this regard, the Government might wish to request further technical assistance from the relevant units of the ILO to address obstacles in reporting on compliance with the Convention.

Lesotho

Termination of Employment Convention, 1982 (No. 158) (ratification: 2001)

The Committee notes the Government's report received in November 2008 including detailed replies to its previous comments. It notes with **interest** the judgements by the labour courts of Lesotho on the matters covered by the Convention.

Article 2, paragraphs 4–6. Categories of employed persons excluded from the scope of the Convention. The Committee notes that the Government did not list any categories of worker contemplated in subparagraphs (4) and (5) in its first report. Accordingly, as the Government itself indicates in its latest report, no categories of worker have been excluded from the reach of the Convention. The Committee notes that section 2(1) of the Labour Code applies to all employees except those listed in section 2(2) which refers to the members of the army, the police force, or any other "disciplined force". It also refers to categories of "public officer" specifically exempted by the minister. The Committee notes that since 2001 it has requested the Government to supply it with information confirming that these categories are provided with the requisite protection afforded by the Convention. In its recent report, it states that there are no provisions giving protection against unfair termination in respect of these categories of employees. ***The Committee urges the Government to take the necessary steps as a matter of urgency to ensure that these categories of worker are afforded the protections guaranteed by the Convention. The Government is requested to inform in its next report of any such steps taken.***

Papua New Guinea

Termination of Employment Convention, 1982 (No. 158) (ratification: 2000)

The Committee notes the Government's report received in June 2009 in reply to the 2007 observation. The Government indicates that the new Industrial Relations Act, now in its fifth draft, is before the National Tripartite Consultative Council for approval and will be referred to the National Executive Council for adoption, and will afterwards be submitted to Parliament for promulgation. The National Tripartite Consultative Council meeting was scheduled for August 2009. The Government further indicates that the provisions of the Convention will feature comprehensively in the new Industrial Relations Act and will be considered in the review of the Employment Act. ***The Committee hopes that in its next report, due in 2011, the Government will report on the enactment of the new Industrial Relations Act in order to ensure the full and effective application of each provision of the Convention. As soon as the new legislation is enacted, please provide a copy of its text to the ILO.***

Turkey

Termination of Employment Convention, 1982 (No. 158) (ratification: 1995)

The Committee notes that the Government's report has not been received. It must therefore repeat its 2007 observation, which read as follows:

The Committee notes the Government's report for the period ending May 2006, which included observations from the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Turkish Confederation of Employers' Associations (TİSK). ***It would appreciate receiving in the Government's next report copies of relevant updated legislation which gives effect to the provisions of the Convention as well as relevant decisions issued by the courts on the matters covered by the Convention (Parts I and II, IV and V of the report form).***

Follow-up to a representation submitted under article 24 of the ILO Constitution. The Committee recalls the conclusions adopted in 2000 by the committee set up by the Governing Body to examine a representation made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) alleging non-observance by Turkey of Convention No. 158, which concluded that sections 14(1) and 16 of the Maritime Labour Act (No. 854) and section 6 of the Journalists Labour Act (No. 5953) do not require a valid reason for dismissal. TÜRK-İŞ reiterates that these categories of workers are still not able to benefit from the provisions of the Convention. The Committee notes that the Government indicates in its report that several provisions, in particular section 18 of the new Labour Act No. 4857 on valid grounds for dismissal are applicable by analogy to journalists. It further notes that the provisions of the Maritime Labour Act (No. 854) on dismissal were not modified. ***The Committee thus asks the Government to provide further information on the manner in which it is ensured in practice that workers who are subject to the Maritime Labour Act (No. 854) are not dismissed without a valid reason, as required by the Convention.***

Article 2, paragraphs 2 and 3, of the Convention. Adequate safeguards against recourse to contracts of employment for a specified period of time. TÜRK-İŞ indicates that workers on fixed-term contracts of employment or in temporary or seasonal employment, and those with less than six months' service at a workplace do not benefit from the provisions of the Convention. ***The Committee asks the Government to indicate what safeguards have been provided against recourse to contracts of employment for a specified period of time, the aim of which is to avoid protection resulting from the Convention.***

Article 2, paragraphs 4–6. Undertakings excluded from the Convention. In reply to previous comments, the Government refers to section 18 of the new Labour Act No. 4857 of 2003 which provides that dismissal must be based on a valid reason only when the worker is employed in an establishment with 30 or more workers. The Government also refers to Article 2(5) of the Convention, and indicates that establishments with fewer than 30 workers are excluded from the application of the Convention. TİSK indicates that this exclusion is based on the premise that these businesses would not be able to afford the burden of "job security" provisions and a lengthy termination procedure. TİSK also indicates that the limit of 30 workers is very low and is preventing the improvement of employment, as businesses in labour-intensive sectors of industry try not to exceed 30 workers as they do not want to fall within the scope of the "job security" provisions for employees. The Committee observes that the categories of workers that may be excluded pursuant to Article 2(5) must be identified and listed by the member State ratifying the Convention in its first report submitted under article 22 of the ILO Constitution following ratification, in accordance with Article 2(5)(6). It notes in this respect that the Government's first report received in December 1997 contained no indication that workers employed in establishments with fewer than 30 workers were to be excluded from the application of the Convention under the terms of Article 2(5). ***The Committee therefore requests the Government to indicate how workers employed in establishments with fewer than 30 workers are covered by the protection afforded by Article 4 of the Convention.***

Other categories of workers excluded. The Committee also notes that several provisions of the new Labour Act do not apply to employers' representatives and their assistants authorized to manage the entire enterprise and those who are also authorized to recruit and terminate the employment of employees (last paragraph of section 18 of the Labour Act). ***The Committee asks the Government to indicate the manner in which the protection afforded by the provisions of the Convention is ensured in respect of employers' representatives and their assistants.***

Article 4. Valid reason for termination. TÜRK-İŞ indicates that it is not clear what type of conduct or lack of capacity would constitute a valid reason for termination or what requirements of the workplace or the business would be regarded as sufficient ground for termination of employment. TİSK indicates that, although the employer is free to determine the content and objectives of its operational decisions, it has to demonstrate that the termination of employment had become necessary as a consequence of the operational decision. Referring to section 25 of the Labour Act respecting termination of employment due to "a situation incompatible with good will or the code of ethics or other similar situations", TİSK indicates that the worker will be entitled neither to seniority pay nor to unemployment benefits. ***The Committee asks the Government to provide details on relevant court decisions which give effect to Article 4, which constitutes the "cornerstone" of the Convention (paragraph 76 of the 1995 General Survey on protection against unjustified dismissal). It reiterates its interest in being informed about the manner in which a "situation incompatible with good will or the code of ethics or other similar situations" is considered by the courts as a valid reason for termination of employment.***

Article 10. Remedies in case of invalid termination. TÜRK-İŞ indicates that court decisions do not result in the reinstatement of workers as the employer has the right to choose reinstatement or the payment of compensation. TÜRK-İŞ also indicates that these difficulties arise because the worker does not have the right to choose between reinstatement or compensation. In this respect, TISK notes that due to the backlog of judicial cases which are taking a year to conclude, an establishment which dismisses a worker may be compelled by a court decision to re-employ the worker a year later and that establishments which do not want to do so face paying large sums in compensation. TISK refers to section 21 of the Labour Act and indicates that it is not possible to waive or to change the amount of compensation or other entitlements specified in that section, either to the detriment or the benefit of the employee. ***The Committee asks the Government to provide information on the effect given in practice to Article 10 of the Convention.***

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

Uganda

Termination of Employment Convention, 1982 (No. 158) (ratification: 1990)

The Committee notes with *regret* that the Government has not provided any information on the application of the Convention since its report received in June 2004, which indicated that the draft Employment Bill which, according to the Government, would give effect to the Convention, had still not been adopted. The Committee understands that the Employment Act was adopted and came into force in 2006. In this context, the Committee considers it particularly regrettable that the Government has still not provided the relevant information on the application of the Convention. ***The Committee trusts that the Government will be in a position to provide a detailed report containing full particulars on the application of each of the provisions of the Convention in both law and practice.***

[The Government is invited to reply in detail to the present comments in 2010.]

Bolivarian Republic of Venezuela

Termination of Employment Convention, 1982 (No. 158) (ratification: 1985)

In reply to the previous observation, the Government indicates, in a report received in September 2009, that since 2001 workers engaged in managerial functions do not enjoy the special protection against dismissal (*inamovilidad laboral especial*) applicable for men and women workers earning up to three times the minimum wage. The Committee once again draws the attention of the Government to the fact that the Convention applies to “all employed persons” including managers. ***It once again invites the Government to indicate the measures adopted to ensure that managerial workers are covered by the protection afforded by the Convention.***

Legislative reforms. The Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), in a communication forwarded to the Government in September 2009, once again refers to the protection against dismissal decrees and maintains that the policy of labour stability is in violation of the Convention. The Government indicates in its report that during the course of 2008 a total of 39,807 applications for re-employment were filed with labour inspectors at the national level. These applications gave rise to 11,498 requests for the reintegration, while 2,123 applications were declared to be unfounded. The Committee recalls that the Convention reflects a well-constructed balance between the interests of the employer and those of the worker, particularly in relation to dismissals for reasons relating to the operational needs of the enterprise (general observation for Convention No. 158). The Committee reiterates its conviction that, also with regard to the important issues covered by the Convention, the Government and the social partners should make a commitment to promoting and reinforcing tripartism and social dialogue. ***The Committee reiterates its interest in examining the legislative texts that have been adopted in relation to the termination of the employment relationship. The Committee also requests the inclusion of relevant and updated information on the activities of the bodies of appeal (such as the number of appeals against unjustified termination, the outcome of such appeals, the nature of the remedy awarded and the average time taken for an appeal to be decided) and on the number of terminations for economic or similar reasons (Part V of the report form). The Committee hopes that the Government will also provide examples of recent court rulings handed down in relation to the definition of justified reasons for dismissal (Part IV of the report form).***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 158** (*Antigua and Barbuda, Bosnia and Herzegovina, Central African Republic, Ethiopia, Gabon, Lesotho, Luxembourg, Malawi, Namibia, Saint Lucia, Zambia*).

Wages

General observation

The ongoing global economic crisis is gravely affecting the job and income security of millions of workers around the world. This economic downturn is a forceful reminder of the critical importance of those international labour standards that seek to ensure decent minimum wage levels, prevent the accumulation of wage arrears, grant preferential treatment of wage claims in the event of the employer's insolvency or avoid the risk of social dumping in public procurement operations. In this context, the Committee wishes to refer to the note included in its General Report regarding the "Relevance and application of ILO wages-related standards in the context of the global economic crisis" (pages 32–35), in which it highlighted the importance of the ILO Conventions on minimum wage fixing, protection of wages – including in the case of the employer's insolvency – and labour clauses in public procurement contracts for setting the legal framework within which appropriate crisis responses can be formulated.

The Committee considers it very significant that the Global Jobs Pact, adopted by the International Labour Conference in June 2009, places particular emphasis on the need to strengthen respect for international labour standards and expressly identifies ILO instruments on wages and labour conditions on public contracts as being relevant in order to prevent a downward spiral in labour conditions and build recovery (paragraph 14). It further suggests that "governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability" (paragraph 23) and points out that "in order to avoid deflationary wage spirals, ... minimum wages should be regularly reviewed and adapted" (paragraph 12). In the same spirit, the ILO Director-General in his Report to the 98th Session of the International Labour Conference entitled *Tackling the global jobs crisis – Recovery through decent work policies* expressed the view that "the different elements of the way forward are to be found in the international labour standards adopted, promoted and supervised by the ILO" (paragraph 42). More concretely, he stressed that "avoiding wage deflation and providing a proper anchor, in the form of effective minimum wages, will support global demand and reduce trade tensions" (paragraph 116).

The Committee trusts that the crisis responses adopted or envisaged by the governments in the field of income security will be fully consonant with the principles underlying the relevant ILO Conventions and with the output of the ILO supervisory bodies. The Committee draws particular attention to:

- The Minimum Wage Fixing Convention, 1970 (No. 131), which establishes that determining minimum wage levels within an institutionalized framework of tripartite consultations or negotiations is key to establishing a safety net for the workers at the bottom of the wage scale while periodic review and adjustment of minimum wage rates is an absolute prerequisite to the meaningful operation of any minimum wage system. This, in turn, underlines the importance of independent sources of up to date and reliable statistical information.
- The Protection of Wages Convention, 1949 (No. 95), which seeks to prevent wage arrears that not only deprive workers of cash and therefore lower consumption but also imply poor tax revenues and reduced public spending thus leading to a vicious circle that affects the entire economic and social tissue of the society. In view of complexity of issues, progress may only be made through cooperation with social partners. Implementing reforms and reaching compromise solutions in a crisis environment needs constant and genuine social dialogue. Drastic measures also call for strict monitoring and enhanced enforcement, which in turn implies reinforced labour inspection services and a system of truly dissuasive and effective sanctions.
- The Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which focuses on modern solutions for protecting workers' income in the event of enterprise closure, such as the setting up of wage guarantee funds based on compulsory employers' contributions, which require appropriate changes in the bankruptcy and wage legislation.
- The Labour Clauses (Public Contracts) Convention, 1949 (No. 94), which responds to the challenge of how to prevent public authorities from entering into contracts involving the employment of workers at conditions below an acceptable level of social protection and how to encourage public authorities to raise the bar and act as model employers.

To enable the Committee to discharge its functions in monitoring the application of ratified Conventions and also permit the Office to facilitate the exchange of good practices, tested policies and innovative solutions, the Committee would be grateful if the governments concerned would collect and transmit together with their regular reports detailed information on any wage policy measures taken or planned in connection with the current economic crisis which would have an impact on relevant Conventions, especially with reference to: (i) readjustment of minimum wage rates; (ii) prevention of large-scale phenomena of wage arrears; (iii) protection of workers' claims in bankruptcy or insolvency proceedings; and (iv) inclusion of labour clauses in stimulus packages focusing on public works projects.

Algeria

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

Article 2 of the Convention. Insertion of labour clauses in public contracts. Further to its previous observation, the Committee notes the adoption of Presidential Decree No. 08-338 of 26 October 2008, section 14 of which amends section 50 of Presidential Decree No. 02-250 of 24 July 2002 on public procurement regulations to add “the labour clauses ensuring the observance of labour legislation” among the contractual provisions which need to be mentioned in every public contract. While noting that a reference to labour clauses is made for the first time in the public procurement legislation, the Committee wishes to draw the Government’s attention to the following: first, as currently worded, section 14 of the Presidential Decree of 2008 refers generally to clauses guaranteeing respect for labour legislation but fails to give effect to the core requirement of the Convention which is the insertion of labour clauses expressly providing for wages, hours of work and other working conditions of the workers concerned that need to be aligned, as a minimum, to best local standards established through collective bargaining, arbitration or legislation – whichever is the most favourable. The Committee refers, in this respect, to paragraph 41 of the General Survey of 2008 on labour clauses in public contracts in which it emphasized that the general applicability of national labour law to work done in the execution of public contracts is not the focus of the Convention since there would be very little meaning in adopting a Convention that would simply affirm that work for public contracts must comply with relevant labour legislation. It also refers to paragraph 103 of the same General Survey in which it pointed out that conditions not less favourable than the three alternatives offered by the Convention (i.e. collective agreement, arbitration award, legislation) would in practice, in most instances, imply the best conditions of the three.

Second, the terms of the labour clauses to be included in public contracts and any variations must be determined after consultation with the organizations of employers and workers concerned, as required by *Article 2(3)* of the Convention. Third, the Convention requires specific measures for the enforcement of the provisions of the labour clauses, including the posting of notices in conspicuous places at the workplaces concerned with a view to informing the workers of the conditions applicable to them (*Article 4*) and adequate sanctions such as the withholding of contracts or the withholding of payments (*Article 5*).

In light of the preceding observations, the Committee hopes that the Government will take additional steps to ensure the effective implementation of the Convention. It recalls, in this respect, that such steps do not necessarily imply legislative enactment but may entail administrative instructions or circulars and asks the Government to provide supplementary information, including copies of any newly adopted texts, on measures taken or envisaged in order to bring the national legislation into conformity with the Convention. The Committee would also appreciate receiving sample copies of any recently awarded public contracts which have incorporated labour clauses in accordance with section 50 of Presidential Decree No. 02-250 of 2002, as amended by section 14 of Presidential Decree No. 08-338 of 2008.

Finally, the Committee attaches herewith a copy of the Practical Guide on Convention No. 94 which was prepared by the Office in September 2008 based on the conclusions of the aforementioned General Survey to help better understand the requirements of the Convention and ultimately improve their application in law and practice.

Argentina

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1950)

Article 3 of the Convention. Minimum wage fixing machinery. The Committee notes the Government’s detailed replies to the comments made by the Confederation of Argentinean Workers (CTA), dated 4 July 2008 and 21 October 2009, as well as the documentation attached to its report. It also notes the comments made by the CTA dated 31 August 2008 which mainly repeat those sent in August 2007.

With regard to the operation of the National Council for Employment, Productivity and the Minimum Adjustable Wage (CNEPySMVM), the CTA previously indicated that the Council, which meets only on the initiative of the Government, had dwindled in importance as a forum for social dialogue for defining the priorities and steps to be taken with regard to wage policy. The Committee notes the Government’s indication that section 2 of Resolution No. 617 of the Ministry of Labour, Employment and Social Security, of 2 September 2004, authorizes the social partners to convene the Council on the proposal of at least 14 advisers, including eight members from the sector requesting that the Council be convened and six members from the other sector. However, according to the Government, this option has not been used to date. It also notes Resolution No. 1/2009 of 22 July 2009, under which the Council was convened for a plenary session, and Resolution No. 642/2009 of 27 July 2009 appointing the employers’ and workers’ representatives for that session.

With regard to the determination of the basic shopping basket (*canasta básica total*), the CTA previously commented that, because of the way in which the Council operates, it was not possible to determine the basic basket to serve as a reference for setting the amount of the minimum wage. The Government indicates that this matter was

presented to the Council's productivity committee in 2004, but no agreement was reached with the employer sector. The Committee notes the information provided by the Government that the current minimum wage for the first time covers nearly 100 per cent of the amount of the basic shopping basket (compared to only 80 per cent in 2005 and 43 per cent in 2001).

Furthermore, the CTA asserted that government policy on wages only benefited workers in the formal economy, who account for only 57.2 per cent of employees. In this regard, the Government indicates that the Ministry of Labour, Employment and Social Security is making considerable efforts to combat informal labour, particularly with regard to domestic workers, by launching the "declared labour" (*Trabajo en Blanco*) campaign in order to increase the percentage of domestic workers declared by their employer and benefiting from social protection and a minimum wage. The Government adds that in 2004 the Council attempted to reach a consensus on this matter, but without success.

Finally, with regard to the method for determining the minimum adjustable wage (SMVM), the CTA previously indicated that, because of shortcomings in the Council's procedures, there were no objective rules to determine the amount of the minimum wage, the wage policy agreed between the social partners was not implemented, and the amount of the minimum wage was fixed at the discretion of the Government. The Government indicates that, since the Council was convened in August 2004, the readjustment of the minimum adjustable wage has been discussed within the committee on the minimum adjustable wage and employment benefits on four occasions between 2004 and 2007. Following these meetings, the plenary adopted the decisions proposed by a two-thirds majority in accordance with the provisions of the regulations on the operation of the Council. The Committee also notes Resolution No. 2/2009 of 30 July 2009 adjusting the minimum wage, which currently stands at 1,440 pesos per month (approximately US\$378). Finally, it notes that on 1 January 2010 the minimum wage will be increased to 1,500 pesos per month (approximately US\$393). The Committee notes with *interest* the major developments and progress made in recent years with regard to the operation of the system for determining the minimum wage and the regular readjustment of its rate. *It hopes that the Government will continue its efforts in this regard in full and constant consultation with the social partners and requests it to provide information in its next reports on any relevant developments. The Committee would also be grateful if the Government would provide copies of collective agreements determining the minimum wage rate by sector or branch of the economy, copies of studies or other official documents, such as activity reports of the CNEPySMVM, on the operation of the minimum wage system and, in particular, extracts from the reports of the inspection services indicating the violations reported and penalties imposed with regard to the payment of the minimum wage rate in force.*

Furthermore, the Committee takes this opportunity to draw the Government's attention to the conclusions adopted by the ILO Governing Body on the basis of the recommendations of the Working Party on Policy regarding the Revision of Standards (document GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). The Governing Body considered that Convention No. 26 was among those instruments which were no longer fully up to date, even if it remains relevant in certain respects. The Committee therefore suggests that the Government should consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which marks certain advances compared to older instruments on minimum wage fixing by providing, for example, a broader scope of application, the introduction of a generalized minimum wage system and, finally, the adoption of criteria for determining minimum wage levels. The ratification of Convention No. 131 would be all the more appropriate given that the legislation of Argentina actually establishes a comprehensive minimum wage system and appears to be in conformity with the requirements of that Convention. *The Committee requests the Government to keep the Office informed of any decisions taken or envisaged on this matter.*

Bolivia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1977)

Articles 4, 6, 7, 8 and 12 of the Convention. Abusive practices in the payment of the wages of indigenous agricultural workers. Further to its previous comment concerning the allegations of abuses in the payment of wages to agricultural workers, as well as to the study entitled *Enganche y Servidumbre por Deudas en Bolivia* ("The trap of debt bondage in Bolivia"), published by the Office in January 2005, which reported practices resulting in tens of thousands of indigenous workers being in a situation of debt bondage, the Committee notes the information provided by the Government concerning the legislative provisions relating to the prohibition of forced labour and slavery contained in: (i) the new national Constitution adopted on 7 February 2009 (articles 15(V) and 46(II)); (ii) Supreme Decree No. 29894 of 7 February 2009 (sections 86(f) and 87(f)); and (iii) the Penal Code (sections 291 and 293). It recalls that the recommendations of the above study included the ratification of the Forced Labour Convention, 1930 (No. 29), which was ratified by Bolivia on 31 May 2005. *In this regard, the Committee requests the Government to refer to the comments sent to it in 2009 under Convention No. 29.*

With regard to the formulation of a national plan of action to eradicate and combat forced labour in all its forms, the Committee notes that the Government provides no information on this point. It refers to paragraph 356 of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Report I(B)), submitted to the 98th Session of the International Labour Conference 2009, in which it is emphasized that forced labour can only be eradicated "through integrated policies and programmes, mixing law enforcement with proactive measures of prevention and protection, and empowering those at risk of forced labour to defend their own rights". *The Committee*

therefore requests the Government to provide concrete and detailed information on any progress made with regard to the current situation of agricultural workers, as well as on any initiative, current or future, designed to eradicate forced labour and ensure the regular payment of a suitable wage to the workers concerned. Furthermore, noting the Government's indication that a new general Labour Act is in the process of being drawn up, the Committee hopes that the Government will also take into account the comments sent to it in 2009 under the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), and the Minimum Wage Fixing Convention, 1970 (No. 131).

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

[The Government is asked to reply in detail to the present comments in 2010.]

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1977)

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

Article 1, paragraphs 2 and 3, of the Convention. Scope of application. Further to its previous comments on the exclusion of certain categories of workers from the coverage of the minimum wage legislation, the Committee notes the Government's statement in its 2004 report that by Act No. 1715 of 18 October 1996 on agrarian reform, agricultural wage workers had come within the scope of application of the General Labour Act and that a draft Supreme Decree was expected to regulate agricultural wage work and guarantee the general application of the national minimum wage to those workers. The Committee recalls, however, that in some earlier reports the Government had stated that only sugar cane and cotton workers were not excluded from the minimum wage system and that efforts were being made to extend its application to rubber, forestry and Brazil nut workers. *The Committee therefore requests the Government to clarify the situation in this regard, and to transmit a copy of the Decree on agricultural wage workers as soon as it is formally adopted.*

Article 3. Determination of minimum wage level. The Committee notes that the minimum wage was last revised in 2003 by Supreme Decree No. 27048 and is presently fixed at 440 bolivianos. According to the information supplied by the Government in its last report, this amount is renegotiated every year and increases proportionately to the evolution of the consumer price index. The Government added that the national minimum wage was used for the calculation of various pay supplements and social security benefits, for instance seniority bonus and maternity allowance, and therefore had an impact on the income of most workers. In this connection, the Committee reminds the Government that the primary function of the minimum wage system envisaged in the Convention is to serve as a measure of social protection and to overcome poverty by ensuring decent minimum levels of wages especially for the low-paid, unskilled workers. Therefore, minimum rates of pay that represent only a fraction of the real needs of workers and their families, whatever their subsidiary importance in calculating certain benefits may be, can hardly fit the concept and the rationale of a minimum wage as this arises from the Convention. *The Committee requests the Government to indicate the measures it intends to take to ensure that the national minimum wage fulfils a meaningful role in social policy, which implies that it should not be allowed to fall below a socially acceptable "subsistence level" and that it should maintain its purchasing power in relation to a basic basket of essential consumer goods.*

Article 4, paragraph 2. Consultations with social partners. The Committee has been requesting the Government for many years to provide tangible evidence of full consultations held with the social partners with respect to fixing or readjusting minimum wage rates, as required by the provisions of the Convention. In its 2004 report, the Government indicated that no consultations with the Bolivian Labour Federation (COB) had been possible that year due to persistent claims of that organization linked to the participation of the President of the Republic in these consultations. However, negotiations had been held with different organizations at the branch level resulting in wage increases of 3 per cent in several sectors. As regards discussions on minimum wages with employers' representatives, the Government stated that it could not enter into any such discussions with the Confederation of Private Employers of Bolivia (CEPB) since section 8 of the statutes of this organization prevented it from negotiating matters related to wages. While taking due note of these indications, the Committee wishes to emphasize once again the fundamental character of the principle of full consultation of the social partners at all stages of the minimum wage fixing procedure. According to the letter and the spirit of the Convention, the process of consultation must precede any decision-making and must be effective, that is to say it must afford the social partners a genuine opportunity to express their views and have some influence on the decisions pertaining to the matters that are the subject of consultation. *While recalling that "consultation" should be kept distinct from "co-determination" or mere "information", the Committee considers that the Government is under the obligation to create and maintain conditions permitting the full consultation and direct participation of the most representative employers' and workers' organizations in all circumstances. It therefore urges the Government to take appropriate action to ensure that the requirement for meaningful consultations set forth in this Article of the Convention is effectively applied, preferably in a well-defined, commonly agreed and institutionalized form. It accordingly asks the Government to provide information on any developments concerning the establishment of the National Council on Labour Relations.*

Article 5. Enforcement measures. The Committee notes that, according to the Government's indications in its report of 2004, it intended to amend section 121 of the General Labour Act to provide for the periodic readjustment of the amount of fine to be imposed in the event of infringement of the minimum wage rates in force. *The Committee requests the Government to supply up to date information in this regard.*

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

Brazil

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)

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

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes that the Government referred to Technical Note No. 0138/2002 and reiterated the view that there was no need to insert labour clauses into public contracts because the workers' rights were protected by the general labour legislation, by the terms of the individual contracts and by the monitoring activities of the labour inspection services. **The Committee would appreciate receiving a copy of the above technical note.**

In view of the Government's continued failure to implement the basic requirements of the Convention, the Committee wishes once again to draw attention to the following: (i) the rationale of the Convention is to ensure – through the insertion of specific labour clauses in all public contracts – that workers engaged in the execution of public contracts enjoy wage and other working conditions not less favourable than those established by law, collective agreement or arbitration award for work of the same nature in the same district; (ii) since labour laws and regulations normally set out minimum standards which are susceptible to being improved through collective bargaining, it is evident that the mere fact that the general labour legislation applies also to public contracts is not sufficient in itself to ensure the most advantageous pay and working conditions to the workers concerned; and (iii) to ensure compliance with the terms of labour clauses, the Convention requires concrete measures for adequate publicity (posting of notices) and an adequate system of sanctions (withholding of contracts or withholding of payments) that go beyond the enforcement measures often provided for in the general labour legislation.

The Committee has been pointing out that, even though the public procurement legislation, especially section 44 of Act No. 8666 of 1993 on public tendering and Normative Instruction No. 8 of 1994, may be considered to give partial effect to the requirements of the Convention, i.e. as regards the level of wages of the workers employed by public contractors, additional measures are needed in order to attain full legislative conformity with all the provisions of the Convention. The Committee recalls that the Government may avail itself of the technical assistance and expert advice of the Office should it so wish with a view to addressing the concerns outlined above.

Moreover, the Committee notes that the Government has not supplied in recent years any information of a practical nature concerning the application of the Convention. **It therefore asks the Government to make every possible effort to collect and transmit, in accordance with Part V of the report form, up to date information on the average number of public contracts granted annually and the approximate number of workers engaged in their execution, inspection results showing the number and nature of contraventions observed, extracts from official documents or studies – such as activity reports of the Department of Logistics and General Services or of the Inspector of Contracts (fiscal de contrato) – addressing issues connected with the social dimensions of public procurement, as well as any other particulars which would enable the Committee to have a clear understanding of the manner in which the Convention is applied in practice.**

Finally, the Committee takes this opportunity to refer to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94.

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

Bulgaria

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1955)

Article 2 of the Convention. Insertion of labour clauses in public contracts. Further to its previous observation, the Committee notes with **regret** to note that the Government is still not in a position to report any concrete progress in giving effect to the principal obligation of the Convention, i.e. the insertion of the labour clause prescribed by *Article 2* in all public contracts falling within its scope. The Government refers to three different provisions of the Public Procurement Act (SG No. 28/06.04.2004) which transpose corresponding provisions of the EU public procurement directive 2004/18/EC but which bear no or little relationship to the specific requirements of the Convention. More concretely, sections 16c and 26 of the Public Procurement Act deal with situations where States may use procurement operations as a means to pursue broader public policy objectives such as environmental protection or the promotion of employment of vulnerable groups (e.g. persons with disabilities), whereas section 56 of the same Act requires tenderers to declare that in drawing up their offer they have taken into account existing regulations concerning minimum wage levels. As the Committee has pointed out in paragraphs 242 and 248 of its 2008 General Survey on labour clauses in public contracts, even though there is no contradiction between the requirements of ILO Convention No. 94 and the principles set out in the two EU public procurement directives, these directives do not specify a level of employment protection or the working conditions required in the performance of a contract as the Convention does. The Committee further refers to paragraph 46 of the same General Survey in which it observed that Convention No. 94 calls for the insertion of labour clauses of a very specific content which should not be confused with clauses related to equal remuneration and gender equality, such as those including affirmative action measures (e.g. measures to promote the employment of women or addressing discrimination through a system of quotas), or yet other clauses requiring compliance with core labour standards (e.g. those aimed at preventing the use of child labour and anti-union practices).

In view of the Government's continued failure to implement the basic requirement of the Convention, the Committee wishes once again to draw attention to the following: (i) the rationale of the Convention is to ensure – through the insertion of specific labour clauses in all public contracts – that workers engaged in the execution of public contracts enjoy the most advantageous wage and other working conditions among those established by law, collective agreement or arbitration award for work of the same nature in the same district; (ii) since labour laws and regulations normally set out minimum standards which are susceptible of being improved through collective bargaining, it is evident that the mere fact that the general labour legislation applies also to public contracts is not sufficient in itself to ensure to the workers

concerned the most advantageous pay and working conditions established for work of the same character in the district concerned; (iii) to ensure compliance with the terms of labour clauses, the Convention requires concrete measures for adequate publicity (posting of notices) and an adequate system of sanctions (withholding of contracts or withholding of payments) that go beyond the enforcement measures often provided for in the general labour legislation. ***The Committee therefore urges the Government to adopt without delay the necessary measures in order to give full effect to the requirements of the Convention and recalls that the Government may draw upon the advisory services of the Office to this effect.***

Moreover, while noting the statistical information provided by the Government concerning the number of public contracts awarded in the period 2006–08, the Committee would be grateful if the Government would continue to communicate up to date information regarding the practical application of the Convention, including statistical data on the number of public contracts awarded during the reporting period, the approximate number of workers involved in their execution, copies of standard bidding documents, official documents such as annual activity reports of the Public Procurement Agency, etc.

Finally, the Committee attaches herewith a copy of the Practical Guide on Convention No. 94 which was prepared by the Office in September 2008 based on the conclusions of the aforementioned General Survey to help better understand the requirements of the Convention and ultimately improve their application in law and practice.

Cameroon

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

Article 2 of the Convention. Labour clauses. Referring to its previous observation and to the comments made in 2006 by the General Union of Workers of Cameroon (UGTC), the Committee notes that the Government merely indicates that the failure by employers to comply strictly with the provisions of collective agreements is a recurring problem and that labour inspectors monitor the application of regulations and agreements in enterprises or on site and, if necessary, impose penalties on recalcitrant employers. With regard to the social security coverage of workers engaged in the execution of public contracts, the Government indicates that it has initiated a process of modernization of the social security system and that a draft Public Contracts Code is in the process of being drawn up.

The Committee recalls that for many years it has been commenting on legislation, such as Decree No. 86/903 of 1986 governing public contracts, Decree No. 95/101 of 1995 regulating public contracts and, more recently, Decree No. 2004/275 of 2004 issuing the Public Contracts Code, which do not give effect to *Article 2* of the Convention that requires the inclusion of clauses ensuring to workers in enterprises involved in public contracts the same working conditions as those established for work of the same character in the trade or industry concerned in the district where the work is carried on. Furthermore, referring to the Public Contracts Code of 2004, the Committee requested the Government to take prompt action to ensure that full effect is given to the provisions of *Article 4(a)(iii)* (notices in workplaces) and *Article 5* (withholding of contracts or of payments) of the Convention. ***The Committee urges the Government to take the necessary measures to finally bring its legislation into conformity with the Convention. It also requests the Government to keep the Office informed of any developments relating to the drafting of the new Public Contracts Code.***

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

The Committee notes the report sent by the Government in response to observations made by the General Confederation of Labour-Liberty of Cameroon (CGTL). It notes with ***regret***, however, that the Government's replies are very brief and contain no fresh information about the measures taken to ensure implementation of the Convention.

Article 8, paragraph 1, of the Convention. Deductions from wages. The Committee refers to its previous comments regarding section 75(1) of Act No. 92/007 of 14 August 1992 issuing the Labour Code and section 4 of Decree No. 94/197/PM of 9 May 1994 regarding deductions from wages, under which such deductions, known as “deposits”, may be prescribed in collective agreements or individual labour contracts. It reminds the Government that according to *Article 8(1)* of the Convention, such deductions may be permitted only under the conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Consequently, they may not be prescribed by a mere individual work contract. The Committee notes that in its 2008 report, the Government stated it expected the National Labour Advisory Board to examine the relevant legal texts. It notes that in reply to CGTL's observations on this matter, in its last report the Government invites the above organization to make proposals for consideration by the National Labour Advisory Board. The Committee stresses that social dialogue is of fundamental importance to the implementation of international labour standards, and points out that responsibility for alignment of the national legislation with the Convention ultimately rests with the Government. ***The Committee accordingly asks the Government to send all relevant information on measures taken to bring the legislation into line with the Convention on this matter. The Government is asked to send the Office a copy of any draft amendments to section 75(1) of the Labour Code and section 4 of Decree No. 94/197/PM of 9 May 1994 that may have been submitted to the National Labour Advisory Board for consideration.***

Article 12, paragraph 1. Payment of wages at regular intervals. In the absence of any information on this matter in the Government's last report, the Committee again asks the Government to supply detailed information on the operation of the special commission set up to calculate and settle wage entitlements and arrears of former employees of state and semi-public enterprises which are being wound up because of the economic crisis, to which the Government referred in its report for 2008, together with details of the results obtained by the commission. The Government is also asked to provide information on the extent of the wage arrears problem in the various sectors of the economy and on the measures taken to remedy it.

The Committee furthermore notes that Decree 2008/099 of 7 March 2008 to raise the basic monthly pay of civilian and military personnel, increased the pay of these persons by 15 per cent as from 1 April 2008. *The Committee requests the Government to provide information on the financial implications of this measure, especially as far as the overall wage debt is concerned.*

With regard to the education sector, the Committee notes from the information in the report sent by the Government in 2008 that private sector employers have made efforts to reduce, and even eliminate, wage arrears. *The Committee asks the Government to provide particulars of the measures taken to this end by the employers concerned.*

Lastly, with regard to education establishments in the public sector, the Committee notes that in its report for 2008, the Government stated its intention of pursuing the operation to issue contracts to teaching staff, who are paid immediately out of HIPC (heavily indebted poor country) funds. It notes that the HIPC initiative, launched under the auspices of the International Monetary Fund and the World Bank, seeks to combat poverty by securing financing for the social sectors out of funds that were initially to be paid to the country's donors. *The Committee understands that a large number of teachers have been recruited under such contracts since 2007 and asks the Government to provide further information on the implementation of the HIPC initiative and on any results it may have made possible in terms of reducing wage arrears.*

Colombia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1963)

Articles 11 and 12 of the Convention. Protection of wage claims in the event of bankruptcy and the payment of wages at regular intervals. The Committee notes that, once again, trade union organizations have brought to its attention problems relating to the preferential treatment of workers' wage claims in the event of the bankruptcy of the employer, as well as problems relating to the payment of wages at regular intervals. More specifically, the Committee notes the Government's reply to the comments of the Colombian Association of Airline Pilots (ACDAC), dated 25 May 2007. The ACDAC previously drew attention to the alarming situation of the Airline Pilots' Provident Fund (CAXDAC) and its growing deficit which is due to the fact that, for many years, the Government has not prevented airline companies which have not paid their contributions from filing for bankruptcy without having first paid all outstanding contributions to the Fund. In its reply of 6 March 2008, the Government indicates that, after requesting information from the various regional directorates concerning the investigations carried out for non-payment of contributions due to the CAXDAC, it was found that no investigation is under way at the administrative level with regard to the events alleged by the ACDAC. The Government also indicates that it is awaiting further information from the supervisory authority for ports and transport. *The Committee requests the Government to keep the Office informed of its further actions and any developments in this regard and to provide the above information as soon as possible.*

The Committee also notes the comments submitted by the Union of Maritime and Inland Water Transport Workers (UNIMAR) dated 14 April 2008 and sent to the Government on 7 August 2008. UNIMAR once again refers to the liquidation process of the Merchant Navy Investment Company SA (formally the Grand Colombian Merchant Navy SA) and emphasizes that the liquidator's advisory board, with the authorization of the Supervisory Authority for Companies, gave the order not to pay the 18 sailors whose employment contracts had been suspended since September 1997, the wages, social benefits and compensation owed to them. UNIMAR adds that 16 final court decisions have ordered that the illegally suspended employment contracts be restored and that the related wages and social benefits be paid, with an order to attach the accounts of the enterprise, which no longer contain any funds allowing the payment of the workers' claims. The Supervisory Authority for Companies and the former liquidator had assured the Constitutional Court that the rights of the workers would be respected, ordering the payment of wages and social benefits for 2003. UNIMAR indicates that the Government, instead of executing the court decisions, dismissed the workers without paying them the wages and social benefits owed to them. In this regard, the Committee notes the information provided by the Supervisory Authority for Companies and transmitted by the Government in a communication dated 30 April 2009. With regard to the above final court decisions, the Supervisory Authority for Companies indicates that the proceedings are pending before the national courts and that the legal rulings handed down by the magistrates responsible for the enforcement of sentences have been transmitted, firstly, to the magistrate responsible for the liquidation and, secondly, to the liquidator so that the payment of the wages, social benefits and compensation can be made, in accordance with the principle of proportionality. *The Committee requests the Government to keep the Office informed of any developments in this regard, and in particular to indicate whether the payments have been made and whether the dispute has been resolved.*

Furthermore, the Committee notes the comments made by the National Union of Workers of the Enterprise Administradora de Seguridad Limitada (SINTRACONSEGURIDAD) received on 15 August 2008 and recalls that it has already issued an opinion on this point, as raised by the Government in its reply dated 4 November 2008. In so far as the former workers of the company CONSEGURIDAD have exhausted all the legal remedies available, they have to comply with court decisions which have the effect of *res judicata*. The Committee once again recalls that it has no power to intervene in the operation of the national judicial authorities, particularly in the manner in which they have adjudicated.

Finally, the Committee notes that the Government does not provide any new information concerning the settlement of the wages owed to the employees of the public hospital San Juan de Dios following the comments made in March 2006 by the National Association of Health, Social Security and Allied Service Workers and Public Employees (ANTHOC). ***The Committee once again requests the Government to keep the Office informed of any settlement of the dispute or any progress made to that end.***

Comoros

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

Article 3 of the Convention. Minimum wage fixing. The Committee notes with ***regret*** that no progress has been achieved for the past nine years in relation to the readjustment of the guaranteed interoccupational minimum wage (SMIG). The Government once again refers in its report to the meeting of the Higher Council of Labour and Employment (CSTE), held in 2001, which resulted in a compromise to establish the rate of the SMIG at 35,000 KMF (approximately US\$90) a month. While noting that the SMIG has been made official in the public sector, the Committee notes with ***regret*** that the draft Decree issuing the rate of the SMIG for the private sector, agreed upon in 2001, has not yet been made official. The Committee is bound to observe that, in the current circumstances, the Convention is not given effect in either law or practice. ***It therefore urges the Government to take all the necessary measures without delay to determine and implement the rate of the SMIG, in full consultation with the CSTE, so as to ensure that the minimum wage responds adequately to the current needs of workers and their families.***

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1978)

Article 1, paragraph 1, of the Convention. Minimum wage fixing machinery. Further to its previous observation, the Committee notes the Government's explanations that confirm that no progress has been made either with respect to the promulgation of the decree fixing the guaranteed inter-occupational minimum wage (SMIG) at 35,000 KMF (approximately US\$110) per month or as regards the reactivation of the Higher Council of Labour and Employment (CSTE). The Government indicates that the draft decree establishing the SMIG rate for the entire private sector, including agriculture, has not yet received the final approval of the President and that the Ministry of Labour is currently taking steps to successfully complete this process. The Government also indicates that tripartite consultations within the CSTE are expected to resume after the adoption of the revised Labour Code which, in turn, is scheduled to be discussed at the next ordinary session of the National Assembly. Regrettably, the Committee is once again obliged to observe that the Convention is presently not applied in either law or practice. ***The Committee urges the Government to take the necessary action without further delay with a view to: (i) establishing and implementing the guaranteed inter-occupational minimum wage rate; and (ii) initiating tripartite consultations within the CSTE on its periodic review and adjustment. It also asks the Government to transmit a copy of the revised Labour Code as soon as it is adopted.***

Finally, the Committee wishes to draw the Government's attention to the conclusions of the ILO Governing Body as regards the relevance of the Convention following the recommendations of the Working Party on Policy regarding the Revision of Standards (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). In fact, the Governing Body has decided that Conventions Nos 26 and 99 are among those instruments which may no longer be fully up to date but remain relevant in certain respects. The Committee therefore suggests that the Government should consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which contains certain improvements compared to older instruments on minimum wage fixing, for instance, as regards its broader scope of application, the requirement for a comprehensive minimum wage system and the enumeration of the criteria for the determination of minimum wage levels. ***The Committee requests the Government to keep the Office informed of any decision taken or envisaged in this regard.***

[The Government is asked to reply in detail to the present comments in 2010.]

Congo

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

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

Article 12, paragraph 1, of the Convention. Payment of wages at regular intervals. The Committee has been commenting for some time on the problem of accumulated wage arrears in the public sector and the need to put an end to

practices of delayed payment of wages that clearly contravene the letter and the spirit of the Convention. According to information provided in 2004, the wage debt was estimated at 187.6 billion Communauté Financière Africaine francs (approximately US\$440 million) corresponding to the wage bill of 23 months. The Committee subsequently asked for detailed and documented information on the evolution of the situation but no report was submitted for three consecutive years. Regrettably, in its last report, the Government does not communicate any updated figures on the progress made regarding the settlement of outstanding payments but limits itself to enumerating the provisions of the Labour Code that ensure legislative conformity with the Convention. The Committee understands that problems of unpaid wages persist, for instance in public education, and that in certain cases wage arrears hinder the Government's privatization programme in the energy, oil, banking, agricultural, forestry, transport and hotel sectors. ***The Committee therefore once again asks the Government to give a detailed account of the current situation regarding the payment of wages to public employees on time and in full and also to describe any new measures taken with a view to resolving the wage crisis that continues to affect a large number of them.***

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

Costa Rica

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts. Further to its previous comments, the Committee notes with **regret** that the Government makes no reference to any progress made with regard to bringing its legislation into line with the provisions of the Convention. It regrets this in particular because in 2006 it supplied the additional explanations which the Government had requested with regard to Executive Directive No. 34 of 8 February 2002, as well as specific information on a possible formulation which would be in conformity with the Convention based on the draft Decree of 1980 drawn up following an ILO direct contacts mission that year. Noting that the situation remains practically unchanged since then, the Committee reiterates that clauses in public contracts which merely recall the applicability and binding nature of the national legislation, particularly with regard to wages, hours of work and other working conditions, are not sufficient to ensure conformity with the provisions of the Convention. The Committee refers to paragraph 44 of the General Survey of 2008 on labour clauses in public contracts, in which it emphasizes that the Convention seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitration award or national laws or regulations for work of the same character in the trade or industry concerned in the region where the work is carried out. This obliges the contractor to apply the most advantageous pay rates, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question.

The Committee attaches a copy of the Practical Guide prepared by the Office in September 2008, based principally on the conclusions of the abovementioned General Survey, which contains an analysis of national law and practice in this field and also legislative examples giving full effect to the requirements of the Convention. ***The Committee hopes that the Government will be able to draw on the information contained in both the General Survey and the Practical Guide and that it will soon be in a position to report on progress made in this area.***

Finally, with regard to the comments of 17 May 2008 made by the Union of Workers of the Ministry of Finance and the National Customs Service (SITRAHSAN) – previously called the Union of Customs Workers – the Committee requests the Government to refer to its comments under the Protection of Wages Convention, 1949 (No. 95).

[The Government is asked to reply in detail to the present comments in 2010.]

Protection of Wages Convention, 1949 (No. 95) (ratification: 1960)

Articles 6 and 9 of the Convention. Prohibition on limiting the freedom of workers to dispose of their wages. Prohibition on any deduction from wages for the purpose of obtaining or retaining employment. The Committee notes the comments from the Union of Workers of the Ministry of Finance and the National Customs Service (SITRAHSAN) – previously called the Union of Customs Workers dated 17 May 2008 and also the Government's reply received on 29 April 2009. SITRAHSAN alleged that the Government, represented by the Ministry of Finance, and the Directorate-General of Customs breached the provisions of *Articles 6 and 9* of the Convention inasmuch as the workers of SITRAHSAN, aware that their jobs were at risk, had been obliged to take out an insurance policy (*poliza de fidelidad*) vis-à-vis the State in order to retain them. SITRAHSAN underlined the fact that the insurance policy in question should have been taken out by the employer and not by the workers themselves, as provided for by the Act on cooperative associations in Costa Rica and as done by all private enterprises.

The Government states in its reply that the Ministry of Finance adopted Directive DAF-01-2008 concerning the obligations of officials of the Ministry of Finance. This directive was the subject of an appeal to have it quashed before the civil court, which rejected the appeal. The Government adds that this was not an unfounded unilateral decision on the part of the Ministry aimed at reducing officials' salaries but a decision taken in strict application of the national legislation in force. The abovementioned Directive was adopted pursuant to section 13 of Act No. 8131 concerning financial administration and public budgets and section 21 of Act No. 8422 against corruption and unlawful enrichment. The Committee notes that section 13 of Act No. 8131 provides that any official responsible for collecting or managing public funds must pay a security out of his own pocket to the public treasury in order to ensure the full discharge of his duties

and obligations. Section 21 of Act No. 8422 establishes the list of persons who are obliged to make a sworn declaration concerning their financial situation, and these include customs employees.

The Committee also understands that a number of public institutions – especially the Electricity Board of Costa Rica, Editorial Costa Rica and the National Council for Scientific and Technological Research – have issued regulations pursuant to section 13 of Act No. 8131 governing the guarantees to be provided by officials, namely the insurance policy which the latter must take out with the National Insurance Institute.

While noting that these provisions aim to prevent any risk of corruption in the public administration, the Committee recalls that *Article 6* of the Convention prohibits the employer from limiting in any manner the freedom of the worker to dispose of his wages, and is concerned by the question of whether the obligation to pay an insurance premium out of his own pocket might contravene this provision of the Convention. The Committee refers to paragraph 178 of its General Survey of 2003 on protection of wages, in which it considers that the pressures exerted on workers to make contributions to certain funds are of a nature to restrict the freedom of workers to dispose of their wages. Similarly, *Article 9* of the Convention prohibits any deduction on wages for the purpose of obtaining or retaining employment. In the present case, the Committee expresses its **concern** whether, even if there is not an actual deduction from wages, the obligation to take out an insurance means loss of employment for any person failing to take out the insurance and retention of employment for persons who take out insurance.

In order to have a better understanding of the scope of the provisions in question and to evaluate their compatibility with the Convention, the Committee requests the Government to provide further information, stating in particular: (i) whether the obligation to take out an insurance policy forms part of the contractual requirements of which officials are informed at the time the offer of employment is made; (ii) the number of officials who have taken out, or refused to take out, an insurance policy; (iii) the consequences of any refusal by officials to take out the said insurance policy; and (iv) whether all officials are obliged to take out an insurance policy even in the absence of specific regulations adopted by the institution which employs them, pursuant to section 13 of Act No. 8131 concerning financial administration and public budgets.

The Committee also refers once again to its previous observations and requests the Government to provide the necessary explanations with regard to the application of Articles 3 and 4 of the Convention (payment of wages in legal tender and value attributed to allowances in kind) – in relation to the draft amendments to sections 165 and 166 of the Labour Code – and also of Articles 8 and 12 (deductions from wages and regular payment of wages), which have been the subject of comments by the Committee for a number of years.

Democratic Republic of the Congo

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

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

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes with **regret** that, despite the observations that it has been making on this matter since 1991, legislation has still not been adopted to give full effect to the Convention.

The Committee recalls in this respect that the essential purpose of the Convention is to ensure that, through the insertion of appropriate labour clauses in public contracts, the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether they are established by collective agreement or otherwise. Such protection is deemed to be necessary because this category of workers may not be covered by collective agreements and other measures regulating wages, and is often more exposed than others because of the competition between firms tendering for public contracts. Furthermore, the Committee deems it important to emphasize that the protection provided through labour clauses in public contracts cannot normally be ensured through the application of the general labour legislation only. This is due first of all to the fact that there are many countries in which the minimum standards fixed by law are improved upon by means of collective bargaining or otherwise. Thus, even where fairly extensive labour legislation exists and is properly applied, the inclusion of labour clauses in public contracts can serve a very useful purpose in ensuring fair wages and conditions of labour for the workers concerned. Secondly, it is due to the fact that the provision of penalties, such as the withholding of contracts, as envisaged in the Convention, makes it possible to impose sanctions in case of violations of the labour clauses in the public contracts which may be more directly effective than those applicable for infringements of the general labour legislation.

The Committee therefore urges the Government to take all the necessary measures to bring the national legislation into conformity with the provisions of the Convention and reminds it of the possibility of seeking the technical assistance of the International Labour Office for this purpose.

Finally, the Committee refers to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94. It also refers to the Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law and practice.

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

Djibouti

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1978)

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

Article 1 of the Convention. Establishment of minimum wage fixing machinery. Further to its previous comments on the abolition of the system of the guaranteed interoccupational minimum wage (SMIG), the Committee notes the Government's explanations to the effect that this decision was taken under pressure from the International Monetary Fund (IMF), which required the Government to adopt a raft of measures, including liberalization of the labour market, to be the beneficiary of a Structural Adjustment Programme (SAP). The Government adds that it made the choice of deregulation rather than leave the SMIG in place, since the balance of public finances would have been seriously jeopardized and wages would not have been guaranteed, thereby threatening the social peace and stability of the country. In this regard, the Committee recalls that the establishment of minimum wage fixing machinery outside the system of collective bargaining is essential for ensuring effective social protection for workers who are not covered by the rules of collective agreements, and that the Government must take the necessary steps to ensure that collectively agreed minimum wage rates are binding and the application thereof is linked to a system of supervision and effective penalties.

The Committee therefore concludes that the situation remains unchanged. Apart from the Government's indication that the matter would be studied by the new National Council for Labour, Employment and Vocational Training (CNT), the Convention is no longer applied either in law or in practice. The CNT was set up pursuant to Decree No. 2008-0023/PR/MESN of 20 January 2008 as a tripartite structure to enable the Government and the social partners to exchange ideas in a free and open manner. In this regard, the Government points out that there is increasing talk of the possibility of reintroducing the SMIG for each branch of economic activity. **The Committee requests the Government to supply detailed information on the planned meeting of the CNT and any decisions regarding the reintroduction of the national minimum wage rate. It also requests the Government to send its comments in reply to the observations made by the General Union of Djibouti Workers (UGTD) sent to the Government in September 2007.**

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

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1978)

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

Article 2 of the Convention. Insertion of labour clauses in public contracts. Further to its previous observations, the Committee notes with **regret** that the Government is still not in a position to report any meaningful progress in putting in place the appropriate legal framework for the implementation of the Convention. The Committee notes that for over ten years, the Government has been stating that it is planning to examine the necessary measures to give effect to the Convention in the overall context of the forthcoming revision of labour laws and regulations which it hopes to undertake with the Office's assistance as soon as the conditions have been fulfilled for the organization of a national tripartite consultation. Despite those reassurances, however, the Committee observes that major legislative exercises, such as the adoption of the new Labour Code of 2006, have been completed without any effort having been made to address the issue of labour clauses in public contracts. Moreover, the Committee understands that the Government is involved in a public procurement reform project initiated by the Common Market for Eastern and Southern Africa (COMESA) with a view to improving public procurement practices and harmonizing rules and procedures at the regional level.

The Committee recalls that the Government may draw upon the advisory services of the Office, should it so wish, for the purpose of revising its public procurement legislation and aligning it with the requirements of the Convention, and urges the Government to take long overdue action in order to ensure conformity with the provisions of the Convention. The Committee also asks the Government to keep the Office informed of any progress made in the preparation of new procurement laws and regulations under COMESA's public procurement reform project and transmit copies of any new texts as soon as they are adopted.

The Committee also notes the observations made in 2007 by the General Union of Djibouti Workers (UGTD) concerning the application of the Convention. According to the UGTD, the absence of legislation implementing the Convention creates a legal vacuum which is prejudicial to the workers employed under public contracts. In this connection, the UGTD hopes that the National Commission of Labour, Employment and Vocational Training will soon be established so that it can take measures to bring the national legislation into conformity with the Convention. **The Committee requests the Government to transmit its comments in reply to the points raised by the UGTD.**

Finally, the Committee refers to its 2008 General Survey on labour clauses in public contracts which contains an overview of national laws and practice concerning the social dimensions of public procurement and a global assessment of the impact and present-day relevance of Convention No. 94. It also refers to the Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law and practice.

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

Protection of Wages Convention, 1949 (No. 95) (ratification: 1978)

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

Articles 8 and 12 of the Convention. Wage deductions and regular payment of wages. The Committee has been commenting for a certain number of years on the provision of the Labour Code permitting wage deductions on the basis of individual agreement and also on difficulties experienced in the public sector concerning the timely payment of wages. ***The Committee requests the Government to provide up to date information on both issues, in the light of the provisions of the new Labour Code (Act No. 133/AN/05/5èmeL).***

Moreover, the Committee notes the communication of the General Union of Djibouti Workers (UGTD) received on 23 August 2007 concerning the application of the Convention. The UGTD states that whereas Chapter IV of the Labour Code, in particular section 152, provides for the protection of wages in the strict sense of the word, the absence of wage guarantees such as the guaranteed minimum inter-professional wage (SMIG), which was abolished in September 1997, has deprived the workforce of real income protection. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the UGTD.***

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

Ecuador

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1970)

Article 4, paragraphs 2 and 3, of the Convention. Full consultation and direct participation of the social partners in the establishment and operation of the minimum wage fixing machinery. The Committee notes the comments made by the International Organisation of Employers (IOE) dated 30 August 2009. The IOE indicates that a new constitutional text was drawn up and adopted by referendum on 28 September 2008 without the effective participation of the main actors in the world of work, which prevented an objective analysis of the matters to be regulated at the constitutional level. The IOE adds that section 328(2), as well as Transitional Provision No. 25 of the new constitutional text, which provide for the annual revision of the minimum wage on a gradual basis in order to cover the cost of the shopping basket (*canasta familiar*), do not take into account the direct participation of the employers and workers concerned, as required by this provision of the Convention. ***The Committee requests the Government to provide its comments in reply to the observations submitted by the IOE.***

Furthermore, referring to its previous observation concerning the minimum wage rate currently in force and its ability to offer workers a decent standard of living, the Committee hopes that the Government will take all the necessary steps to ensure the application of sufficient minimum wage rates to enable workers to meet their essential needs and those of their families, and once again requests it to provide a copy of the legal text establishing this rate and to provide detailed information on the consultations held within the National Wage Council (CONADES).

Egypt

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1960)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee has been in receipt of General Circular No. 8 of the Minister of Finance dated 23 June 2008. It notes with *interest* that the Government has for the first time taken concrete steps to give effect to the core requirement of the Convention. According to the terms of the Circular, two new bidding terms are to be added to the provisions of the Public Tenders Law No. 89/1998: (i) workers engaged in the execution of the contract must receive wages and bonuses not lower than those received by workers carrying out similar work in the same governorate; and (ii) they must enjoy the hours of work and working conditions prevailing in the region, according to a general agreement or according to custom. In addition, the Circular draws the attention of all bodies concerned to the necessity to include in detail the above two bidding terms in public contracts and indicates that the Ministry of Manpower and Migration will be responsible for the implementation of the new provisions.

The Committee welcomes the adoption of General Circular No. 8/2008 of the Minister of Finance and understands that the Government has made use of the Office's advisory services in this respect. However, it wishes to draw the Government's attention to the following: first, in its current wording, the Circular does not make it sufficiently clear that the wages, hours of work and other working conditions of the workers concerned have to be aligned, as a minimum, to best local standards established through collective bargaining, arbitration or legislation – whichever is the most advantageous. The Committee refers, in this respect, to paragraph 103 of the General Survey of 2008 on labour clauses in public contracts in which it pointed out that conditions not less favourable than the three alternatives offered by the Convention (i.e. collective agreement, arbitration award, legislation) would in practice, in most instances, imply the best conditions of the three. Second, the terms of the labour clauses to be included in public contracts and any variations must be determined after consultation with the organizations of employers and workers concerned, as required by *Article 2(3)* of the Convention, and the Committee has not received any indication whether any such consultations were held before the adoption of General Circular No. 8/2008. Third, the Convention requires specific measures for the enforcement of the provisions of the labour clauses, including the posting of notices in conspicuous places at the workplaces concerned with a view to informing the workers of the conditions applicable to them (*Article 4*) and adequate sanctions such as the withholding of contracts or the withholding of payments (*Article 5*). ***The Committee therefore hopes that the Government will take additional steps to ensure the effective implementation of the Convention with regard to the***

points raised above. It also asks the Government to provide supplementary information, including copies of any newly adopted texts, on the measures taken by the Ministry of Manpower and Migration for the practical application of General Circular No. 8/2008. Moreover, the Committee would appreciate receiving sample copies of any recently issued tender documents or public contracts which have incorporated the new bidding terms provided for in the General Circular.

Finally, the Committee attaches herewith a copy of the Practical Guide on Convention No. 94 which was prepared by the Office in September 2008 based on the conclusions of the aforementioned General Survey to help better understand the requirements of the Convention and ultimately improve their application in law and practice.

Guinea

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1959)

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

Articles 1 and 3 of the Convention. Introduction of a minimum wage and consultation of the social partners. The Committee notes with *regret* that, according to the information contained in its last report, the Government is maintaining its decision not to introduce the guaranteed interoccupational minimum wage (SMIG) at the present time in view of the economic situation of the country. It also notes that, as acknowledged by the Government, the introduction of a minimum wage is an important claim of national trade union organizations. The Committee notes in this respect that in November 2005 a 48-hour general strike was called by the National Confederation of Workers of Guinea (CNTG), and that the claims included the establishment of a minimum wage. In this context, it notes with *concern* that the inflation rate in Guinea appears to be particularly high (in the order of 30 per cent in the second half of 2005), which makes it all the more necessary to ensure workers a minimum wage permitting them and their families to benefit from a satisfactory standard of living.

The Committee *deplores* the fact that, despite its repeated comments on the subject, the Government has still not been able to adopt the decree determining the minimum guaranteed wage rate for one hour of work, as provided for in section 211 of the Labour Code. *The Committee therefore urges the Government to take the necessary measures without further delay to give effect to the provisions of the Convention by adopting the implementing decree for section 211 of the Labour Code. The Committee would also be grateful to be provided with more detailed information on the measures adopted or envisaged to ensure effective consultations with the social partners on equal terms in all the stages of the process of fixing minimum wages, as required by the Convention.*

Collective agreements. The Committee notes that, according to the information provided by the Government in its last report, the minimum wage rates in the various sectors are determined in collective agreements. In this respect, it is bound to recall that the fixing of minimum wages by collective agreements is only permitted under certain conditions: the minimum wages must have the force of law, not be subject to abatement and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions (see paragraphs 99–101 of the 1992 General Survey on minimum wages). *The Committee therefore requests the Government to indicate the manner in which compliance with these principles is ensured in the context of the system for fixing minimum wages by collective bargaining. It requests the Government to provide copies of these sectoral collective agreements containing provisions relating to the minimum wage and to indicate the number of men and women, and of adults and young persons, covered by such provisions.*

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

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1966)

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

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes with *regret* that the Government's last report contained no reply to its previous comments but essentially reproduced information already submitted in earlier reports which the Committee had considered to be strictly irrelevant to the scope and content of the Convention. The Committee is once again led to conclude that for the last 40 years there has been practically no progress in implementing the provisions of the Convention in either law or practice. The Committee expresses its deep disappointment about the Government's continued failure to apply the Convention despite the technical assistance provided by the Office in 1981 and the numerous commitments made by the Government, ever since, as regards the drafting and adoption of specific regulations or legislation concerning public contracts. *Under the circumstances, the Committee hopes that the Government will make a sincere effort to maintain a meaningful dialogue with the ILO supervisory bodies and once more urges the Government to take all necessary measures without further delay in order to bring its national law and practice into conformity with the clear terms and objectives of the Convention.*

Finally, the Committee refers once again to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94. It also refers to the Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law and practice.

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

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1966)

Article 3 of the Convention. Minimum wage fixing machinery. The Committee notes with regret that the report on the application of the Convention has not been received and requests the Government to refer to the comments made under Convention No. 26.

Islamic Republic of Iran

Protection of Wages Convention, 1949 (No. 95) (ratification: 1972)

Article 12 of the Convention. Payment of wages at regular intervals. The Committee notes the comments made by the International Trade Union Confederation (ITUC) concerning the implementation of the Convention and, in particular, alleged problems of accumulated wage debts. According to the ITUC, wage arrears constitute a serious problem in the Islamic Republic of Iran and are one of the major roots of labour unrest. The ITUC provides a list of incidents of wage arrears affecting thousands of workers mainly in the sugar cane, metal and textile industries with delays in the payment of wages ranging from two to 12 months. The Committee recalls, in this connection, its previous observation in which it expressed concern about the extent of the problem of unpaid wages and also the fact that the situation was inadequately monitored. As the Government's reply was received on 2 December 2009, the Committee intends to examine the matters raised in the observations of the ITUC at its next session.

Iraq

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1986)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes the Government's report and the attached "Instructions on Implementation of Government Contracts", which were issued by the Ministry of Planning and Development Cooperation in 2008. It observes that, as indicated in the Government's report, these instructions aim principally at ensuring fairness and transparency in all bidding procedures but bear little relevance to the core requirement of the Convention which is the pay and other working conditions applicable to workers engaged in the execution of public contracts. The Committee is therefore bound to conclude that no progress has been made with respect to the revision of procurement laws and regulations in order to give effect to the requirements of the Convention. The Committee recalls that the object and purpose of this Convention is not to promote fair, open and corruption-free public bidding procedures but rather to ensure that, by virtue of standard labour clauses inserted in public contracts, workers are entitled to wages, hours of work and other labour conditions at least as good as those normally observed for the kind of work in question in the area where the contract is executed, and that higher local standards, if any, apply. The Committee hopes that in the ongoing amendment process of the Labour Code, and following the recommendations of the Tripartite Consultation Committee, the Government will not fail to take the necessary steps in order to bring the national legislation at last into conformity with the Convention.

Jamaica

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee has been commenting for a number of years on the absence of any laws or regulations implementing the provisions of the Convention. In its last report, the Government refers to new Contracts and Standard Bidding Documents and Procurement Regulations which are soon to be issued and which are expected to cover labour aspects of public procurement operations. The Committee would appreciate receiving a copy of these documents as soon as they are finalized.

The Committee notes that the Revised Handbook of Public Sector Procurement Procedures (RHPP) was issued in December 2008 and has been in use for an interim period pending formal approval by the Cabinet. It notes, however, that the RHPP does not address working conditions of workers employed under public contracts, except for subsection No. S-2120, which provides that deviations from the bidding requirements, including non-compliance with local regulations relating to labour, import taxes and duties, which do not appear at first sight to provide immediate grounds for bid rejection, may be considered further in the evaluation process. Noting that the Government is still not in a position to report any concrete progress as regards the application of the Convention, the Committee wishes to refer to paragraphs 40 and 44 of its General Survey of 2008 on labour clauses in public contracts, in which it indicated that the purpose of the Convention is to ensure that the workers employed for the execution of public contracts enjoy wages and other working conditions at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. This has the effect of setting as minimum

conditions for the contract standards that are already established within the locality. The further aim is that local standards higher than those of general application (this in practice means the most advantageous labour conditions) should be applied, where they exist. In fact, the type of labour clauses prescribed by this Article of the Convention seek to oblige the contractor to apply the most advantageous pay rates, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors, are to be reflected in a standard contractual clause which has to be effectively enforced notably through a system of specific sanctions.

Finally, with a view to assisting the Government in its efforts to give effect to the Convention, the Committee attaches herewith a copy of the Practical Guide on the Convention prepared by the Office in September 2008 and based principally on the findings of the abovementioned General Survey. *It hopes that the Government will take the necessary action without further delay in order to bring the national legislation into conformity with the Convention and recalls that the Government may draw on the expert advice of the Office to this effect.*

Libyan Arab Jamahiriya

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1971)

Articles 3 and 4 of the Convention. Review and adjustment of the minimum wage. The Committee has been raising questions in recent years concerning the operation of the minimum wage fixing machinery, the periodicity of adjustment of the minimum wage and the criteria used for such adjustment. Following the establishment of the Wages Board in 2006 and the Decision of the General People's Committee in 2007 to set the national minimum wage at 250 dinars (approximately US\$208 per month, the Committee has requested the Government to provide more detailed information on the operation of the Wages Board, the eventual revision of the national minimum wage as well as the enforcement of the minimum wage legislation in practice. In its last report, the Government makes renewed reference to the ILO technical assistance mission that visited the country in July 2007 and emphasizes its willingness to improve conditions of workers in order to achieve full employment and social welfare. *The Committee trusts that the Government will provide in its next report full particulars on the effect given to the requirements of Articles 3 and 4 of the Convention, especially the manner in which the basic needs of workers and their families are taken into account in fixing the minimum wage level, including any surveys or studies of national economic conditions. Moreover, recalling that under Decision No. 613/2006 of the Secretary of the General People's Committee for Manpower, Training and Employment, the Wages Board holds regular meetings once every three months and may initiate the procedure for the revision of the minimum wage whenever it considers it necessary, the Committee asks the Government to provide all available information on the Board's most recent meetings and any decision taken or envisaged concerning the review of the minimum wage rate currently in force. Finally, the Committee would be grateful if the Government would provide in its next report up to date information on measures to ensure compliance with the national minimum wage or any difficulties experienced in this respect, in particular, the number of labour inspection visits carried out and violations reported, with special reference to migrant workers who constitute half of the total workforce.*

Mauritius

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

Articles 1 and 2 of the Convention. Scope of application of minimum wage rates. The Committee recalls its previous observation in which it had noted the comments made by the Private Sector Workers' Front (FTSP) concerning the alleged abuses and overexploitation of workers in four economic sectors not yet covered neither by a wage Order nor by a collective agreement, namely the information and communication technology sector, the financial and other services sector, the seafood sector and the travel agents and tour operators sector. In its reply, the Government explains that with respect to the information and communication technology sector and the financial sector (including banks), it is not deemed necessary to have any (Remuneration Order) regulations since the wages prevailing in those sectors are not considered to be exceptionally low, and accordingly invokes the latitude afforded by *Article 2* of the Convention to determine which trades or parts of trades should be covered by minimum wage legislation. As regards the sea food hub sector (fishing and processing), the Government indicates that the workers involved in fishing activities are either covered by the Banks Fisherman and Frigo Workers (Remuneration Order) Regulations of 1997 while workers employed by the processing plants are covered by either the Factory Employees (Remuneration Order) regulations or the Export Enterprises (Remuneration Order) Regulations, as the case may be. Finally, the Government indicates that upon the recommendation of the National Remuneration Board (NRB), draft (Remuneration Order) Regulations have been prepared for the travel agents and tour operator sector and they have been submitted to the State Law Office for vetting. *Noting the Government's detailed explanations, the Committee would be grateful if the Government would transmit a copy of the new regulations once they are issued.*

Moreover, the Committee notes with *satisfaction* the adoption of the Employment Relations Act No. 32 of 2008 which repeals the Industrial Relations Act and which expressly provides in section 90(2) for the equal representation of

employers' and workers' organizations in the operation of the tripartite National Remuneration Board – a point on which the Committee has been commenting for a number of years.

Morocco

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1956)

Article 2 of the Convention. Inclusion of labour clauses in public contracts. With reference to its previous comment, the Committee notes that the Government essentially repeats the same explanations provided in its previous report and places emphasis on section 20(4) of Decree No. 2-99-1087 of 4 May 2000 approving the general administrative conditions applicable to contracts for work executed on behalf of the State, which provides that the wage paid to manual workers shall not be lower, for each category of worker, than the statutory minimum wage. The Government also refers to sections 25 and 26 of Decree No. 2-98-482 of 30 December 1998 which requires: (i) the registration of the bidder with the National Social Security Fund and the regular provision of wage declarations to the Fund; and (ii) the presentation of documentation issued by the Fund certifying that the bidder has complied with its requirements in relation to the Fund for his participation in the call for tenders.

In this respect, the Committee wishes to refer to paragraphs 40 and 44 of its General Survey of 2008 on labour clauses in public contracts, in which it emphasizes that the purpose of *Article 2* of the Convention is to ensure that the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as the wages and conditions of labour normally established for the type of work concerned, whether by collective agreement or otherwise, in the locality where the work is done. Labour costs are thus removed from competition between bidders and local standards are applied where they are higher than those of general application. This, in practice, means the most advantageous labour conditions for the workers concerned, including pay rates, overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors are to be reflected in a standard contractual clause which has to be effectively enforced, notably through a system of specific sanctions.

The Committee also draws the Government's attention to paragraph 118 of the same General Survey, in which it observes that obtaining labour clearance certificates before being allowed to tender for public contracts is not sufficient for compliance with the requirements of the Convention. In this respect, the Committee has consistently taken the view that the insertion of labour clauses in public contracts under the Convention goes beyond the aims of simple certification, as its purpose is to eliminate the negative effects of competitive tendering on the workers' labour conditions. Certification offers some proof about tenderers' past performance and law-abiding conduct, but carries no binding commitment with regard to prospective operations as labour clauses do. ***The Committee therefore urges the Government to take appropriate measures to ensure that full effect is given to the Convention by requiring the inclusion of the labour clauses envisaged by the Convention in all public contracts to which it is applicable.***

Finally, with a view to assisting the Government in its efforts to give effect to the provisions of the Convention, the Committee attaches a copy of the Practical Guide on the Convention drawn up by the Office and based principally on the conclusions of the abovementioned General Survey. It also reminds the Government that it may, if it so wishes, seek the Office's technical assistance.

Myanmar

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1954)

Articles 1 and 3 of the Convention. Minimum wage fixing machinery. The Committee notes that the Government's report essentially reproduces information already communicated previously and does not reply to the specific points that the Committee has been raising over the past ten years, namely the extension of minimum wage protection to industrial sectors other than the rice-milling and cigar- and cheroot-rolling industries, the revision of the minimum wage rates in force, the evolution of minimum wage rates as compared to the evolution of economic indicators such as the inflation rate in recent years, and the enforcement of the minimum wage legislation in practice. The Committee notes with *regret* that, whereas the Government indicated earlier that the extension of the minimum wage fixing machinery to other industries such as the printing, oil-milling and garment industries was under consideration and that the minimum wage rates applicable to the rice-milling and the cigar- and cheroot-rolling industries were no longer in line with market wages and needed to be adjusted, its last report remains completely silent on these matters. The Committee further notes that the labour inspection statistics provided by the Government refer only to the number of inspection visits carried out in 2007–08 but give no indication as to the results obtained in terms of violations observed, sanctions imposed or amounts of wages recovered. ***The Committee therefore asks the Government to make every possible effort to collect and provide up to date information on the application of the Convention in law and practice***

and also to indicate the concrete measures it intends to take for the extension of minimum wage coverage to sectors other than rice-milling and cigar- and cheroot-rolling and the readjustment of existing minimum wage rates.

[The Government is asked to reply in detail to the present comments in 2010.]

Norway

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1996)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes the observations of the Confederation of Norwegian Business and Industry (NHO) concerning the impact of recent legislative developments on the application of the Convention. More concretely, the NHO expresses its opposition to the terms of the new clause on wages and working conditions that came into effect in March 2008 and which is now applicable to all tenders both of central and municipal authorities. According to the employers' Confederation, there are overlapping – and even contradictory – rules in the area of wages and working conditions applicable to foreign workers, including the Immigration Act, the regulations on posted workers, and the Act relating to general application of wage agreements, and the new regulations on labour conditions in public contracts can only create additional uncertainty as to which requirements are really applicable. The NHO adds that as a result it will be very difficult to interpret and apply the new clause in practice. **The Committee requests the Government to communicate any comments it may wish to make in response to the observations of the NHO.**

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

Panama

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1971)

Article 2, paragraph 1, of the Convention. Inclusion of labour clauses in public contracts. Further to its previous comments, the Committee notes with **regret** that the Government's report merely repeats information that was sent previously and does not refer to any progress made with regard to bringing the national legislation into line with the provisions of the Convention. The Committee previously noted the reference made by the Government to two communications, No. DM.359.2008 of 5 May 2008 and No. DM.374.2008 of 7 May 2008, sent by the Ministry of Work and Labour Development (MITRADEL) to the Ministry of Economic and Financial Affairs (MEF) and the Directorate-General of Public Procurement, respectively. Noting that the situation remains unchanged, the Committee reiterates that clauses in public contracts which merely recall the applicability and binding nature of national labour legislation, in particular with regard to wages, working hours and other conditions of work, do not comply with the provisions of the Convention.

Moreover, the Committee understands that the Directorate-General of Public Procurement, with the assistance of the World Bank, has developed a strategic plan to modernize the public procurement system and give it greater transparency and effectiveness. The plan comprises six tiers, including one concerned with ensuring the uniformity of tendering procedures and the preparation of standard documents. In this regard, the Committee considers that the Government might take this opportunity to adopt legislative provisions which would finally make it possible to bring the legislation into line with the provisions of the Convention. **While reminding the Government that it can avail itself of technical assistance from the Office if it so desires, the Committee urges it to take the necessary steps to give effect to the provisions of the Convention and requests it to keep the Office informed of any developments, particularly in the legislative field.**

Protection of Wages Convention, 1949 (No. 95) (ratification: 1970)

Article 12 of the Convention. Regular payment of wages. Referring to its previous comment concerning the payment of the 13th month's wage to public sector employees, in the light of the observations made by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP), the Committee notes with **interest** the adoption of Act No. 19 of 2 March 2009 which establishes the right to payment of the 13th month's wages not paid between 1989 and 1991. It recalls that, according to FENASEP, the payment of the 13th month's wage was suspended between October 1989 and August 1991, representing an amount of around US\$88 million owed to hundreds of thousands of public sector employees. The Committee notes that, under section 2 of Act No. 19 of 2 March 2009, the Government will proceed with payment of the amounts due as soon as public revenue permits. **The Committee requests the Government to provide detailed information on any steps taken under the abovementioned Act.**

Paraguay

Protection of Wages Convention, 1949 (No. 95) (ratification: 1966)

Articles 3, 4, 6, 7 and 12 of the Convention. Debt bondage. Further to its previous comment concerning the problem of debt bondage affecting numerous indigenous workers in agricultural undertakings in the Paraguayan Chaco, the Committee notes the Government's indications that a regional labour directorate has been created in the town of Teniente Irala Fernández (Central Chaco) in order, in particular, to supervise and prevent situations of forced labour, and inspections have been carried out in the context of the decent work programme in the agricultural sector. The Committee also notes the adoption of Resolution No. 230 of 27 March 2009 creating the Committee on Fundamental Rights at Work and the Prevention of Forced Labour, and Decree No. 1945 of 30 April 2009 approving the National Programme for Indigenous Peoples (PRONAPI). Furthermore, the Committee notes that the eradication of forced labour is one of the major components of the Decent Work Country Programme concluded with the ILO in February 2009. It recalls that, even if the legislative provisions exist, they still have to be applied effectively. In this regard, the Committee refers to paragraph 356 of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Report I(B)), submitted to the 98th Session of the International Labour Conference, 2009, in which it is emphasized that forced labour can only be eradicated "through integrated policies and programmes, mixing law enforcement with proactive measures of prevention and protection, and empowering those at risk of forced labour to defend their own rights". ***The Committee therefore requests the Government to provide detailed information on the impact of the above measures on the working conditions of the workers concerned, in particular with regard to the application of Article 3 (payment of wages in legal tender), Article 4 (partial payment of wages in kind), Article 6 (freedom of workers to dispose of their wages), Article 7 (work stores) and Article 12 (payment of wages at regular intervals) of Convention No. 95.***

Furthermore, the Committee requests the Government to refer to its comments under the Forced Labour Convention, 1930 (No. 29), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

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

[The Government is asked to reply in detail to the present comments in 2010.]

Poland

Protection of Wages Convention, 1949 (No. 95) (ratification: 1954)

Article 12 of the Convention. The wage arrears situation. The Committee notes the detailed statistical information provided by the Government on labour inspection results for the period 2005–07. During this period, in addition to 57,700 routine inspections, 3,079 thematic inspections were carried out covering 2,971 employers and 381,300 workers employed in manufacturing, trade and repairs, construction, real estate and renting, transport storage, health care and other branches. According to the Government's report, the controls revealed a considerable decline in the percentage of employers who breach the legislation on wage protection (55.7 per cent in 2005 as compared to 25.7 per cent in 2007), the most frequently observed infringement being the non-payment of holiday pay, overtime or other allowances. The percentage of affected employees (expressed as a ratio to all the employees of controlled companies) also declined from 76 per cent in 2005 to 49.2 per cent in 2007.

The Government further indicates that the total amount of unpaid wages decreased from 199 million zloty (PLN) (approximately 48.5 million euros) in 2005 to 83 million (approximately 20.2 million euros) in 2007 and, accordingly, the number of warnings issued by labour inspectors also decreased from 45,331 warnings in 2005 to 31,426 in 2007. The reason mostly invoked for failure to comply with wage legislation is bad economic circumstances and lack of funds although the Government states that this argument may be overused as it has been observed that workers' pay is sometimes withheld to fund other activities.

Despite the positive developments described by the Government, the Committee considers that the problem of non-payment or delayed payment of wages persists, affecting according to the latest statistics provided by the Government, as many as half of all the employees of inspected companies. ***The Committee would therefore appreciate if the Government would continue to provide up to date information on any additional measures taken or envisaged, in order to prevent and punish unlawful practices such as the accumulation of wage arrears, and also to settle in an expeditious manner all outstanding wage debts.***

The wage crisis in the health-care sector. Further to its previous comments, the Committee notes the statistical information provided by the Government concerning the progress made in settling accumulated wage debts in the health-care sector for the period 2005–07 (approximately PLN229 million in 2005, PLN133 million in 2006 and PLN102 million in 2007 or 55.5, 32.4 and 24.8 million euros respectively). With respect to the implementation of the Act of 15 April 2005 on public aid and restructuring of public health-care institutions, the Committee notes with interest the Government's indication that 99.99 per cent of all liabilities arising from the so-called "203 Act" have now been met. It also notes the labour inspection results covering the period 2005–08, according to which 1,109 payment orders were issued and, as a result, PLN25.2 million (approximately 6.1 million euros) were recovered on behalf of 39,486 employees.

In this connection, the Committee notes the “Green Paper” of the Ministry of Health entitled “Financing health in Poland” and published in November 2008, in particular the indications in Chapter V about the increasing debts of public health establishments despite the financial restructuring. *In light of this report, the Committee would appreciate if the Government would clarify whether independently from past claims arising out of the “203 Act”, health-care employees in the public sector experience new problems with respect to the regular payment of their wages and, if so, indicate any measures taken to remedy this situation.*

Romania

Protection of Wages Convention, 1949 (No. 95) (ratification: 1973)

The Committee notes the comments made by the Federation of National Education (FEN) concerning the alleged failure of the Government to implement pay increases for teaching staff in the State education system. More concretely, FEN indicates that in October 2008 the Chamber of Deputies of the National Parliament adopted Act No. 221/2008 awarding a 50 per cent pay rise to all teaching staff but the Government has systematically refused to apply the new legislation. The FEN adds that the Government first took the matter to the Constitutional Court and, when its challenge was dismissed, it decided to block the implementation of Act No. 221/2008 by making abusive use of the Prime Minister’s power to issue emergency ordinances. The first such ordinance was Emergency Ordinance No. 136/2008, which repealed Act No. 221/2008, but was later struck down by the Constitutional Court. According to the FEN’s detailed account, the Government has deliberately created through political manoeuvring and delaying tactics a confusing situation for the sole purpose of not honouring the wage entitlements of the employees concerned.

The Committee recalls that in its previous observation – following similar comments received from the Confederation of Democratic Trade Unions of Romania (CSDR) and the Free Trade Union Federation in Education (FSLI) – it expressed concern about the ongoing controversy over pay conditions of education personnel. *Noting that the Government’s reply has not yet been received, the Committee requests the Government to transmit any comments it may wish to submit in response to the allegations of the FEN.*

Rwanda

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1962)

Articles 1 and 2 of the Convention. Inclusion of labour clauses in public contracts. The Committee notes the adoption of Act No. 13/2009 of 27 May 2009 issuing labour regulations. It also notes that, according to the Government’s report, sections 42–46 of this Act establish the labour clauses required by the Convention. However, these provisions regulate subcontracting, in which the head of an industrial or commercial enterprise assigns the execution of work or services to a contractor who in turn recruits the necessary workforce, and do not regulate contracts concluded with a public authority. The Committee notes with *regret* that, despite the comments which it has been making for many years, the recent General Survey and the Practical Guide – copies of which were sent to the Government – the Government still does not appear to fully understand the actual concept of public contracts which is the subject of the Convention. The Committee is therefore bound to repeat that a public contract pursuant to *Article 1(1)* of the Convention is a contract: (i) concluded by a public authority; (ii) involving the expenditure of funds by a public authority and the employment of workers by the other party to the contract; and (iii) relating to the execution of public works, the manufacture of materials or the provision of services. It is therefore clear that subcontracting in the form of the specific labour contract governed by the provisions of Chapter II, Title II, of the new Labour Code bears little relevance to public contracts and even less to the labour clauses which such contracts ought to contain.

Moreover, with regard to the 2007 Public Procurement Act, the Committee recalls that the mere fact that the general legislation applies to workers responsible for the execution of public contracts, as laid down by section 96 of this Act, is not sufficient to ensure the observance of the provisions of the Convention. The Convention seeks to ensure that public contracts are executed under conditions of labour which are not less favourable than those established by collective agreement, arbitration award or national laws or regulations for work of the same character in the trade or industry concerned in the region where the work is carried out. This in practice means the most advantageous labour conditions for the workers concerned, including pay rates, overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors are to be reflected in a standard contractual clause which has to be effectively enforced, notably through a system of specific penalties. Moreover, the Committee recalls that the Convention does not only apply to construction contracts but also to contracts for supplies and services. *In the light of the above, the Committee urges the Government to take all necessary steps without delay to bring national law and practice into conformity with the Convention and requests it to keep the Office informed of any developments on these matters. The Committee recalls that the Government may avail itself of technical assistance from the Office, if it so desires, in order to draw up the legislative or other provisions giving effect to the requirements of the Convention.*

[The Government is asked to reply in detail to the present comments in 2010.]

Sierra Leone

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

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

Article 16 of the Convention. Full information on legislative amendments. The Committee notes the Government's earlier statement to the effect that, when the new Employment Act enters into force, it would give full effect to *Articles 6, 7, 8, 13 and 15(a)* of the Convention. *While recalling that the Government has been referring for the last ten years to the imminent adoption of new labour legislation and also recalling that draft amendments had been prepared with the assistance of the Office more than 20 years ago in order to bring the national legislation into conformity with the requirements of the Convention, the Committee urges the Government to take all the necessary steps without further delay to enact the new law and reminds the Government of the availability of further ILO technical assistance in this regard.*

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

Singapore

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1965)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee has been commenting on the Government's persistent failure to give effect to the provisions of the Convention in either law or practice. The Committee has also been requesting clarification as to whether the Executive Resolution of 10 June 1952 providing for the inclusion of fair wages clauses in government contracts, which previously gave effect to the provisions of the Convention, is still in force. In its last report, the Government indicates that it is currently reviewing the requirements of the Convention and that the Committee's concerns are duly noted. In addition, the Government refers to the "Tripartite Advisory on Responsible Outsourcing Practices" which was adopted in 2008 by the tripartite committee on work-related benefits for low-wage workers and which seeks to ensure compliance with national employment laws by end-user companies when they outsource their business functions and buy services from third-party contractors. The Committee is bound to observe, in this connection, that this initiative bears little relevance to the Convention as it does not refer to public procurement contracts awarded through competitive bidding.

To help better understand the requirements of the Convention, the Committee wishes to refer to paragraphs 40 and 41 of its General Survey of 2008 on labour clauses in public contracts in which it explained that the essential purpose of the Convention is to ensure that the workers employed by a contractor and paid indirectly out of public funds enjoy wages and conditions of labour which are at least as satisfactory as those normally established for the type of work concerned, whether they are established by collective agreement or otherwise, in the locality where the work is done. The Convention requires that this be done through the insertion of appropriate labour clauses in public contracts. The intention is that labour costs are removed from competition between bidders and also that local standards higher than those of general application should be applied, where they exist. Accordingly, clauses within public contracts that merely restate the applicability and binding nature of national employment or labour laws – such as for instance the clause included in the Public Sector Standard Conditions of Contract (PSSCOC) formulated by the Building and Construction Authority – are not sufficient to meet the requirements of the Convention.

Along the same line of thought, in paragraphs 44 and 103 of the General Survey, the Committee observed that conditions not less favourable than the three alternatives offered by the Convention (i.e. collective agreement, arbitration award or national laws or regulations) in practice, in most instances, imply the best conditions of the three. In fact, the type of labour clauses prescribed by *Article 2* of the Convention seek to ensure that the contractor applies the most advantageous pay rates, including overtime pay, and other working conditions, such as work hour limits and holiday entitlement, established in the industrial sector and geographical region in question. The concrete terms of this obligation incumbent on the selected bidder and any subcontractors, are to be reflected in a standard contractual clause which has to be effectively enforced notably through a system of specific sanctions. *In light of the preceding observations, the Committee hopes that the Government will take the necessary steps without further delay in order to effectively implement the Convention and asks it to keep the Office informed of any progress made in this regard.*

Finally, with a view to assisting the Government in its efforts to give effect to the Convention, the Committee attaches herewith a copy of the Practical Guide on the Convention prepared by the Office in September 2008 and based principally on the findings of the abovementioned General Survey. It also recalls that the Government may draw upon the advisory services of the Office if it so wishes.

[The Government is asked to reply in detail to the present comments in 2010.]

Sudan

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1957)

Article 3, paragraph 2(2), of the Convention. Consultation and participation of employers and workers. The Committee has been commenting for many years on section 4 of the Wages and Conditions of Employment Tribunals Act of 1976 which, contrary to the Wages Tribunal Ordinance of 1952, does not provide for equal representation of employers' and workers' organizations in the wages tribunals. The Government has indicated on several occasions that, in practice, employers' and workers' representatives have always participated in equal numbers in the operation of minimum wage fixing bodies but gave assurances that the relevant provision in the legislation would still be amended to give effect to the provisions of the Convention. In this regard, the Committee wishes to stress that the requirement for genuine and effective consultations with employers' and workers' organizations and their participation in equal numbers and on equal terms in the minimum wage fixing process is a key element of the Convention. ***The Committee trusts that the Government will provide in its next report full particulars on the effect given to the requirements of Article 3 of the Convention, in law and practice.***

In addition, the Committee notes with ***regret*** that the information contained in the Government's reports is often fragmentary, undocumented and fails to give a comprehensive picture of the minimum wage system in the country. The Committee understands that minimum wage rates are fixed: (i) at the national level under the Minimum Wage Act of 1974, as amended, for enterprises employing more than ten employees; (ii) by wages tribunals under the Wages and Conditions of Employment Tribunals Act of 1976 for specific categories of workers; and (iii) through collective bargaining. The Committee also understands that the national monthly minimum wage was set at 200 Sudanese pounds (approximately US\$100) in 2006 against 162.5 Sudanese pounds (approximately US\$81) in 2005 and 125 (approximately US\$62) in 2004. ***The Committee would be grateful if the Government would specify in its next report whether the different minimum wage fixing methods mentioned above are still in effect, and also provide copies of all relevant legal instruments establishing minimum wage rates currently in force.***

Finally, the Committee wishes to draw the Government's attention to the conclusions of the ILO Governing Body on the continued relevance of the Convention based on the recommendations of the Working Party on Policy regarding the Revision of Standards (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). In fact, the Governing Body has decided that Convention No. 26 is among those instruments which may no longer be fully up to date but remain relevant in certain respects. The Committee therefore suggests that the Government should consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which marks certain advances compared to older instruments on minimum wage fixing, for instance, as regards its broader scope of application, the requirement for a comprehensive minimum wage system, and the enumeration of the criteria for the determination of minimum wage levels. ***The Committee requests the Government to keep the Office informed of any decision taken or envisaged in this regard.***

Protection of Wages Convention, 1949 (No. 95) (ratification: 1970)

Articles 4, 6, 8, 10, 13 and 14 of the Convention. Revision of the labour legislation. The Committee has been commenting for some years on numerous divergences that persist between the Labour Act 1997 currently in force and certain provisions of the Convention. In its last report, the Government confined itself to reiterating that a tripartite committee had been set up to prepare a new consolidated draft Labour Code and that technical assistance had already been received from the Office to this effect. ***The Committee asks the Government to keep the Office informed of the revision process and to transmit a copy of the new draft Labour Act, once it has been finalized. In particular, the Committee asks the Government to indicate whether the new labour legislation is expected to extend its coverage to agricultural and other categories of workers currently excluded, and how it is intended to give effect to the specific requirements of Articles 4 (partial payment of wages in kind), 6 (freedom of workers to dispose of their wages), 8 (deductions from wages based on individual agreement), 10 (conditions and limits of attachment of wages), 13 (place of wage payment) and 14 (notification of wage conditions and statement of earnings) of the Convention.***

The Committee recalls, in this connection, that the General Survey of 2003 on the protection of wages contains documented information and practical guidance as to how legislative conformity with the Convention may be attained. It also recalls that the Government may continue to draw upon the technical advice and expertise of the Office on these matters, if it so wishes. ***The Committee hopes that the Government will make every effort to provide in its next report a detailed response to all the points raised above.***

Suriname

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1976)

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee recalls its previous observation in which it noted with regret that the Government has – for the last 35 years – not been in a position to report any concrete progress in ensuring legislative conformity and full implementation of the requirements of the Convention.

In this connection, the Committee wishes to refer to paragraph 304 of its General Survey of 2008 on labour clauses in public contracts in which it noted that the Convention was adopted 60 years ago with a view to ensuring that substantial public investment in public works and the purchase of goods and services did not have the effect of depressing working conditions elsewhere in the economy. Yet today, the risk remains essentially the same, namely that the winning tender might well be the one which pays the lowest wages, fails to provide safety equipment or coverage for accidents, and which has the largest proportion of informal workers, for whom no tax or social security was paid, and who are not covered in practice by any legal or social protection. In fact, there is a persistent concern that international competition pushes bidding enterprises to compress labour costs affecting standards on wages, working hours, sanitation, accommodation and welfare facilities. It was in this sense that the Committee reaffirmed the continuing relevance of the Convention in a context where public investment via public contracts continues to represent a high proportion of formal economic activity in both developed and developing countries.

Moreover, the Committee wishes to draw the Government's attention to paragraphs 41 and 169 of the same General Survey, in which reference is made to those countries which are bound by the Convention but have not as yet taken measures to give effect to its main requirement, that is the insertion of labour clauses in public contracts, considering that the mere fact that the general labour legislation applies without distinction to all workers suffices to absolve them from their obligation of incorporating appropriate labour clauses into all public contracts for works, supplies or services.

In addition, the Committee understands that with the assistance of the Inter-American Development Bank, the Government has been implementing since March 2006 a four-year Public Sector Management Strengthening Programme (PSMSP) that contains activities related to the procurement regulatory framework, including legislation review and the drafting of a new comprehensive procurement law. In the light of the foregoing observations, the Committee believes that the PSMSP offers a real opportunity for bringing at last the national legislation into conformity with the Convention. ***The Committee trusts that in preparing the new public procurement legislation in the framework of the PSMSP, the Government will not fail to take into consideration the points raised by the Committee in its previous comments and asks it to keep the Office informed of any progress made in this respect.***

Finally, with a view to assisting the Government in its effort to give effect to the Convention, the Committee attaches herewith a copy of the Practical Guide on the Convention prepared by the Office in September 2008 and based principally on the findings of the abovementioned General Survey. It also recalls that the Government may draw upon the advisory services of the Office to this effect.

Uganda

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1963)

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

Articles 1–4 of the Convention. Minimum wage fixing machinery. The Committee trusts that the Government will supply detailed information in its next report on the application of all the provisions of the Convention in the light of the Employment Act, 2006. The Committee also requests the Government to reply to its previous observation and in particular to send available data concerning changes in the minimum wage and the rate of inflation, and also the average wage by branch of activity and occupation.

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

Ukraine

Protection of Wages Convention, 1949 (No. 95) (ratification: 1961)

Article 12, paragraph 1, of the Convention. Regular payment of wages. The Committee notes with ***regret*** that the Government's report does not provide up to date information on the wage arrears situation on which the Committee has been commenting for a number of years. Unlike previous years, no statistical or other indications are given concerning the accumulated wage debt, any new legislative measures or relevant inspection results. The Government merely refers to its intention to elaborate a legal mechanism in order to protect workers' wage claims in the event of the employer's insolvency through a wage guarantee fund. ***To enable the Committee to effectively evaluate compliance with the Convention in law and practice, the Government is once again requested to transmit detailed information on any persistent problems with regard to the regular payment of wages, including the sector(s) concerned and the number of workers and enterprises affected, the total amount of outstanding payments, the average delay in the payment of wages and any negotiated schedule for the settlement of accumulated wage debts. In the absence of such a schedule, the Government is asked to initiate negotiations to this end.***

In addition, the Committee continues to receive voluminous communications concerning the ongoing problem of unpaid wages in the Nikanor-Nova mine. By letters dated 5 and 30 May 2008, the Workers' Union of the Nikanor-Nova Coal Mine (NPG) denounced the extensive problems of non-payment of wages and also complained about the

deteriorating living conditions of miners, especially in the town of Zorinsk. In its reply, dated 11 September 2008, the Government indicates that there is currently a one-month delay in the payment of wages at the Nikanor-Nova mine with the total wage debt amounting to 197,200 hryvna (UAH) (approximately €16,500). The Government further indicates that all mine workers, including those at the Nikanor-Nova mine, have been transferred as from 1 April 2008 to the new wage and salary scales based on a minimum monthly wage of UAH525 (approximately 43.5 euros). With respect to allowances intended to improve the living conditions of miners, the Government refers to the new Act on enhancing the prestige image of coalminers' labour adopted on 2 September 2008, which amends the Mining Act and introduces an allowance for electricity, gas and central heating for workers employed in mining enterprises. Finally, the Government indicates that in the first seven months of 2008 the Nikanor-Nova mine spent UAH1.5 million (approximately 124,000 euros) on improvement of the occupational safety and health standards while the Ministry of Coal Industry is planning the acquisition of new protective equipment.

While noting the Government's explanations, the Committee observes that in a new communication received in November 2008, the Confederation of Free Trade Unions of the Lugansk Region (KSPLO) refers to a resolution adopted in the KSPLO Congress of October 2008 which alleges continued failure of executive authorities to pay adequate wages punctually and calls upon public authorities to make every effort to rectify the situation. In another communication received in February 2009, the NPG complains about violations of labour legislation, in particular the delayed payment or non-payment of wages, and provides statistical information on the sums owed to the pension fund at the Nikanor-Nova mine.

Moreover, the Committee notes the communication of the NPG, dated 23 July 2009, and a similar communication of the KSPLO, dated 26 August 2009, by which the two workers' organizations transmitted copies of recent correspondence with the labour inspectorate of the Ministry of Labour and of Social Policy, the Ministry of Coal Industry, and the management of the state enterprise "Luganskugol" pointing at the following facts: (i) in accordance with applicable collective agreements, the minimum guaranteed remuneration as from 1 July 2009 should be not lower than UAH786 (approximately 65 euros) (605 x 1.3 adjustment factor) for workers engaged in underground work and UAH726 (approximately 60 euros) (605 x 1.2) for all others; (ii) the management of the state enterprise "Luganskugol" has admitted that it is unable to pay workers at the new minimum wage rate (i.e. UAH786) for lack of sufficient financial resources; (iii) in accordance with section 3 of the Act on enhancing the prestige image of coalminers' labour, the salary scales of coalminers must be established on the basis of a rate of the worker of category 1 which exceeds the statutory level of the minimum wage by at least 30 per cent; and (iv) the labour inspectorate last visited the state enterprise "Luganskugol" on 23 February 2009, and found that the enterprise is in violation of labour legislation for non-observance of the applicable minimum wage levels. It also observed that even though at the time of inspection no wage arrears were found, wages were paid irregularly, there were accumulated liabilities to the pension fund, and the compensation for the delay in payment was not always paid on the day of settling the wage arrears. In light of the foregoing considerations, the two workers' organizations denounce a deliberate and systematic failure of the state enterprise "Luganskugol" (and other state-owned coal production enterprises such as "Donbassantratsit" and "Sverdlovatratsit") to comply with state social guarantees in the field of remuneration thus depriving coalminers of a decent standard of living.

By letter, dated 8 October 2009, the Deputy Minister of Labour and Social Policy replied to the latest communication of the NPG indicating that the Territorial State Labour Inspection in the Lugansk region carried out in 2009 inspections at the coalmine Nikanor-Nova and at the state enterprise "Luganskugol". As a result, it was found that the minimum guarantees of labour remuneration were not observed and that the wage rate of workers was fixed without taking into account the provisions of the general and sectoral collective agreements. The Deputy Minister indicates that disciplinary action was taken against the managers of the enterprises concerned in accordance with section 188-6 of the Code of Administrative Offences, while the inspection results were forwarded to law enforcement bodies as provided for in section 95 of the Code of Criminal Procedure.

As pointed out in previous comments, the Committee is of the view that the wage situation in the Nikanor-Nova mine is not an isolated phenomenon but rather symptomatic of the difficulties of the Ukrainian coalmining industry as a whole, that is high unemployment, low profitability and poor safety record. ***The Committee accordingly requests the Government to communicate full particulars on the employment and working conditions prevailing in the mining sector – including the several hundred illegal mines reportedly operating in the country – and the measures taken or envisaged to ensure the regular payment of wages in the coalmining industry in accordance with applicable collective agreements.***

[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]

United Kingdom

British Virgin Islands

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)

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

Article 2 of the Convention. Insertion of labour clauses in public contracts. The Committee notes with *regret* that the Government is still unable to report substantive progress concerning the adoption of legislation giving effect to the provisions of the Convention. While noting the Government's indication that the draft bill to amend the Labour Code Ordinance, Cap. 293 is under review and should be resubmitted to the Legislative Council, the Committee recalls that the Government has been stating for the last 28 years that the enactment of appropriate legislation for the insertion of labour clauses in public contracts is under consideration.

The Committee wishes to point out that the principal obligation for a government arising out of the ratification of an international labour Convention is to take such action as may be necessary to make effective the provisions of the ratified Convention, and to continue to ensure its application for as long as it does not decide to denounce it. ***The Committee therefore strongly suggests that the new legislation designed to implement the Convention should be adopted without delay and asks the Government to keep the Office informed of any developments in this respect.***

Finally, the Committee refers to its 2008 General Survey on labour clauses in public contracts which contains an overview of public procurement practices and procedures in so far as labour conditions are concerned and makes a global assessment of the impact and present-day relevance of Convention No. 94. It also refers to the Practical Guide, prepared by the Office principally on the basis of the abovementioned General Survey, to help better understand the requirements of the Convention and ultimately improve its application in law and practice.

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

Bolivarian Republic of Venezuela

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1944)

The Committee notes the information provided in the Government's report, and particularly the adoption of Decree No. 6.052 of 29 April 2008, setting the level of the minimum wage as from 1 May 2008 at 799.23 bolivars (*bolívars fuertes*) (or around US\$372) for all workers, urban or rural, in the private and public sectors, and domestic workers, and at 599.43 bolivars (or around US\$279) for apprentices.

Article 3 of the Convention. Consultations with employers' and workers' organizations. The Committee notes the observations made by the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), which were received on 27 August 2008 and 27 August 2009 and forwarded to the Government on 4 September 2008 and 7 September 2009, respectively, and the Confederation of Workers of Venezuela (CTV), received on 31 August 2009 and forwarded to the Government on 16 September 2009. These organizations indicate that the Government is not holding the consultations provided for by law for the determination of the minimum wage. More specifically, FEDECAMARAS denounces the fact that the Government has not convened the National Tripartite Commission responsible for making recommendations on the adjustment of the minimum wage for the past nine years and recalls that the minimum wage fixing machinery shall, in accordance with section 167 of the Basic Labour Act, be the outcome of tripartite dialogue between the Government and employers' and workers' organizations. FEDECAMARAS also indicates that wage increases have been determined by Presidential Decree without consultation, as invitations to the consultations were issued very late or even after the date of publication of the Decree. The Committee further notes that the International Organisation of Employers (IOE), to the observations of which there has, as yet, been no reply, had raised similar issues. In this respect, the Committee wishes once again to recall that *Article 3* of the Convention requires the full and effective consultation of employers' and workers' organizations and their participation on an equal footing in the operation of minimum wage fixing machinery. ***As the Government's reply was received on 8 December 2009, the Committee intends to examine in detail the matters raised in the above observations at its next session.***

Finally, the Committee draws the Government's attention to the conclusions adopted by the ILO Governing Body in relation to the relevance of the present Convention, based on the recommendations of the Working Party on Policy regarding the Revision of Standards (GB.283/LILS/WP/PRS/1/2, paragraphs 19 and 40). The Governing Body decided to classify Convention No. 26 among those instruments that may no longer be fully up to date but which nevertheless remain relevant in certain respects. The Committee therefore suggests that the Government might consider the possibility of ratifying the Minimum Wage Fixing Convention, 1970 (No. 131), which contains certain advances compared to older instruments on minimum wage fixing, for instance in terms of its broader scope of application, the requirement for a comprehensive minimum wage system and the obligation to determine criteria for fixing and adjusting minimum wage rates. ***The Committee requests the Government to keep the Office informed of any decision adopted or envisaged in this respect.***

Yemen

Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ratification: 1969)

Article 2 of the Convention. Insertion of labour clauses in public contracts. Further to its previous comments, the Committee notes the adoption of Act No. 23 of 14 August 2007 on bidding, outbidding and government warehouses which replaces Act No. 3 of 1997 on the same. The new Act regulates, in particular, the award, execution and supervision by the Supreme Commission for Tenders of all public tenders on the basis of equality of treatment and transparency. However, the Committee notes with **regret** to note that, contrary to the indications of the Government, the new Act does not provide for the insertion of labour clauses as prescribed by this Article of the Convention. In this connection, the Committee wishes to refer to paragraphs 176–177 of its General Survey of 2008 on labour clauses in public contracts in which it pointed out that “the Convention has a very simple structure, all its provisions being articulated around and directly linked to the core requirement of *Article 2(1)*, that is the insertion of labour clauses ensuring favourable wages and other working conditions to the workers concerned. As a result, in case the national legislation makes no provision for the specific type of labour clause and in the specific terms set out in *Article 2(1)* of the Convention, the application of the remaining *Articles 3, 4 and 5* becomes without object and thus cannot be considered separately.” The Committee went on to observe that “by aligning contract standards to the highest prevailing standards, by excluding the lowering of those standards through subcontracting, and by incorporating those principles into the standard clauses of each and every public contract falling within its scope, the Convention guarantees that public procurement is not a terrain for socially unhealthy competition and can never be associated with poor working and wage conditions.” ***The Committee hopes that the Government will take the necessary steps without further delay in order to ensure the application of the basic requirement of the Convention and recalls that it may draw on the expert advice of the Office to this effect.***

Finally, the Committee attaches herewith a copy of the Practical Guide on Convention No. 94 which was prepared by the Office in September 2008 based on the conclusions of the aforementioned General Survey to help better understand the requirements of the Convention and ultimately improve their application in law and practice.

Minimum Wage Fixing Convention, 1970 (No. 131) (ratification: 1976)

Article 4 of the Convention. Full consultation and direct participation of employers’ and workers’ organizations. The Committee recalls its previous comments in which it noted that, even though the minimum wage set for public employees (20,000 rials or approximately US\$100 per month) may also apply to workers of the private sector in accordance with section 55(1) of the Labour Code, there is no institutionalized mechanism for fixing and revising minimum wages through a consultative process sufficiently representative of employers’ and workers’ interests. In its last report, the Government indicates that the implementation of the national strategy on wages has been postponed due to the current economic situation. The Government also states that the establishment of the tripartite Labour Council, which is provided for in section 11(1) of the Labour Code, has been deferred in view of the proposed amendment of the Labour Code. Accordingly, the Committee notes with **regret** that no progress has been made as regards the implementation of the Convention, either in law or in practice. ***The Committee urges the Government to take, without further delay, all necessary measures in order to set up a minimum wage fixing mechanism based on effective and genuine tripartite consultations. It asks the Government to keep the Office informed of any developments concerning the reactivation of the national strategy on wages, the eventual establishment of the Labour Council and the announced amendment of the Labour Code.***

Zambia

Protection of Wages Convention, 1949 (No. 95) (ratification: 1979)

Article 12, paragraph 1, of the Convention. Regular payment of wages. With reference to its previous comment, the Committee notes the Government’s statement that it has redoubled its efforts to ensure that all accrued wages and salary arrears for public employees in local councils are settled, and, at present, there is a reasonably low level of outstanding wage arrears. It further notes that according to the Government, no other sector of economic activity is currently experiencing problems of deferred payment of wages. The Committee understands, however, that serious problems of accumulated wage debts persist, for instance, council workers in Mufumbwe have reportedly not been paid for 30 months, workers at the country’s largest coal mine recently undertook industrial action for payment of four months of salary arrears, while the national air carrier, now in receivership, owes its employees 3.4 billion kwacha (approximately US\$750,000) in salary arrears. The Committee recalls the need for strong commitment and rigorous action on the part of state authorities in addressing the three crucial parameters of the problem, namely tight supervision, severe sanctions and appropriate compensation to workers for the loss incurred. ***The Committee urges the Government to pursue its efforts for the settlement of outstanding wage arrears and to keep the Office informed of any progress made in this regard.***

Zimbabwe

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) (ratification: 1993)

Articles 1 and 3 of the Convention. Minimum wage fixing machinery. The Committee notes the observations of the Zimbabwe Congress of Trade Unions (ZCTU) dated 21 September 2009 concerning the application of the Convention. According to the ZCTU, the Minister of Labour and Social Services has been ignoring the recommendations of the tripartite Wages and Salaries Advisory Board for the past two years. The minimum wage for domestic workers and unclassified workers was last set in 2007, and, as a result, these categories of workers are now subject to poor remuneration and exploitation. *The Committee would appreciate receiving any comments the Government may wish to make in response to the observations of the ZCTU.*

Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99) (ratification: 1993)

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

Article 1 of the Convention. Minimum wage fixing machinery for the agricultural sector. The Committee notes the observations made by the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention. According to the ZCTU, the Government has failed to ensure that workers' income is adequately protected in terms of guaranteeing a fair remuneration sufficient to provide a decent living. The ZCTU indicates that, in the context of the current hyper-inflationary economy, prices of basic commodities change at an hourly rate and minimum wage rates become rapidly irrelevant, thus calling into question the practicality of maintaining a system where an amount fixed today would be next to nothing by the end of the week. The Committee understands that, according to official data published by the Central Statistical Office, the annual inflation rate stood at 231 million per cent in 2008, while no official data have been released by the Central Statistical Office for 2009. *In light of the aggravating socio-economic situation, the Committee asks the Government to clarify the role and function of the National Employment Council for the Agricultural Industry (NEC) and, in particular, the practical significance of the annual review of minimum pay rates by NEC subcommittees responsible for cost of living adjustment. It also requests the Government to transmit any comments it may wish to make in reply to the observations of the ZCTU.*

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 26** (Albania, Armenia, Barbados, Fiji, Malawi, Paraguay, Sierra Leone, Solomon Islands, Togo, United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Montserrat); **Convention No. 94** (Nigeria, Norway, Sierra Leone, Solomon Islands, Uganda, United Kingdom: Anguilla); **Convention No. 95** (Barbados, Bolivia, Dominica, Guinea, Iraq, Paraguay, Solomon Islands, Tajikistan, Uganda, United Kingdom: Montserrat); **Convention No. 99** (Malawi, Paraguay, Sierra Leone, United Kingdom: Anguilla); **Convention No. 131** (Albania, Australia: Norfolk Island, Cameroon, Iraq, Ukraine); **Convention No. 173** (Albania, Ukraine, Zambia).

Working time

Australia

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1970)

Article 1 of the Convention. Forty-hour week. The Committee notes the comments of the Australian Council of Trade Unions (ACTU) dated 1 September 2008 on the application of the Convention. According to these comments, excessively long working hours are causing numerous problems for workers. Based on three different sources of information, the ACTU maintains that Australian workers increasingly work in excess of the statutory limit of 38 hours per week. First, according to data published by the Australian Bureau of Statistics (ABS) in 2007, the male average full-time working week was 45 hours and the female average full-time working week was 42 hours. In addition, the Australian Work and Life Index 2008, based on survey research undertaken by academics at the University of South Australia, reported that 22.5 per cent of respondents worked 48 hours or more, including 31.7 per cent of male respondents and 11.9 per cent of female respondents. Finally, a survey conducted in 2007 by the Workplace Research Centre of the University of Sydney, found that 39 per cent of workers were working longer than standard hours while 23 per cent of workers were working for 50 hours or more a week. ***The Committee requests the Government to transmit any comments it may wish to make in response to the observations of the ACTU.***

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

Belgium

Hours of Work (Industry) Convention, 1919 (No.1) (ratification: 1926)

Articles 2 and 5 of the Convention. Working hours – Annualized averaging. Further to its previous observation, the Committee notes the Government's statement that no amendment is envisaged to the Act of 17 March 1987 on the introduction of new work regimes in enterprises. It recalls that the purpose of the Act is very broad, namely to enable the extension or adaptation of operating time in the enterprise and promote employment. It also notes that, under such regimes, hours of work may be increased to 12 a day with no absolute weekly limit (other than the 84 hours corresponding to seven days of 12 hours), and that average weekly hours of work over a period of reference of up to one year may not exceed 40. Lastly, the Committee points out that the new work regimes, which allow major exemptions from the normal rules on hours of work, may be established by collective agreement but also, where there is no union representation in the enterprise, by amendment of the work regulations. The Committee is bound to reiterate its **concern** at the extent of the flexibility afforded by the abovementioned provisions, particularly in small enterprises with no trade union representation. The Committee recalls that, in its General Survey of 2005 on hours of work (paragraph 227), it pointed out that, in order to be compatible with the Convention, annualized working-hour arrangements must satisfy simultaneously the following three conditions: "(i) the arrangement is introduced in an 'exceptional case' where it is recognized that the eight-hour and 48-hour limits cannot be applied; (ii) the arrangement is introduced through an agreement between workers' and employers' organizations transformed into regulations by the government, to which this agreement is submitted; (iii) the average number of hours worked per week over the number of weeks covered by any such agreement does not exceed 48". ***The Committee requests the Government to take steps to reduce the authorized daily working hours and to set a reasonable cap on weekly hours of work in the context of the new work regimes.***

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

Bolivia

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1973)

Article 6, paragraph 1(a), of the Convention. Permanent exceptions – intermittent work. The Committee notes the adoption of the new National Constitution on 7 February 2009 which implies amending numerous legislative texts, including the General Labour Act which is in the process of being formulated. Further to its previous comments on intermittent work, the Committee notes that, according to the Government, section 46 of the General Labour Act and its implementing Decree, No. 244 of 1943, list exhaustively the permanent exceptions to daily working hours, which apply to persons holding management positions, positions of trust and supervisory posts, as well as persons whose work is discontinuous. The Committee notes that the Government provides no information on the types of job concerned by this exception which are deemed to be intermittent within the meaning of *Article 6(1)(a)* of the Convention. ***While recalling that, under this provision of the Convention, regulations made by public authority shall determine by industry or occupation the permanent exceptions that may be allowed in preparatory or complementary work (i.e. work which must necessarily be carried on outside the limits laid down for the general working of an establishment) or for certain classes of workers whose work is essentially intermittent, and the number of additional hours authorized and the rate of pay for overtime, the Committee again asks the Government to state the types of work that are covered by this exception.***

Articles 3 and 6, paragraph 1(b). Overtime. The Committee notes that the Government provides no information on the limiting of overtime to the instances specifically listed at section 37 of Decree No. 244 of 1943. The Committee hopes that the Government will take account of its comments in formulating the new General Labour Act, in particular by amending section 50 of the General Labour Act, as the Committee has been requesting for many years, and that it will limit the possibility of overtime work to the instances allowed by the Convention, namely: (i) in case of accident, actual or threatened; (ii) in case of urgent work to be done to machinery or plant; (iii) in case of force majeure, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking; and (iv) to enable establishments to deal with exceptional cases of pressure of work. ***The Committee requests the Government to keep the Office informed of any developments in the preparation of the new General Labour Act and to provide a copy of the text as soon as it has been finalized. It reminds the Government that, should it so wish, it may seek technical assistance from the ILO through its Regional Office in Lima, in making the necessary legislative amendments to give full effect to the provisions of the Convention.***

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1954)

Article 5 of the Convention. Compensatory rest. Further to its previous comments concerning section 31 of Decree No. 244 of 1943 regulating the General Labour Act, which applies to all workers except agricultural workers, the Committee requests the Government to refer to its comments concerning Article 8(3) of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1973)

Article 7, paragraph 1(a), of the Convention. Permanent exceptions – intermittent work. The Committee notes the adoption of the new national Constitution on 7 February 2009, which implies the modification of many legislative texts, including the General Labour Act, which is under preparation. Further to its previous comment concerning intermittent work, the Committee notes the Government's indication that, under the terms of section 46 of the General Labour Act and its implementing Decree No. 244 of 1943, permanent exceptions to daily hours of work include, listed exhaustively, persons engaged in positions of direction, trust or supervision, as well as persons engaged in discontinuous work. The Committee notes that the Government has not provided any indication of the types of work concerned by this exception and which are considered to be intermittent within the meaning of Article 7(1)(a) of the Convention. ***While recalling that, under the terms of this Article of the Convention, regulations made by the public authority shall determine the permanent exceptions which may be allowed for (i) certain classes of persons whose work is intermittent (such as caretakers and persons employed to look after working premises and warehouses), and (ii) classes of persons directly engaged in preparatory or complementary work (which must necessarily be carried on outside the limits laid down for the hours work of the rest of the persons employed in the establishment), the Committee once again requests the Government to indicate the types of work covered by this exception.***

Article 7, paragraph 2. Additional hours of work. Further to its previous comments concerning the possibility of working additional hours under section 37 of Decree No. 244 of 1943, the Committee notes that the Government has not provided any information on this point. It recalls in this respect that the Convention only allows the granting of temporary exceptions to rules on working hours in specific cases, namely, in unforeseen cases, to prevent accidents or for the urgent repair of machinery; to prevent the loss of perishable goods or avoid endangering the technical results of the work; to allow for special work; or to enable establishments to deal with cases of abnormal pressure of work due to special circumstances. The Committee hopes that the Government will take its comments into account in the process of preparing the new General Labour Act, particularly by amending section 50 of the General Labour Act, as the Committee has been requesting it to do for many years, and that it will confine the possibility of working additional hours to the cases envisaged by the Convention. ***The Committee requests the Government to keep the Office informed of any developments in the preparation of the new General Labour Act and to provide a copy of the text once it has been finalized. It recalls that the Government may, if it so wishes, avail itself of the technical assistance of the ILO, through its Regional Office in Lima, with regard to the necessary legislative amendments for the full application of the provisions of the Convention.***

Night Work (Women) Convention (Revised), 1948 (No. 89) (ratification: 1973)

Article 3 of the Convention. Prohibition of night work of women. The Committee has been drawing the Government's attention to the fact that Convention No. 89 is widely criticized as being contrary to the overriding principle of gender equality and restricting the individual worker's freedom of choice on working time solely on the basis of sex. For this reason, the International Labour Conference decided to partially revise the Convention by adopting the 1990 Protocol to Convention No. 89, and also adopted a new Night Work Convention, 1990 (No. 171), which no longer applies to a specific category of workers and sector of economic activity but to all night workers irrespective of gender in all branches and occupations. For the same reasons, the Committee has been inviting States parties to the Convention to ratify either the Protocol if they considered that women's protection from the harmful effects and risks of night work was still relevant, or the new Night Work Convention if they were prepared to eliminate all restrictions on night work for women.

The Committee recalls, in this connection, paragraphs 168–169 of its 2001 General Survey on the night work of women in industry, in which it noted that the full realization of the principle of non-discrimination requires the repealing of all laws and regulations which apply different legal prescriptions to men and women, except for those related to pregnancy and maternity. The Committee further recalled that member States are under an obligation to review periodically their protective legislation in light of scientific and technological knowledge with a view to revising all gender-specific provisions and discriminatory constraints. This obligation stems from Article 11(3) of the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (to which parenthetically Bolivia is a party since June 1990), as later reaffirmed in point 5(b) of the 1985 ILO resolution on equal opportunities and equal treatment for men and women in employment.

In its last report, the Government indicates that the new Constitution, which was promulgated on 7 February 2009, establishes a new hierarchy among legal norms placing international treaties before national laws, statutes and decrees. The Government adds that in preparing the new General Labour Act, the Ministry of Labour, Employment and Social Protection will consider the suggestions of the Committee. The review of the content and scope of each of the two instruments adopted in 1990 would clarify fundamental options of the new General Labour Act that is currently being drafted. In light of these observations, the Committee invites the Government in consultation with the social partners, to consider the possibility of ratifying the Night Work Convention, 1990 (No. 171), which applies to all night workers in all branches and occupations. ***The Committee requests the Government to keep the Office informed of any decision taken or envisaged in this regard.***

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1973)

Article 8, paragraph 3 of the Convention. Compensatory rest. Further to its numerous comments on this matter, the Committee notes the Government's indication that, following the adoption of the new Constitution on 7 February 2009, the Government intends to adopt and amend numerous laws, in particular, the General Labour Act (LGT). For more than 30 years, the Committee has been drawing the Government's attention to the fact that section 31 of Regulatory Decree No. 244 of 1943, which allows the employer, in the event of work being carried out on the Sunday rest day, to grant the worker compensatory rest or compensatory pay of more than 100 per cent of the worker's basic pay, is inconsistent with *Article 8(3)* of the Convention which requires compensatory rest regardless of any cash compensation which may be granted. In this regard, it recalls that offering only monetary compensation for weekly rest worked is contrary to the objective of the Convention of ensuring a minimum rest period for workers in order to protect their health and well-being. Furthermore, the Committee recalls that the drafting of the new Labour Code, for which the Office has offered assistance between 1988 and 1990, has not yet been completed. ***The Committee therefore urges the Government to take the necessary steps as soon as possible to finally bring its legislation into conformity with the requirements of the Convention and to provide a copy of the relevant legislative or regulatory text as soon as it has been adopted.***

Canada

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1935)

Further to its previous comments, the Committee again expresses *concern* at the many discrepancies between the Canada Labour Code and the provincial legislation on hours of work, and the provisions of the Convention. It draws the Government's attention to the main areas where there are problems in applying the Convention, after a brief overview of the applicable legislative framework.

Articles 2, 5 and 6, paragraph 1(b), of the Convention. Daily and weekly hours of work. Federal legislation. The Committee notes that according to section 169(1) of the Canada Labour Code, standard hours of work are eight per day and 40 per week. It notes that in certain circumstances, hours of work may be averaged over a period of two weeks or more. It further notes that section 171 of the Canada Labour Code allows workers to be employed in excess of the standard hours of work provided that the number of hours they work in a week does not exceed 48 or a lower number established by the regulations of the establishment concerned and which may likewise be averaged over a period of two weeks or more under section 172. The Committee also notes that section 175 of the Code allows the Governor in Council to make regulations establishing different hours of work provisions for certain classes of employees. Lastly, it notes that section 176 of the Code allows the Minister of Labour to grant exceptions under which, for a certain class of employees, the maximum hours of work may be exceeded.

Provincial legislation – Alberta. The Committee notes that section 16(1) of the Employment Standards Code limits the length of the working day to 12 hours, but sets no limit for weekly hours of work. It further notes that section 20 of the Code makes provision for recourse to a compressed work week, in which hours of work may not exceed 12 per day and 44 per week. Lastly, it notes that according to section 20(2)(d), if the compressed work week is part of a cycle (system of averaging hours), the weekly limit of 44 hours is not absolute but applies on average over the cycle.

British Columbia. The Committee notes that section 35 of the Employment Standards Act limits standard working hours to eight a day and 40 a week, but that section 37 allows this rule to be waived if an agreement is reached to average the hours of work. It notes that such an agreement may be concluded for a period ranging from one to four weeks. In such

cases, the average weekly hours of work may not exceed 40 and the normal daily hours of work may not exceed 12, any hours worked beyond these limits being payable at overtime rates.

Prince Edward Island. The Committee notes that section 15(1) of the Employment Standards Act establishes a standard work week of 48 hours. It notes that section 15(2) allows the Standards Board to exempt specific employees or industries from this rule and to substitute other limits.

Manitoba. The Committee notes that section 10 of the Employment Standards Code establishes a standard work week of 40 hours or any greater number of hours per week prescribed by regulation or permitted by the Employment Standards Director, who issues a permit authorizing the hours to be increased pursuant to section 13. It notes that where such a permit is issued, hours of work may be spread over a number of weeks (for example, 120 hours over three weeks). The Committee further notes that according to section 14(2) and (3) of the Employment Standards Code, such permits are valid for not more than three years and that before issuing them, the Director must consider a number of factors, including any effect the permit could have on the safety, health or welfare of the public or the employees concerned. Furthermore, the Committee notes that pursuant to section 10 of the same Code, the standard daily hours of work are eight hours or any greater number of hours per day provided for in a collective agreement applying to the worker concerned, or by regulation or authorization by the Director by means of a permit.

New Brunswick. The Committee notes that section 14 of the Employment Standards Act provides that subject to the provisions on weekly rest and children and to any other Act, there is no limit on the number of hours an employee may work during any daily, weekly or monthly period. It notes that sections 15(1) and 16 of the Act allow the Lieutenant-Governor in Council to prescribe the maximum number of hours beyond which a higher wage rate must be applied, without, however, limiting hours of work. It notes in this connection from information in the Government's report that the authorities of the province do not intend to amend the legislation.

Nova Scotia. The Committee notes that the Labour Standards Code contains no provision limiting daily or weekly hours of work, other than section 66, which provides that workers are as a rule entitled to 24 consecutive hours of weekly rest. It notes that section 40(4) of the Code merely imposes payment of an overtime rate equal to at least 50 per cent more than the normal rate to employees who are required to work in excess of 48 hours a week. The Committee further notes that section 2(4A) of the General Labour Standards Code Regulations excludes from the application of this rule workers to whom the Minimum Wage Order (Construction and Property Maintenance) applies. Lastly, it notes that section 6 of the abovementioned Order sets a maximum work period of 110 hours within two consecutive weeks for employees to whom the Order applies.

Ontario. The Committee notes that according to section 17(1) of the Employment Standards Act, an employee may not work more than eight hours a day or than the number of hours in the employee's regular work day if that number is more than eight hours, or than 48 hours a week. It observes, however, that according to section 17(2), the daily limit may be exceeded if the employee and employer so agree. Furthermore, section 17(3) allows the 48-hour weekly limit to be exceeded provided that employee and employer so agree and that the employer has the approval of the Employment Standards Director pursuant to section 17.1 of the Act. It notes that according to section 17.1(14), such approval allows the employee to work more than 60 hours in a week, but its validity is limited to one year. As to the limitation of daily hours of work, the Committee notes that daily rest may not be less than 11 hours other than for an employee who is on call. The Committee infers from all the foregoing that the length of the working hours may be up to 13 hours per day and may exceed 60 hours per week, subject to the payment of a higher rate of pay for hours worked in excess of 44 a week (or the grant of compensatory rest), as provided in section 22 of the Employment Standards Act.

Quebec. The Committee notes that section 52 of the Labour Standards Act establishes a standard working week of 40 hours, but observes that this limit is merely a threshold that triggers payment of overtime rates which confers the right to increased rate of pay of the workers concerned. It also notes that section 53 of the Act introduces the system of averaging of weekly hours of work, which may be established either by the employer with authorization from the Labour Standards Committee, or by collective agreement or decree. The Committee further notes that according to section 59.0.1 of the Act, other than in exceptional circumstances or in force majeure, employees may refuse to work more than four hours beyond their normal daily hours of work or more than 14 hours in every 24-hour period, whichever is the shorter, or more than 12 hours per period of 24 hours in the case of employees whose daily hours of work are variable or non-continuous.

Saskatchewan. The Committee notes that section 6(1) of the Labour Standards Act as a rule limits working hours to eight a day and 40 a week. It notes, however, that under section 6(2), these limits may be exceeded provided that the worker concerned is paid at a higher rate of at least 50 per cent for each hour worked in excess of the eight hours. The Committee also notes the exceptions to the requirement to pay overtime rates in the context of the compressed work week provided for in section 7 of the Act, and in the averaging of hours of work allowed by section 9. Lastly, the Committee notes that under section 12(1), an employer must obtain consent of his/her employees for them to work more than 44 hours a week, other than in emergency circumstances.

Newfoundland and Labrador. The Committee notes that according to section 5 of the Labour Standards Regulations, the standard hours of work beyond which overtime rates apply pursuant to section 25 of the Labour Standards Act, is 48 hours a week. It notes, however, that the only limitation on working hours contained in the Labour

Standards Act is to be found in section 23, which requires daily rest of eight consecutive hours except in the case of an emergency that constitutes a hazard to life or property. The Committee infers that outside the case of an emergency, the length of the working day is up to 16 hours and that the law sets no weekly limit. Lastly, section 26(c) of the Act provides that the Lieutenant-Governor in Council may fix the maximum number of hours in specified undertakings.

Fixing limits to daily and weekly hours of work. The Committee recalls that according to *Article 2* of the Convention, standard working hours are to be limited to eight a day and 48 a week. It notes, however, that the Employment Standards Act of New Brunswick sets no limit either on daily or on weekly hours of work. In addition, the Employment Standards Act of Prince Edward Island does not regulate daily working hours. The Employment Standards Code of Manitoba sets a standard working day of eight hours, allowing to fix a different limit by collective agreement, regulation or by permission of the Employment Standards Director. It also notes that the legislation of Ontario allows to set by collective agreement a working day of up to 13 hours and, subject to administrative authorization, a working week in excess of 60 hours. Lastly, the Committee notes that the legislation of Nova Scotia sets standard working time at 110 hours over a two-week period in the construction sector.

Compressed work week. The Committee draws the Government's attention to the fact that *Article 2(b)* of the Convention allows weekly hours of work to be spread unevenly, for example in the context of a compressed working week, but only if the length of the working day does not exceed nine hours. It notes in this connection that the Employment Standards Code of Alberta allows recourse to a compressed work week which allows a working day of up to 12 hours.

Averaging of hours of work. The Committee recalls that *Article 5* of the Convention allows averaging of work hours only in exceptional cases where it is recognized that the normal limit of eight hours a day and 48 hours a week cannot be applied. It notes, however, that a number of legislative texts allow working hour arrangements to be introduced with no provision for ensuring compliance with these conditions. The Committee notes in this connection that the Canada Labour Code allows averaging of hours of work without setting any maximum limit to the periods for which they may be applied, the only condition being the consent of the union concerned or the approval of at least 70 per cent of the employees concerned. It notes in this connection the report "Fairness at Work: Federal Labour Standards for the 21st Century", published in October 2006 by the Federal Labour Standards Review Commission. It notes in particular Recommendation 7.6, which seeks to provide a framework for the introduction of averaging arrangements. The Committee also notes that averaging is authorized by the legislation of Alberta and Manitoba with no particular restrictions. It also observes that working time arrangements of this kind are also allowed by the Labour Standards Act of Quebec, and by the legislation of Saskatchewan and British Columbia – in the latter province the period of reference may be of up to four weeks.

Overtime. The Committee wishes to underline that overtime work, in the context of temporary exceptions, is authorized only in the circumstances listed exhaustively in the Convention: in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of force majeure (*Article 3*) or to enable an establishment to deal with an exceptional case of pressure of work (*Article 6(1)(b)*). It notes, however, that the limits placed on hours of work by the legislation of Nova Scotia, Quebec and Saskatchewan are merely a threshold beyond which the hours worked must be paid at a higher rate, with no specification as to the circumstances in which overtime work is authorized. It further notes that a similar provision is to be found in the Labour Standards Act and Regulations of Newfoundland and Labrador, which set a maximum working day of 16 hours.

The Committee requests the Government to take the necessary measures without delay to ensure that federal and provincial laws and regulations are brought into conformity with the provisions of the Convention on these matters. It asks the Government in particular to keep the Office informed of any decisions it may take with a view to implementing the recommendations in the report "Fairness at Work: Federal Labour Standards for the 21st Century".

The Government is also asked to provide copies of any regulations adopted pursuant to section 175 of the Canada Labour Code, section 10 of the Employment Standards Code of Manitoba, or section 26(c) of the Labour Standards Act of Newfoundland and Labrador with a view to setting specific rules on hours of work for certain categories of workers. The Government is also asked to provide information on any exceptions to the standard rules on hours of work that have been granted pursuant to the following provisions: section 176 of the Canada Labour Code; section 15(2) of the Employment Standards Act of Prince Edward Island.

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

[The Government is asked to reply in detail to the present comments in 2010.]

Chad

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1960)

The Committee notes with *regret* that the Government's report does not include any new information in reply to its previous comments and is confined for the fourth consecutive year to reiterating the information provided previously. It therefore requests the Government to provide concrete explanations in its next report on the points on which it has been commenting for several years.

Article 5 of the Convention. Compensatory rest. Further to its previous comments relating to section 209 of the Labour Code and sections 9 and 10 of Decree No. 56/PR-MTJS-TMOPS of 8 February 1969, which envisage exceptions to the weekly rest scheme without compensatory periods of rest, the Committee once again draws the Government's attention to the fact that *Article 5* of the Convention provides that provision shall be made, as far as possible, for compensatory periods of rest to be granted in the event of exceptions to the normal weekly rest scheme. The granting of compensation in cash or in the form of higher rates of pay for the hours worked on the weekly rest day do not correspond to the objective of the Convention, which is to ensure that workers benefit from a minimum period of rest with a view to preserving their health and giving them access to leisure activities. ***The Committee hopes that the Government will soon be in a position to indicate all the measures adopted or envisaged to ensure that compensatory rest periods are granted in these cases and to indicate any agreements or customs established in these matters which ensure the application of the Convention.***

Moreover, with regard to workers in the oil industry, who are entitled to a period of two weeks of rest in respect of each period of four weeks of uninterrupted work, the Committee emphasizes that, while the Convention does not establish a precise time limit for granting the compensatory rest period, compliance with the spirit of the Convention requires this to be within a reasonably short period. If this were not the case, the Convention would risk becoming bereft of all meaning.

Article 7. Information on implementation measures. The Committee understands the difficulties faced by the Government in the field of labour inspection, which are preventing it from providing the information requested previously concerning the application in practice of section 17 of Decree No. 56/PR-MTJS-DTMOPS of 8 February 1969 respecting workers' information in relation to weekly rest arrangements (*Article 7*). ***The Committee nevertheless hopes that the Government will soon be in a position to provide this information and requests it to supply any other information available which would allow the Committee to assess the manner in which the Convention is applied in practice in the country.***

Finally, the Committee takes this opportunity to recall that, based on the conclusions and proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that the ratification of up to date Conventions, including the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), should be encouraged because they continue to respond to current needs (see GB.283/LILS/WP/PRS/1/2, paras 17–18). ***The Committee therefore invites the Government to envisage ratifying Convention No. 106 and to keep the Office informed of any decision taken or envisaged in this respect.***

Chile

Night Work (Bakeries) Convention, 1925 (No. 20) (ratification: 1933)

Article 1 of the Convention. Prohibition of night work in bakeries. The Committee notes the Government's report, in which it indicates that the legislation that is in force does not contain specific regulations governing night work – unlike the repealed legislation. It notes the Government's view concerning the importance of ensuring through the national legislation the protection of persons who are engaged in night work and that it is envisaging favourably the ratification of the Night Work Convention, 1990 (No. 171).

The Committee recalls once again that the ILO Governing Body decided to shelve Convention No. 20, considering that this is an obsolete Convention which no longer meets current needs. Therefore, its ratification is no longer encouraged by the Office and reports on its application are no longer requested on a regular basis. The Committee also recalls that the ratification of Convention No. 171 does not ipso jure imply the denunciation of Convention No. 20 and that, in accordance with *Article 11*, the latter Convention may be denounced at any time provided that there have been full consultations with the representative organizations of employers and workers. It further recalls in this respect that the Government followed the same procedure in 1976 in relation to the denunciation of the Night Work (Women) Convention, 1919 (No. 4), which has also been declared obsolete and shelved.

The Committee hopes that the Government will soon be in a position to give favourable consideration to the comments that it has been making for nearly ten years concerning the denunciation of Convention No. 20 and the ratification of Convention No. 171, which is advisable. It requests the Government to keep the Office informed of any developments in this field and reminds it that, if it so wishes, it may call on the Office for technical assistance in relation to the legislative amendments that are necessary as a result of the possible ratification of the Night Work Convention, 1990 (No. 171).

Colombia

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1933)

The Committee notes the information received from the Government on 10 February 2009 in reply to the observations made by the General Confederation of Labour (CGT). It notes that the Government refers to the preamble of Act No. 789 of 2002, which was the subject of the above observations, and particularly to the objective of the Act, namely

to enable job creation without imposing an excessively heavy burden on enterprises. The Committee wishes to raise the following points with regard to the application of the Convention.

Article 2(b) of the Convention. Irregular distribution of weekly hours of work. The Committee notes that section 161 of the Labour Code provides that normal working hours must not exceed eight hours per day or 48 hours per week, except in the case of the listed exceptions. It notes that section 161(d), which was introduced by section 51 of Act No. 789, permits the conclusion of an agreement between the employer and worker under the terms of which weekly working hours will be distributed unevenly in the context of “flexible working days”. In this case, the week must include at least one rest day, and daily hours of work may vary between four and ten hours. The worker is not entitled to a higher rate of pay for the additional hours as long as the weekly working time does not exceed an average of 48 hours worked during the day time (between 6 a.m. and 10 p.m.). The Committee draws the Government’s attention to the fact that, under *Article 2(b)*, of the Convention, a system involving the irregular distribution of weekly hours of work requires the approval of the competent national authority or the conclusion of an agreement between employers’ and workers’ organizations. A simple individual working agreement is not sufficient, in view of the risk of possible abuse, particularly where it enables an employer to vary his employees’ work schedules unilaterally. Furthermore, the Committee notes that, in ruling No. C-038/04 of 27 January 2004, the Constitutional Court considered that this provision was not contrary to the requirements of Convention No. 1. However, the Court did not refer to *Article 2(b)* of this Convention but to Article 4 of the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), which provides for a ten-hour limit on daily working hours in cases involving the uneven distribution of weekly working hours. With regard to Convention No. 1, the Court merely quoted *Article 2(c)* of this instrument, which allows the limits of eight hours per day and 48 hours per week to be exceeded in the specific context of shift work. However, the scope of section 161(d) of the Labour Code is not clearly restricted to shift work. Outside this specific context, the conditions laid down by *Article 2(b)* of the Convention, which only permits daily hours of work to be extended by one hour in cases where weekly working time is unevenly distributed, must be observed. Under this hypothesis, maximum daily working time is nine hours, and not ten hours as permitted by section 161(d) of the Labour Code. ***The Committee therefore requests the Government to amend this provision, in order to ensure that schemes involving the irregular distribution of weekly working hours can only be set up in a given establishment with the approval of the competent authorities or further to the conclusion of an agreement on this subject between the representative employers’ and workers’ organizations concerned. This could be done, for instance, in the context of the work of the Committee for the Monitoring and Inspection of Job Creation Policies referred to in sections 45 and 46 of Act No. 789 of 2002. The Committee also requests the Government to reduce the maximum daily working time permitted under such schemes to nine hours. Finally, in view of the fact that the last sentence of section 161(d) of the Labour Code refers to an average of 48 hours of work per week, the Committee requests the Government to clarify whether this provision also permits the irregular distribution of hours of work over a period longer than a week.***

Article 6, paragraphs 1(b) and 2. Additional hours – temporary exceptions. The Committee notes that under section 162(2) of the Labour Code, normal hours of work can only be extended with the authorization of the Ministry of Labour and in conformity with ratified international labour Conventions – apart from in a limited number of exceptional cases, for example managerial staff. However, it notes that the Code does not contain any provision stating the cases in which overtime work is authorized, and considers that a mere reference to ILO Conventions is not sufficient in this respect. Apart from certain particular cases, such as shift work and non-stop factory work, or indeed urgent work or situations of force majeure, which are the subject of specific regulations in the Labour Code in line with the provisions of the Convention, overtime work in the context of temporary exceptions is only authorized to enable establishments to deal with exceptional cases of pressure of work. Moreover, such exceptions necessitate the adoption of regulations from the national authority, by a given industry or profession, after consultation of the employers’ and workers’ organizations concerned and stating the conditions under which they are authorized. ***The Committee requests the Government to indicate whether the authorization from the Ministry of Labour provided for in section 162(2) of the Labour Code is of an individual character or whether these are more general regulations establishing conditions in which overtime work is authorized in the sector of activity concerned. If the latter is the case, the Government is also requested to indicate whether the Ministry of Labour issues its decision after consultation of the employers’ and workers’ organizations concerned. As regards the circumstances justifying overtime work, the Committee requests the Government to take steps to ensure that, apart from in the particular cases listed above (force majeure, shift work, etc.), this possibility is only given to enable employers to deal with exceptional cases of pressure of work.***

Limits on the number of additional hours. The Committee notes that section 22 of Act No. 50 of 1990 introduces a new section into the Labour Code (unnumbered and inserted between sections 167 and 168 of the Code), under the terms of which the number of overtime hours may not exceed two per day or 12 per week, and overtime work is not authorized where daily working time is ten hours under an agreement concluded between the employer and worker. The Committee reminds the Government that, even though the Convention only imposes a limit on the number of authorized additional hours of work in each case by means of regulations adopted by the competent national authority after consultation of the employers’ and workers’ organizations concerned, without establishing a specific ceiling in this regard, the limit to be established at national level must remain reasonable. As the Committee emphasized in its General Survey of 2005 on hours of work (paragraph 144), “such limits must be ‘reasonable’ and they must be prescribed in line with the general goal [of the Convention], namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order

to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life”. However, the possibility of working 12 additional hours per week, if not accompanied by a monthly or annual limit, would amount to an authorization of hundreds of hours of overtime work per year. In the abovementioned General Survey (footnote 89, paragraph 144), the Committee recalls that it was concluded from the preparatory work for the Convention that the limits considered to be permissible amounted to 150 hours per year in the case of temporary exceptions or 100 hours per year for non-seasonal activities. ***The Committee therefore requests the Government to take the necessary steps to establish a reasonable monthly or annual limit on the number of additional hours which may be worked in the context of temporary exceptions.***

Comoros

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1978)

Article 2, paragraphs 1 and 4, of the Convention. Deferral of the annual paid holiday. Further to its previous observation, the Committee notes the Government’s explanations that in the context of the current process of revision of the Labour Code, a new draft provision is being considered which would continue to allow for the accumulation of the annual holidays for two consecutive years, provided that at least six working days of the accumulated period of holidays are taken each year. The Committee hopes that the revised Labour Code will give full effect to the requirements of the Convention with respect to the postponement of holidays on which the Committee has been commenting for the past 20 years. ***The Committee requests the Government to provide a copy of the new text as soon as it is adopted.***

Article 2, paragraph 3(b). Interruptions of attendance at work due to sickness not to be included in the annual leave. The Committee notes the Government’s indication that the revised Labour Code is expected to include a new section which will expressly provide that absences for sickness duly certified by an approved doctor may not be deducted from the number of days of annual holidays granted to the worker. The Committee hopes that the revised Labour Code will effectively align the national legislation with the Convention on this point on which the Committee formulates comments since 1987. ***The Committee requests the Government to provide a copy of the new text as soon as it is adopted.***

Costa Rica

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1982)

Articles 2 and 6 of the Convention. Daily hours of work and overtime. Further to its previous comments relating to sections 136, 139 and 140 of the Labour Code, and Bill No. 16.030, the Committee notes the Government’s indication that the Bill is still under discussion by the Human Rights Commission of the Legislative Assembly. It notes that the discussions addressed the issues of the effects of the globalization of the economy and the current situation in which there is a trend towards ever greater flexibility of working time. The Committee also notes that the discussions focused on the provisions of article 58 of the Constitution which, while limiting hours of work to eight in the day and 48 in the week, allows in exceptional cases the adoption of different working time arrangements by law. The Committee also notes the indication that, in view of the needs arising out of the globalized economy, it is necessary to promote social dialogue with a view to adapting working time to the needs of enterprises and workers, while respecting international standards and ILO principles.

Furthermore, with regard to the comments made by the Confederation of Workers Rerum Novarum (CTRN) that Bill No. 16.030 proposes amendments to the Labour Code which are in total contradiction to the provisions of the Convention and would be prejudicial to the professional, social and economic interests of workers, the Committee notes the Government’s reply that the Bill is intended to introduce new forms of the organization of working time in clearly defined exceptional cases and in accordance with provisions of the Constitution, with a view to adapting industrial relations to the new dynamics of the labour market, which impose almost continuous working. The Government adds that the trade union provides no evidence or legal provisions in support of its allegations and that, as the Bill is still under discussion, the Labour Code has not yet been reformed and it is not possible at this stage to foresee the impact of Bill No. 16.030 in practice. In this respect, the Committee wishes to recall, as it noted previously, that although the Bill is intended to improve conditions of work and protect the rights of workers, the amendments proposed are nevertheless contrary to the provisions of the Convention.

In this respect, the Committee notes the formal request for technical assistance made by the Government to the Subregional Office in San José on 28 May 2009 with a view to bringing the provisions of Bill No 16.030 into conformity with those of the Convention. ***The Committee hopes that the Government will take into account the numerous comments that it has made previously, particularly with regard to maximum daily hours of work and overtime hours. It also trusts that the Office will offer its services through the preparation of detailed technical comments on any draft legislation that the Government may wish to refer to it for examination. Finally, it hopes that the Government will soon be in a position to report progress in the adoption of new legislation respecting the arrangement of working time that is fully in conformity with the provisions of the Convention.***

[The Government is asked to reply in detail to the present comments in 2010.]

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1984)

Articles 4 and 5 of the Convention. Total or partial exceptions. The Committee requests the Government to refer to the comments made in relation to Articles 7 and 8 of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1959)

Articles 7 and 8 of the Convention. Permanent and temporary exemptions. Further to its numerous comments concerning section 152 of the Labour Code – which does not give full effect to the provisions of the Convention regarding exemptions relating to weekly rest – the Committee notes the Government's statement that in the case of trading establishments required to constantly provide their services to the public, the competent authorities recommend that enterprises increase their workforce and introduce a system of rotation so that all workers can enjoy a weekly rest day, since Sunday is no longer considered as the sole day of rest. It also notes that workers who are subjected to any infringement have the possibility, through implementing regulations, of reporting it to the labour inspection services. The Committee also notes that the Government has formally requested technical assistance from the ILO Subregional Office in San José in order to designate a specialist for the drawing up of draft legislation which would enable the national legislation to be harmonized with the practice and provisions of the Convention regarding exemptions relating to weekly rest.

In this regard, the Committee recalls that the Convention is based on three basic principles, namely: *regularity* (a rest period of 24 hours in each seven-day period), *continuity* (a rest period of at least 24 consecutive hours) and *uniformity* (the same rest day, in principle, for everyone). It stresses that the Convention only authorizes exemptions in exhaustively-listed circumstances, which are clearly regulated by the competent authority and which do not allow the relinquishment of weekly rest or an agreement between employer and employee to forgo such rest. However, the situation that the Government describes in its report suggests an increasing relaxation of the rules concerning weekly rest which is not in line with the three principles mentioned above. *The Committee hopes that the Government will soon be in a position to report on progress in this area and requests it to send copies to the Office of any legislative texts adopted in connection with section 152 of the Labour Code and the exemptions relating to weekly rest granted to workers.*

Dominican Republic

Night Work Convention, 1990 (No. 171) (ratification: 1993)

Article 3 of the Convention. Minimum protection measures for night workers. Further to its previous comments, the Committee notes that the Government's report does not contain any new information concerning the points that it has been raising for many years. Indeed, since the ratification of the Convention in 1993, the Committee has been drawing the Government's attention to the absence of tangible measures to give effect to the provisions of *Articles 4* (free medical assessment), *6* (workers certified as unfit for night work), *7* (maternity protection), *9* (social services) and *10* (consultation of workers' representatives) of the Convention, which lay down a number of measures that need to be taken as a minimum for the protection of night workers. In this respect, the Committee has always recalled that the provisions of the Convention, even though they may be applied progressively, are not however optional and therefore remain binding. Accordingly, indicating that the social partners consider that there is no divergence between the national legislation and the requirements of the Convention calling for any amendment of the laws in force, does not absolve the Government from its obligation to give effect to all of the provisions of the Convention in law and practice. *The Committee therefore once again requests the Government to take all necessary measures to give full effect to the provisions of the Convention and to keep the Office informed of any progress achieved in this respect.*

[The Government is asked to reply in detail to the present comments in 2010.]

Equatorial Guinea

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1985)

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

Article 6 of the Convention. Permanent and temporary exceptions. In reply to the comments the Committee has been making since 1994, the Government indicated that the regulations applying section 49 of Act No. 2/1990 were still being examined with the parties concerned, particularly in the oil sector. *The Committee asks the Government to provide information on the progress made in this matter. The Government is also invited to communicate information on the organizations of employers and workers consulted in the preparation of the abovementioned regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the manner in which effect is given, in practice, to the provisions of section 49 of Act No. 2/1990 on overtime.*

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

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

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1985)

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

Article 7 of the Convention. Permanent and temporary exceptions. In reply to comments that the Committee has been making since 1994, the Government indicated that the regulations to implement section 49 of Act No. 2/1990 are still being examined with the parties concerned, particularly in the oil sector. ***It requests the Government to report on progress in this process. The Government is also asked to provide information on the employers' and workers' organizations consulted in the preparation of these regulations. Pending the latter's adoption, the Committee urges the Government to provide information on the way in which the provisions of section 49 of Act No. 2/1990 on overtime are applied in practice.***

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

Ethiopia

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1991)

The Committee notes with **regret** that the Government's report does not contain any information in reply to its previous comments and is confined to indicating that there have been no changes in law or practice affecting the application of the Convention. The Committee is therefore bound to draw the Government's attention once again to the following points.

Article 1, paragraph 1(d), of the Convention. Scope of application – workers in the transport sector. The Committee notes that the Government's report does not contain any information concerning the comprehensive study that it proposed to undertake with a view to the adoption of a directive by the Minister of Labour under section 72(2) of Labour Proclamation No. 377 of 2003, with a view to providing for the special application of the weekly rest provisions to workers directly engaged in the carriage of passengers and goods. ***The Committee once again requests the Government to keep the Office informed of any developments in this respect and to provide a copy of any new legal text that might be adopted on this matter.***

Article 2, paragraph 1, and Articles 4 and 5. Exemption of persons holding managerial positions. The Committee notes the adoption of Proclamation No. 494/2006, amending section 3(2)(c) of the Labour Proclamation No. 377/2003, which continues to exclude persons holding managerial positions from the scope of the Proclamation, and accordingly from the provisions respecting weekly rest. While noting the Government's previous indications that in practice the weekly rest period is granted to those holding managerial positions in the same way as to other workers, the Committee recalls that this entitlement should be guaranteed by a legislative provision. ***The Committee therefore once again requests the Government to take the necessary measures to give effect to Article 2(1) of the Convention, in relation to the persons concerned, in both law and practice.***

Article 7, paragraphs (a) and (b). Posting of notices. ***In the absence of information on this point, the Committee once again requests the Government to indicate the measures adopted or envisaged concerning the obligation of employers to notify workers of days and hours of rest by means of notices or rosters, in accordance with this Article of the Convention.***

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1991)

The Committee notes with **regret** that the Government's report does not contain any information in reply to its previous comments and is confined to indicating that there have been no changes in law or practice affecting the application of the Convention. The Committee is therefore once again bound to draw the Government's attention to the following points.

Article 3 of the Convention. Scope of application – establishments, institutions and administrative services providing personal services. The Committee notes the adoption of Labour Proclamation No. 377/2003 repealing Labour Proclamation No. 42/1993. Further to its previous comments, the Committee notes that the regulations governing conditions of work applicable to personal services, envisaged in section 3(3)(c) of Proclamation No. 377/2003, have still not been issued by the Council of Ministers. ***The Committee once again requests the Government to take the necessary measures for the adoption of these regulations and to keep the Office informed of any progress achieved in this respect.***

Post and telecommunications services, newspaper undertakings, theatres and places of public entertainment. The Committee notes that section 70(1) and (2) of Labour Proclamation No. 377/2003 provides for the establishment of special schemes for activities that are similar or identical to those referred to in *Article 3(1)(b)–(d)* of the Convention, thereby ensuring the application of the Convention in establishments engaged in these activities. It recalls that, under the terms of *Article 3(2)* of the Convention, the Government may, at any time, communicate to the Director-General of the

International Labour Office a declaration accepting the obligations of the Convention in respect of post and telecommunications services, newspaper undertakings and theatres and places of public entertainment. ***The Committee once again invites the Government to communicate such a declaration to the Office.***

Commercial representatives. The Committee notes that section 72(1) of Labour Proclamation No. 377/2003 excludes commercial representatives from the scope of application of the provisions respecting the weekly rest period. ***The Committee requests the Government to indicate the manner in which the weekly rest period of the workers concerned is ensured.***

France

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1926)

Articles 4 and 5 of the Convention. Total or partial exceptions. The Committee notes the observations of the General Confederation of Labour–Force ouvrière (CGT–FO) on the application of the Convention, in which it regrets the lack of reliable statistical data on the nature and extent of the exemptions from Sunday rest that are granted by the labour inspectorate and stresses that the number of such exemptions has substantially increased between 2006 and 2007. On a more general note, the CGT–FO points out that the absence of precise data on the results of labour inspection supervisory activities does not allow for an assessment of the application of the Convention. ***The Committee requests the Government to provide its comments in response to the observations of the CGT–FO, and to communicate up to date statistical information on the number of enterprises and approximate number of workers in the industry concerned by such exceptions, the types and number of exemptions granted per year, as well as extracts from reports of the labour inspection services showing the number of infringements observed and sanctions imposed, copies of relevant collective agreements, etc.***

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

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1971)

Article 7 of the Convention. Permanent exemptions – Sunday work. The Committee notes the comments of the General Confederation of Labour–Force ouvrière (CGT–FO) received on 4 June, 20 August and 7 September 2009 concerning the application of the Convention.

The CGT–FO denounces the progressive extension of exemptions to weekly rest on Sunday, particularly in the commercial sector, and refers, on the one hand, to their incompatibility with the provisions of the Convention and, on the other, to the negative impact on workers by challenging a principle which has contributed to the division between private and working life since 1906. It observes that successive modifications of the Sunday rest scheme are opening the way to the generalization of Sunday work and the avoidance of consultations with workers' organizations on the subject.

In its three communications, the CGT–FO emphasizes the non-compliance of the measures adopted successively in 2008 and 2009 with the Convention. It indicates that the previous extensions of exemptions from Sunday rest were reinforced by Act No. 2008-3 of 3 January 2008 and by the subsequent recodification of the Labour Code. The first reform added “retail furniture stores” to the list of establishments authorized to introduce exemptions from Sunday rest. The recodification resulted in an extension of the scope of exemptions through the introduction of the new concept of “public needs” and by providing that the list of establishments allowed to introduce exemptions from the Sunday rest shall be determined by regulations. Section L.3132-12 of the Labour Code provides in this respect that “certain establishments the operation or opening of which is rendered necessary by production constraints, the activities or needs of the public, shall be entitled to introduce exemptions to the Sunday rest rule and shall attribute rest days on a Sunday on a rota basis. A decree issued by the Council of State shall determine the categories of establishments concerned”.

As regards the second reform, Act No. 2009-974, adopted by Parliament on 22 July 2009, modified the scheme of exemptions from Sunday rest in tourist towns and areas (section L.3132-25) and replaced the previous restrictions relating to the areas concerned, the issuance of permits and the period concerned by a scheme under which the exemption is automatically acquired – permanent and generalized – thereby, de facto, resulting in the generalization of Sunday work in towns and areas classified as touristic by decision of the Prefect, at the proposal of the mayors concerned. The same trend for the extension of exemptions concerns retail outlets in towns with over 1 million inhabitants, through the introduction of the authorization of automatic opening on Sundays for a period of five years in “areas of exceptional consumption” (PUCE) characterized “by customary Sunday consumption, the significance of the volume of customers concerned and their distance from the said area”.

The CGT–FO considers that these exemptions, which only retain the voluntary nature of Sunday work and the compulsory compensatory benefits in the case of PUCE, are clearly far removed from those envisaged in the Convention and are based on criteria that are difficult to verify in practice, such as “the significance of the volume of customers concerned” and consumption “needs”. It underlines the weakness of statistical data to assess the impact of these exemptions. It further emphasizes the importance that is attached to the interpretation of the Convention to prevent trends that are contrary to its spirit.

In its reply, received on 4 September 2009, the Government recalls that the labour legislation fully complies with the requirement of *Article 6(3)* of the Convention by stipulating that, in the employees' interest, the weekly rest is granted on Sunday (section L.3132-3 of the Labour Code) and indicates that it even exceeds the minimum standard prescribed by the Convention by providing for a weekly rest of 35 hours (section L.3132-2 of the Labour Code). Concerning the specific arguments put forward by the CGT-FO, the Government maintains that:

- (i) the re-codification of the text of the Labour Code did not aim at extending the permanent exemptions to the Sunday rest rule but simply to restate the criteria which had already been used for such exemptions and which are the constraints of the production and the needs of the public;
- (ii) the notion of needs of the public is not contrary to the provisions of *Article 7* of the Convention since the "nature of the service performed by the establishment", referred to in this Article, conveys the same idea. Besides, the Convention requires regard to be paid to all proper social and economic considerations, which may include the evolution of the needs of the public;
- (iii) Act No. 2008-3 of 3 January 2008 aims at promoting competition in the consumer's interest. It was noted that due to changes in lifestyle, especially in big cities, there is a high demand for visiting retail furniture stores on weekends, hence the necessity to authorize these establishments to open on Sundays;
- (iv) no consultations were held prior to introducing the exemption with respect to retail furniture stores for reasons connected with the legislative process but also because the sector concerned is covered by a collective agreement that provides for specific compensations in case of Sunday work;
- (v) Act No. 2009-974 of 10 August 2009 was adopted following the recommendations of the Economic, Social and Environmental Council contained in two reports prepared in 2007. As these reports concluded, Sunday no longer constitutes only a day of collective rest but also a moment of cultural enjoyment or leisure and suitable for shopping either as a family or individually;
- (vi) the new exemption concerning the tourist towns and areas builds on an existing exemption simply extending its scope with a view to promoting tourism. It will affect, at the maximum, an estimated 150,000 persons to be compared with 6.5 million persons who are habitually or occasionally required to work on Sundays;
- (vii) the establishment of PUCÉ, or areas of exceptional consumption in urban areas of at least 1 million inhabitants, is meant to respond to existing practices of Sunday consumption. It will be subject to the authorization of the Prefect upon the prior request of the municipal council and on condition that a collective agreement fixes the compensations to be granted to the employees deprived of their Sunday rest. Approximately 20 areas are expected to be established affecting 15,000 persons. Authorizations are limited to five years which demonstrates the exceptional character of the new measures while a six-member parliamentary committee will present a report within a year as from the publication of the new legislation in the *Official Gazette*.

The Committee notes the observations of the CGT-FO and the Government's reply which relate to legislative developments impacting on the application of *Articles 6(3), 7(1) and (4)*, of the Convention. The Committee wishes to recall at the outset that for the determination of weekly rest the Convention is articulated around three basic principles, i.e. *continuity* (a period of weekly rest comprising at least 24 consecutive hours), *regularity* (weekly rest to be enjoyed in every period of seven days), and *uniformity* (weekly rest to be granted, wherever possible, simultaneously to all the persons concerned of an establishment and to coincide, wherever possible, with the traditional day of rest). These principles are reflected in sections of the Labour Code and there seems to be little disagreement between the CGT-FO and the Government that the principle of Sunday rest is a time-sanctioned and firmly grounded principle of the French labour legislation. It is commonly accepted that a certain flexibility is indispensable in applying this principle in view of the fact that in some cases there is an imperative need to maintain certain units of production operating around the clock, and in some others there is a manifest public interest in receiving certain services on Sunday. The Committee is therefore of the view that the different questions raised in the communications of the CGT-FO ultimately concern the exact scope and conditions of application of the permanent exemptions permitted under *Article 7* of the Convention.

The Committee recalls that *Article 7* permits special weekly rest schemes, including the granting of weekly rest on another weekday on a rotation basis when the nature of work, the nature of the service performed by the establishment, the size of the population to be served, or the number of persons employed is such that the normal weekly rest scheme provided for in *Article 6* cannot be applied. In this connection, the Committee refers to paragraphs 110–123 of the 1964 General Survey on weekly rest in which it concluded that "an examination of the establishments covered by special schemes shows that they are governed by three main criteria, i.e. the need to cater for certain everyday consumer needs; the need to keep certain establishments operating; and the need to make special weekly rest arrangements for particular places or districts". More concretely, the Committee referred to: (i) first, establishments engaged in work which cannot be interrupted owing to the nature of the needs for which they cater or the harm which any stoppage would cause to the public interest, including industries, businesses and services indispensable to the daily maintenance of health, food supplies, safety and essential consumer needs generally, such as hospitals and similar establishments, hotels, restaurants, certain wholesale and retail commercial establishments, fire-fighting services, newspaper, information and entertainment establishments, public utilities (water, gas and electricity) and transport; (ii) secondly, industries which for technical reasons must operate continuously if they are to maintain their efficiency, including manufacture of foodstuffs for

immediate consumption, occupations in which any interruption of the work would entail the loss or deterioration of the raw materials, or industries using certain specialized techniques (ovens, blast furnaces, gas works, etc.); and (iii) thirdly, establishments which operate only for part of the year or which depend on natural energy or other variable circumstances (e.g. establishments using water or wind as their sole motive power, occupations which are carried on in the open air and in which work may be held up by bad weather), including certain establishments in bathing and tourist resorts or watering places.

More specifically, in so far as retailing is concerned, the Committee noted that this is one of the branches of employment most frequently subjected to special weekly rest schemes, and that some countries specified the items which may be sold on the compulsory weekly rest day. It also noted that this had the advantage of making it clear that exceptions to the normal weekly rest schemes were warranted only when they met a very definite need (General Survey of 1964 on weekly rest, paragraph 113). More recently, in its 1984 General Survey on working time, the Committee indicated that in certain sectors such as commerce there is a trend which could lead to the establishment of special schemes that do not necessarily correspond to the standards prescribed by the Convention (paragraph 166).

The Committee recalls, in this regard, that it has raised similar questions in the direct requests it addressed in 2005 and 2008 concerning the application of the Convention in New Caledonia with respect to exemption of hardware and do-it-yourself stores. In these comments, the Committee also referred to relevant jurisprudence, including 19 decisions of the Administrative Court of Paris rendered in November 1993 and a decision of the *Conseil d'Etat* of July 1983, which ruled that do-it-yourself stores did not meet the conditions for granting an exception to the Sunday rest rule. In this connection, the Committee notes the existence of recent court decisions ordering on pain of fine retail stores, in particular hardware and do-it-yourself stores, to remain closed on Sundays.

The Committee understands that the question of Sunday work has been the subject of serious controversy in France which has led the Parliament to defer on several occasions the debate on the topic prior to the adoption of Act No. 2009-974. It also understands that this debate is stirred principally by the evolution in people's preferences and patterns of consumption. The Committee further notes the regret expressed by the CGT-FO concerning the lack of statistical data on these situations and on the probable impact of the reforms. There are also significant divergencies between the fears that it expresses concerning the generalization of Sunday work and the Government's estimates, which indicate that some 15,000 persons are concerned in tourist areas, compared to 6.5 million persons who are normally affected by Sunday work. An accurate assessment of the situation is in this context a prerequisite to evaluating the impact of the legislative measures. *The Committee would therefore appreciate it if the Government and the social partners would provide supplementary documented information on the following: the results of any opinion surveys carried out among the workers concerned; the measures taken to ensure the voluntary character of Sunday work; the compensatory measures taken in favour of employees working on Sundays in application of the new legislative provisions, including copies of relevant collective agreements; any developments concerning the delimitation of tourist areas, the determination of tourist towns and the establishment of PUCE; copy of official studies that may have been conducted following the legislative developments of 2008 and 2009 or new reports that may have been published by the Economic, Social and Environmental Council on this matter; copy of the report which will be prepared by the parliamentary committee referred to in Act No. 2009-974.*

The Committee would also be grateful to the Government for replying to the following additional questions: (i) did Act No. 2009-974 reflect the proposals contained in the 2007 report of the Economic, Social and Environmental Council? (ii) were any consultations held with the social partners during the period from 2007 when the report was prepared and July 2009 when the Act was adopted, and if so, what was the nature and outcome of these consultations? (iii) what are the consultation procedures used when legislative measures touch on labour questions? (iv) what was the special procedure used by the Government in this case and why was it chosen?

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

[The Government is asked to reply in detail to the present comments in 2010.]

Georgia

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1993)

Articles 2 and 6 of the Convention. Right to annual holidays with pay. The Committee notes the Government's reply to the observations made by the Georgian Trade Unions Confederation (GTUC), alleging widespread violations of the workers' right to annual paid leave. It notes with *regret* that the Government confines itself to restating the relevant provisions of the Labour Code without however giving any useful indications as to the extent of infringements in the enjoyment of the right to annual leave or the actions taken or envisaged to enhance conformity with the Convention. The Committee recalls that formal legislative conformity alone is not sufficient to constitute satisfactory compliance with the Convention, when the relevant laws and regulations are not enforced in practice. *The Committee expresses the hope that the Government will take all necessary measures to fully implement and effectively enforce the Convention and requests it to take due account of all the points raised in its previous comments.*

Guatemala

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1988)

Articles 2 and 6 of the Convention. Work in excess of normal hours of work – Overtime hours. Further to its previous comments relating to the observations made by the Trade Union of Operators of Plants and Wells, Guards of the Municipal Water Company and its Annexes (SITOPGEMA), the Committee notes the Government's indications concerning the nature, scope and conditions governing the adoption of the internal rules for the work in an enterprise. It also notes the indications that the Municipal Water Company of the City of Guatemala (EMPAGUA) is an enterprise which has to provide an essential service on a continuous basis and that it is therefore necessary to ensure the presence of the personnel responsible for the production, maintenance and distribution of water. Noting that the rules were adopted by consensus between the employer and the workers, the Committee nevertheless notes that the rules provide for a working day of 24 hours followed by 48 hours of rest for career workers not subject to limitations on the ordinary working day, which means a working week that may be as long as 72 hours. The Committee is bound to recall once again that the Convention establishes a double cumulative limit, namely eight hours in the day and 48 hours in the week. It only allows exemptions from these maximum limits in restricted and well-defined circumstances, namely: (i) the distribution of hours of work over the week (*Article 2(b)*); (ii) the averaging of hours of work over a period of three weeks in the case of shift work (*Article 2(c)*); (iii) processes that are necessarily carried on continuously within the limit of 56 hours in the week (*Article 4*); (iv) the averaging of hours of work in exceptional cases (*Article 5*); and (v) permanent exceptions (preparatory, complementary or intermittent work) and temporary exceptions (exceptional cases of pressure of work) (*Article 6*). **The Committee therefore once again requests the Government to take the necessary measures without further delay to ensure that hours in excess of normal hours of work are limited to the cases envisaged by the Convention. It requests the Government to keep the Office informed of any developments in this respect and recalls that it may, if it so wishes, avail itself of the technical assistance of the ILO, through its Subregional Office in San José, in relation to the measures to be envisaged to give full effect to the provisions of the Convention.**

Furthermore, with regard to the observations made previously by the Trade Union Confederation of Guatemala (UNSITRAGUA) concerning daily hours of work, which may be in excess of 12 hours in certain enterprises that set productions targets but do not increase wages accordingly, the Committee notes the Government's explanations according to which, on the one hand, the only sector which sets production targets is the textile sector which, in addition to applying the minimum wage, provides for an increase in the wage of 50 per cent where hours of work are in excess of those set out in the contract and, on the other, no complaint has been made on this subject to the labour inspectorate. Furthermore, with regard to the allegation that in certain industrial enterprises the staff responsible for security may alternate between periods of 24 hours of work and of rest and that the Minister of Labour authorizes collective agreements accepting these conditions, the Committee notes that, according to the Government's report, the Ministry of Labour may not in any event authorize such irregular conditions, and that a procedure exists (Government Decision No. 221-94 of 13 May 1994) for the negotiation, registration and denunciation of collective agreements relating to conditions of work in specific enterprises.

Finally, with regard to the amendments to be made to section 122 of the Labour Code, which provides that the working day including overtime hours may not exceed 12 hours, the Committee notes the Government's indication that, in the context of the current draft legislative reform, the possibility of amending section 122 has not been addressed, but a discussion is envisaged on this matter in the Tripartite Commission for International Labour Affairs. **The Committee therefore requests the Government to keep the Office informed of the outcome of these discussions and recalls that the employment of a worker for four additional hours in the day without any restriction (such as a monthly or annual limit) greatly exceeds the exemptions authorized by the Convention.**

Furthermore, the Committee requests the Government to refer to the comment that it is making under the Forced Labour Convention, 1930 (No. 29).

India

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1921)

The Committee notes the Government's detailed report, and the observations made by the Centre of Indian Trade Unions (CITU) concerning the application of the Convention, which were received on 25 August 2008, and those of the Bharatiya Mazdoor Sangh (BMS) union, which were attached to the Government's report. It notes the allegations by the BMS of violations of the legislation on hours of work in certain sectors, such as information technology, and in special economic zones. The Committee further notes the CITU's indication that the provisions of the Factories Act establishing the 48-hour working week are amongst those most frequently violated. It also notes that, according to the CITU, the Government is reported to have the intention of raising hours of work to 12 hours a day and 60 hours a week. **The Committee requests the Government to provide its comments in reply to the observations made by these two trade union organizations.**

Article 6 of the Convention. Permanent exceptions – Essentially intermittent work – Railways. Further to its previous comments, the Committee notes the adoption of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, the provisions of which reflect the recommendations of the Railway Labour Tribunal, 1969, a copy of which was

attached to the Government's report. It notes that Rule 7(3) establishes the criteria under which work may be classified as "essentially intermittent". It also notes that Rule 3(1) provides that the power to declare employment essentially intermittent is vested in the Head of the Railway Administration and that, in accordance with Rule 3(4), any railway servant aggrieved by such a decision may appeal to the Regional Labour Commissioner, and then to the Ministry of Labour. The Committee further notes that, under the terms of Rule 8, the standard hours of duty for these employees are 48 hours a week with the possibility of 12 or 24 additional hours, according to the type of work, as well as three hours of preparatory or complementary work, making an absolute maximum of 75 hours a week, as established in section 132 of the Railways Act, 1989.

Temporary exceptions – Railways. The Committee notes that Rule 9 of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, empowers the head of a railway administration to make temporary exceptions from the provisions of the Railways Act, 1989, in respect of hours of work for an employee or class of employees in the railways in the cases envisaged in sections 132(4) and 133(3) of the Railways Act, 1989. It notes that these sections authorize such exceptions where they are considered necessary to avoid serious interference with the ordinary working of the railway or in cases of accident, actual or threatened, or when urgent work is required to be done, or in any emergency which could not have been foreseen or prevented, or in other cases of exceptional pressure of work.

The Committee observes that the Government has not replied to its previous comment concerning any consultations held with employers' and workers' organizations concerning the introduction of the permanent and temporary exceptions described above. ***The Committee therefore once again requests the Government to provide fuller information on any consultations held with the organizations of employers and workers concerned prior to the adoption of the Railway Servants (Hours of Work and Period of Rest) Rules, 2005, as required by Article 6 of the Convention when permanent or temporary exceptions are made to the normal rules respecting hours of work.***

Article 10. Special provisions applicable to India. As the clause set out in this Article was adopted prior to India's independence, and with reference to the Government's express desire to accept the principle of the 48-hour working week, the Committee once again expresses the hope that the Government will consider favourably the possibility of making a declaration accepting the application of all of the provisions of the Convention. Such an initiative would be particularly desirable since the normal working week in factories and mines has already been set at 48 hours. It would be grateful if the Government would indicate its intentions in this regard.

Part IV of the report form. Court decisions. The Committee notes that, according to the information contained in the Government's report, the prosecutions against M/S Shital Traders are not related to failure to comply with the legal provisions relating to hours of work. With regard to the case against M/S Model Construction (P) Ltd, Goa, it notes the Government's indications that the case is in its final stages. ***The Committee requests the Government to provide a copy of the court's ruling when it is handed down. The Government is also requested to provide, where appropriate, copies of other court decisions involving questions of principle relating to the application of the Convention.*** In this respect, the Committee notes that a number of seminars have been organized jointly by high courts and the International Labour Office on the theme of promoting social justice through international labour standards. It hopes that the development of this type of activity will facilitate the application of ILO standards, including Convention No. 1, by the national courts.

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

[The Government is asked to reply in detail to the present comments in 2010.]

Iraq

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1965)

Article 6(2) of the Convention. Maximum limits on additional hours of work. The Committee has been commenting for a number of years on section 63(2)(b) of the Labour Code of 1987 which provides for the possibility of working up to four additional hours per day in preparatory and supplementary work in industry or in order to meet extraordinary work demands. Despite the Government's indications in its reports of 1992 and 1998 that legislative measures had been taken to determine an annual limit on the number of additional hours and that the relevant text would be supplied as soon as it was published, the Committee notes with ***regret*** that the new draft Labour Code of 2007, which is in the process of finalization and is currently examined by the State Consultative Council, maintains the same provision in identical terms (draft section 63.6(b)). As the Committee has pointed out in previous comments, the single reference to a daily limit of overtime – without determining the maximum number of hours of overtime which may be permitted in the year – might give rise to too many weekly, monthly or annual working hours which could be inconsistent with the spirit in which this Convention was drafted.

In this regard, the Committee wishes to refer to paragraph 144 of its 2005 General Survey on hours of work in which it noted that even though the establishment of specific limits to the total number of additional hours is left to the competent authorities, it does not consider that such authorities have unlimited discretion in this regard. Such limits must be reasonable and they must be prescribed in line with the general goal of Conventions Nos 1 and 30, namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life. ***The Committee hopes that in the***

ongoing process of revising the Labour Code, the Government will take all necessary measures to establish, within reasonable limits, the maximum number of additional hours which may be allowed in the year in respect of permanent exceptions, in conformity with the Convention. The Committee requests the Government to keep the Office informed of all future developments in this regard and to transmit a copy of the new legislation once it has been adopted.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1962)

Article 7, paragraph 3, of the Convention. Maximum limits on additional hours of work. The Committee has been commenting for a number of years on section 63(2)(c) of the Labour Code of 1987 which provides for the possibility of working up to four additional hours in a day in non-industrial activities. Despite the Government's indications in its reports of 1992 and 1998 that legislative measures had been taken to determine an annual limit on the number of additional hours and that the relevant text would be supplied as soon as it was published, the Committee notes with **regret** that the new draft Labour Code of 2007, which is in the process of finalization and is currently examined by the State Consultative Council, maintains the same provision in identical terms (draft section 63.6(c)). As the Committee has pointed out in previous comments, the single reference to a daily limit of overtime – without determining the maximum number of hours of overtime which may be permitted in the year – can imply weekly or annual working hours that are far too high and which could be contrary to the spirit of the Convention. In this regard, the Committee wishes to refer to paragraph 144 of its 2005 General Survey on hours of work in which it noted that even though the establishment of specific limits to the total number of additional hours is left to the competent authorities, this does not mean that such authorities have unlimited discretion in this regard. Such limits must be reasonable and they must be prescribed in line with the general goal of Conventions Nos 1 and 30, namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life. ***The Committee hopes that in the ongoing process of revising the Labour Code, the Government will take all necessary measures to establish, within reasonable limits, the maximum number of additional hours which may be allowed in the year in respect of temporary exceptions, as required by this Article of the Convention. The Committee requests the Government to keep the Office informed of all future developments in this regard and to transmit a copy of the new legislation once it has been adopted.***

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1974)

Article 2, paragraph 1, of the Convention. Scope of application – Employees in the public service. The Committee welcomes the fact that, after nine years of interruption, the Government is once again in a position to take up its dialogue with the Organization's supervisory bodies. It recalls that for 20 years it has been drawing the Government's attention to the amendments to be made to the provisions of Act No. 24 of 1960 respecting the public service which are contrary to *Articles 9* (postponement and accumulation of part of the annual holiday) and *11* (proportional period of holiday with pay in the event of the termination of the employment relationship) of the Convention. ***The Committee once again recalls that the Convention applies to all employed persons, with the exception of seafarers, and therefore urges the Government to take the necessary measures without further ado to bring Act No. 24 of 1960 respecting the public service, and particularly sections 43(3), 45(1), 48(10) and 49, into conformity with the provisions of the Convention.***

Article 6, paragraph 1. Exclusion of public and customary holidays from being counted as part of the minimum annual holiday with pay. With reference to the Labour Code that is currently in force (Act No. 71 of 1987), the Committee recalls its previous comments in which it drew the Government's attention to the absence of a provision establishing that public and customary holidays shall not be counted as part of the annual holiday with pay. In this respect, the Committee understands that a draft new Labour Code is currently at an advanced stage of consultation and is being finalized. It notes that section 66(4) of the draft Labour Code of 2007, a copy of which was communicated to the Office, provides that public holidays that coincide with the worker's leave shall not be deducted from the annual holiday. The Committee recalls that under the terms of *Article 6(1)* of the Convention, public and customary holidays shall not be counted as part of the minimum annual holiday with pay. ***The Committee hopes that the Government will take its comments into account when examining possible amendments to the draft Labour Code and once again requests it to take the necessary measures in order to bring the existing Labour Code into conformity with the Convention.***

Article 8, paragraph 2. Division of the annual holiday with pay. The Committee notes with **interest** that Act No. 17 of 2000 amends section 69 of the Labour Code, on which it had commented for several years. It notes that section 9 of the above Act provides that, where the annual holiday is divided, one of the parts shall consist of at least 14 uninterrupted days, in accordance with *Article 8(2)* of the Convention.

Article 9, paragraph 1. Time at which parts of the holiday are to be taken and postponement of the holiday. The Committee refers to its previous comments and notes that the Government has not reported any progress on this point. It recalls that the possibility for the worker to claim compensation in the event of the deferral of part of the holiday under the conditions set out in section 73(3) of the Labour Code is contrary to this provision of the Convention. However, it notes that section 69(2) of the draft Labour Code of 2007, referred to above, would give effect to this provision. ***The Committee therefore hopes that the Government will take its comments into account when examining any amendments to the draft Labour Code and once again requests it to take the necessary measures in order to bring the existing Labour Code into***

conformity with the Convention. The Committee further requests the Government to keep the Office informed of any developments relating to the adoption of the draft Labour Code.

Jordan

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1979)

Articles 6 and 7 of the Convention. Accumulation of weekly rest – Special weekly rest schemes. The Committee has been commenting for many years on section 60(2) of the Labour Code of 1996 which permits the accumulation of weekly rest days for a period of up to one month. While fully understanding the intention to provide workers employed at distant or isolated sites with an opportunity to be with their families less often but for longer periods, as explained by the Government in earlier reports, the Committee has drawn attention to the fact that, as it currently reads, the Labour Code does not limit the accumulation or deferral of weekly rest only to workers employed in distant or isolated regions and is therefore possibly open to abuse. The Committee has further drawn attention to *Article 7* of the Convention which precisely offers the possibility under certain well-circumscribed conditions of establishing special weekly rest schemes where the nature of the work, the size of the population to be served or the number of persons employed is such that the normal weekly rest scheme cannot be applied. The Committee notes with *regret* that in its last report the Government gives no indication of any progress made in this regard and confines itself to reiterating that the national legislation is in conformity with the requirements of the Convention. ***The Committee is therefore obliged once again to ask the Government to take all necessary action in order to amend section 60(2) of the Labour Code, with a view to specifying the conditions under which, and the limits within which, the accumulation or postponing of weekly rest days may be authorized, and possibly limiting to three weeks the period over which workers covered by such special weekly rest scheme may accumulate weekly rest days, as indicated in Paragraph 3(a) of the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103).***

Articles 7, paragraph 2, and 8, paragraph 3. Permanent and temporary exemptions – Compensatory rest. The Committee has been drawing the Government's attention to section 59(2) of the Labour Code which is not in conformity with the Convention since it provides for cash compensation and not compensatory rest as prescribed by *Articles 7(2) and 8(3)* of the Convention. The Committee recalls once more that the Convention requires compensatory rest of a total duration at least equivalent to 24 hours in all cases where a worker performs work on the day of weekly rest, irrespective of any higher remuneration paid on this occasion and even if the work has been carried out with the worker's consent. ***The Committee therefore asks the Government to take without further delay all appropriate steps in order to bring section 59(2) of the Labour Code into conformity with the Convention.***

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

Kenya

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1979)

Articles 5, 6, 7, 10 and 12 of the Convention. Scope and conditions of annual leave entitlement. The Committee has been drawing the Government's attention – practically since the ratification of the Convention – to the need to effect certain amendments to the national legislation in order to ensure full compliance with the requirements of the Convention. The Government has, on numerous occasions, admitted that appropriate legislative measures are necessary and recently indicated that the revision process of the Employment Act (Cap. 226) has given the opportunity to address the concerns raised by the Committee. However, the Committee notes that the new Employment Act 2007 fails to introduce the necessary amendments with the sole exception of section 28(2)–(4), which regulates the possibility of dividing the annual paid leave into parts and guarantees uninterrupted holiday of two weeks, as prescribed by *Article 8(2)* of the Convention. The Committee is, therefore, once again obliged to observe that several additional provisions would be needed before legislative conformity with the Convention could be attained, in particular regarding the following points: justified absence from work to be counted as part of the qualifying period of service (*Article 5(4)*); public holidays and periods of incapacity due to sickness or injury not to be counted as part of minimum annual holiday (*Article 6*); payment of holiday pay in advance (*Article 7(2)*); considerations to be taken into account when fixing the timing of holidays (*Article 10*); prohibition of agreements to relinquish the right to annual holiday or forego such holiday for compensation (*Article 12*). In addition, the Committee draws the Government's attention to section 28(1)(a) of the new Employment Act which requires twelve months of service for entitlement to any holiday with pay, and therefore is inconsistent with *Article 5(2)* of the Convention which limits the length of any qualifying period to six months. ***The Committee hopes that the Government will take active steps without further delay in order to bring its legislation into line with the requirements of the Convention. It also hopes that the Government will not hesitate to avail itself of any technical assistance or advice the Office might be able to offer in the preparation of the necessary amendments to legislation.***

[The Government is asked to reply in detail to the present comments in 2010.]

Kuwait

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1961)

The Committee notes the Government's indication that it is making every possible effort to adopt the new Labour Code currently being examined within the *Majlis El-Ummah* (legislative authority), which has already considered several parts of the draft. *The Committee hopes that the Government will soon be in a position to provide concrete information concerning the finalization of this text, which has been at the draft stage since 1994, and requests it to provide a copy of the new legislative text as soon as it has been adopted.*

Articles 1 and 2 of the Convention. Scope of application. Further to its previous observations concerning the categories of workers not covered by the provisions of the Labour Code, such as casual workers engaged in seasonal work not exceeding six months and the owners of small non-mechanical enterprises employing fewer than five workers, the Committee once again requests the Government to provide information concerning compliance with the provisions of the Convention in respect of those persons, as well as a copy of the legislative texts applicable to them.

Article 6, paragraphs 1(b) and 2. Temporary exceptions – Public sector. Further to its numerous comments relating to sections 3 and 4 of Ministerial Order No. 34/77 concerning overtime in the public sector, the Committee notes that no progress has been made with regard to the determination of the maximum number of additional hours which may be authorized in the case of temporary exceptions to the hours of work in the public industrial sector, as well as the conditions in which these additional hours are authorized. The Committee is bound to recall once again that Article 2 of the Convention stipulates that the provisions of the Convention are applicable to undertakings in both the public and private sectors and requests the Government to take the appropriate measures to adopt regulations similar to Order No. 104/94 applicable to public sector undertakings. Finally, the Committee notes the request for technical assistance made by the Government and invites it to contact the ILO office in Beirut to draw up an action plan and a timetable for the technical assistance requested.

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1961)

The Committee requests the Government to refer to its comments under the Hours of Work (Industry) Convention, 1919 (No. 1).

Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106) (ratification: 1961)

Article 2 of the Convention. Scope of application. The Committee notes with satisfaction the amendment of section 2 of the Labour Code of 1964 for the private sector so as to extend its coverage to temporary workers employed for a period of not more than six months and workers at enterprises employing less than five persons, which also constitutes a positive follow-up to the points raised by the Committee on this point for several years. The Committee also notes the Government's explanations concerning the categories of workers who are currently excluded from the application of the Labour Code, such as seafarers and workers in the oil industry, since they are covered by specific legislation. In this connection, the Committee notes the Government's reference to consolidated labour contracts recently prepared for domestic workers. The Committee would appreciate if the Government would provide additional information on the rules applicable to domestic workers with relation to weekly rest and also transmit copies of the consolidated labour contracts applicable to them.

Article 11. List of exceptions. The Committee requests the Government to provide a list of all authorized exemptions (permanent or temporary) to the normal weekly rest scheme set out in section 35 of the Labour Code which gives rise to compensatory rest pursuant to section 1 of Ministerial Order No. 54 of 1982 on weekly rest.

Finally, the Committee takes this opportunity to recall that, based on the conclusions and proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that the ratification of up to date Conventions, including the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), should be encouraged because these instruments continue to respond to current needs (see GB.283/LILS/WP/PRS/1/2, paragraphs 17–18). *Noting that the national legislation giving effect to this Convention applies to all sectors and to all branches of economic activity without distinction, the Committee accordingly invites the Government to contemplate ratifying Convention No. 14 and to keep the Office informed of any decision taken or envisaged in this respect.*

Kyrgyzstan

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1992)

Article 2 of the Convention. Right to weekly rest. The Committee notes with regret that the Government's report has not been received for the tenth consecutive year. It hopes that a report will be supplied for the examination of the Committee at its next session and that it will contain detailed information on the application of all the provisions of the

Convention, in particular as regards the conditions for granting compensatory rest, which the Committee has also raised in its comments under the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

Libyan Arab Jamahiriya

Hours of Work (Industry) Convention, 1919 (No. 1) (ratification: 1971)

Article 6, paragraph 2. Maximum limits on additional hours of work. The Committee has been commenting for more than 25 years on section 87 of the Labour Code which permits a worker to be employed for four additional hours per day without setting any weekly, monthly or annual limit. The Committee has been pointing out that this provision goes far beyond the exceptions provided for in the Convention, i.e. permanent or temporary exceptions to the general standard of eight hours in the day and 48 hours in the week which are permissible only in the following cases: (a) for preparatory or complementary work, which must be carried on outside the limits laid down for the general working of an establishment, or for certain categories of workers whose work is essentially intermittent; and (b) so that undertakings may deal with exceptional cases of pressure of work.

The Committee has also been recalling that the Convention requires payment of all overtime at not less than one and one-quarter times the regular rate. In its last report, the Government maintains that workers who agree to work hours in excess of the prescribed amount are not entitled to overtime pay in order not to be tempted by financial gain and adds that the four additional hours of daily work were introduced in the early 1970s because of the first social and economic development plan of the 1969 Fateh Revolution which had a strong focus on infrastructure and housing construction. Moreover, contrary to reassurances given in earlier reports that legislative amendments were under preparation with a view to bringing the Labour Code into full conformity with the Convention, the Government in its last two reports no longer makes any reference to the process of revision of the general labour legislation.

In this regard, the Committee wishes to refer to paragraph 144 of its 2005 General Survey on hours of work in which it noted that even though the establishment of specific limits to the total number of additional hours is left to the competent authorities, this does not mean that such authorities have unlimited discretion in this regard. Such limits must be reasonable and they must be prescribed in line with the general goal of Conventions Nos 1 and 30, which is to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life. *The Committee asks the Government to take without further delay all necessary measures in order to amend section 87 of the Labour Code so as to (i) ensure that overtime is only allowed in the cases provided for in the Convention, (ii) establish, within reasonable limits, the maximum number of hours of overtime work which may be allowed in the year, and (iii) ensure that overtime work performed in either the public or the private sector in the case of temporary exceptions, is paid at least at the higher rate prescribed by Article 6(2) of the Convention.*

Holidays with Pay Convention, 1936 (No. 52) (ratification: 1962)

Article 2, paragraph 3(b) of the Convention. Period of sickness not to be counted in annual leave. The Committee notes the Government's reply that section 38 of the Labour Code provides expressly that a period during which the capacity of the worker is affected by sickness or by injury must not be included in his/her holiday with pay, and that in practice, the worker submits to his/her employer a certificate of leave prepared by his/her physician, hospital or sanatorium. The Committee recalls in this connection its previous comments and the Government's replies referring to the forthcoming adoption of a legislative reform which, in particular, would include explicitly in the Labour Code the exclusion of a period of sickness from annual leave. Based on the Government's last report, the Committee understands that no progress has been made in this regard. *Accordingly, the Committee reiterates its hope that the reform will be concluded shortly to give full effect to this Article of the Convention, and requests the Government to keep the Office informed of any new developments on this matter.*

Finally, while noting the Government's statement that it will consider in the light of the legislation in force the ratification of the Holiday with Pay Convention (Revised), 1970 (No. 132), the Committee wishes to observe that the ratification of Convention No. 132 would be all the more appropriate as the legislation of the Libyan Arab Jamahiriya – which provides for 30 days of annual leave, and even 45 days for those aged at least 50 or with 20 years of service – appears to be in substantial conformity with the requirements of that Convention.

Malaysia

Sarawak

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1964)

Article 2 of the Convention. Scope of application. The Committee notes with *satisfaction* that the Labour Ordinance Sarawak (Cap. 76), on which the Committee has been formulating comments since 1967, was amended by the Labour Ordinance (Sarawak Cap. 76) (Amendment) 2005 (Act A1237) and that the possibility of contracting out of the

right to weekly rest, which was allowed under former section 105 of the Labour Ordinance Sarawak, has now been removed.

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

Mauritius

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1969)

Article 2 of the Convention. Workers' right to weekly rest. The Committee notes the comments made by the Confederation of Private Sector Workers (CTSP) according to which following the entry into force of the Employment Rights Act 2008, all workers of the private sector are compelled to work on two Sundays in a period of one month. The CTSP indicates that since Sunday is considered as a public holiday and as such any work performed on a Sunday should be remunerated at double the regular rate, it is now an obligation for the workers of the private sector to perform overtime by working on two Sundays in a month.

In its reply, the Government refutes as unfounded the argument of the CTSP that overtime in the form of Sunday work has become compulsory. It indicates that section 14(5) of the Employment Rights Act, which specifies that every worker is entitled to a rest day of at least 24 consecutive hours in every period of seven consecutive days, and that the rest day must at least twice a month be a Sunday, or any other day agreed upon between the worker and the employer, is consistent with *Article 2(3)* of the Convention which requires that the weekly rest, wherever possible, be fixed so as to coincide with the days already established by tradition or custom. The Government adds that the introduction of some form of flexibility as regards the rest period was meant to cater for an increasing number of enterprises which by nature of their operational requirements need to work on a seven day basis.

While noting the Government's explanations, the Committee is bound to observe that contrary to the Government's declared intention, section 14(5) of the Employment Rights Act does not merely introduce another exception designed to respond to the needs of the specified types of industrial undertakings such as those for instance that for technical reasons must operate continuously if they are to maintain their efficiency, but introduces a permanent exemption of general application so that in reality the basic standard of Sunday weekly rest is for all practical purposes removed from the national legislation. The Committee wishes to recall that the Convention is articulated around three basic principles, i.e. continuity (a period of weekly rest comprising at least 24 consecutive hours), regularity (weekly rest to be enjoyed in every period of seven days), and uniformity (weekly rest to be granted, wherever possible, simultaneously to all the persons concerned and to coincide, wherever possible, with the traditional day of rest). ***Noting that section 14(5) of the Employment Rights Act 2008 does not fully reflect these principles, the Committee hopes that the Government will re-examine on the next suitable occasion, the relevant provisions of the Employment Rights Act with a view to bringing them into line with the letter and the spirit of the Convention, in full consultation with the representative employers' and workers' organizations concerned.***

Netherlands

Part-Time Work Convention, 1994 (No. 175) (ratification: 2001)

Article 3 of the Convention. Exclusion of part-time domestic workers. The Committee notes the explanations provided by the Government concerning the process of consultations that preceded the amendment of the regulation on service provision in the home. Following the amendment, employees who usually perform exclusively or virtually exclusively household services less than four days per week – as opposed to three days per week previously – for the natural person by whom they are employed, are excluded from the scope of the Convention. In this connection, the Committee notes the observations made by the National Federation of Christian Trade Unions (CNV), the Trade Union Federation of Middle and Higher Level Employees Unions (MHP) and the Netherlands Trade Union Confederation (FNV), according to which the Government's report does not accurately capture the essence of the consultations as it does not refer to the fact that the social partners opposed the proposed amendment and that employers' and workers' organizations jointly submitted an alternative proposal to the Council for Work and income (RWI). ***The Committee requests the Government to explain the reasons for broadening the exclusion of part-time domestic workers, and describe the particular problems of a substantial nature that the application of the Convention to this category of workers would have raised, as required under this Article of the Convention. The Committee also requests the Government to provide any comments it may wish to make in response to the observations of the CNV, the MHP and the FNV.***

Article 9, paragraph 2(c). Access to part-time work for specific groups. The Committee notes the comments of the MHP which criticizes the Government's current policy not to encourage part-time work. According to the MHP, people who are severely disengaged from the labour market must be gradually directed towards paid work and part-time work can be an excellent part of this strategy and would be even necessary to persuade those who are currently not working and are only prepared to do part-time work to actually take a paid job. ***The Committee requests the Government to transmit any comments it may wish to make in reply to the observations of the MHP.***

New Zealand

Weekly Rest (Industry) Convention, 1921 (No. 14) (ratification: 1938)

Article 2 of the Convention. Workers' right to weekly rest. Further to its previous observation, the Committee notes the Government's explanations that, under the Health and Safety in Employment Act 1992, as amended, employers have a duty to prevent harm occurring to employees while at work, including the effects arising from excessive work hours or insufficient rest periods, even where hours of work and weekly rest periods are not explicitly regulated. The Government states that, in the absence of prescriptive legislation, New Zealand's approach to occupational safety and health is a comprehensive, principles-based and performance-based framework which recognizes the diversity and complexity of modern workplaces and work. The Government adds that the Health and Safety in Employment Act is a comprehensive and integrated code which sets out general duties that can be supplemented by regulations, approved codes of practice and guidelines. This framework guarantees that there are strong inducements in place to ensure that workers receive a weekly rest period while employers are required to take all practicable steps to guarantee the safety of employees while at work.

In addition, the Committee notes the comments made by Business New Zealand (BNZ) according to which daily rest periods are specified in collective or individual employment agreements while the requirement for at least 24 hours of weekly rest is implicit in the obligation to specify hours of work. According to the BNZ, these protective standards are likely to prove far more effective than the provision of a statutory 24-hour weekly rest period, which might be more honoured in the breach than the observance.

While taking due note of these explanations, the Committee feels obliged to observe that the provisions of the Health and Safety in Employment Act in relation to weekly rest are general and overly permissive and therefore fail to give effect to specific requirements of the Convention. The Committee wishes to recall that the scope and purpose of *Article 2* of the Convention are clear; workers must be granted an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days, and this rest period should, to the extent possible, be the same for all and should coincide with the day already designated by tradition or custom as day of weekly rest. The Convention is thus articulated around three basic principles: regularity (rest to be taken at seven-day intervals); continuity (rest of at least 24 consecutive hours); and uniformity (weekly break to be taken simultaneously by all workers). These are minimum standards, which governments are bound to apply and enforce, either through national laws or regulations, or by ensuring that collective agreements contain at least as favourable provisions. The Convention permits, of course, total or partial exceptions (including suspensions or diminutions) from the general weekly rest standard set out in *Article 2*, especially when the inherent need to keep certain establishments in operation (e.g. continuous processes, transport, hospitals, hotels, newspapers, etc.) or exceptional conditions (e.g. accidents, force majeure or urgent work to premises or equipment) so require. It seeks to guarantee, however, that total or partial exceptions to the normal weekly rest are authorized on as limited grounds as possible, and in any case only after due consideration having been given to all social and economic implications and needs.

The Committee considers that the workers' right to a minimum period of weekly rest and leisure as prescribed by the Convention is of such cardinal importance for their health and well-being that needs to be regulated in a well-circumscribed and thus binding form and cannot be left to the mere persuasion power of codes of practice and guidelines. As for BNZ's comment referring to the Committee's apparent inability to recognize that this is a Convention dating from 1921 and that overall industrial relations protections have moved markedly since then, the Committee recalls that the principles and objectives pursued by Convention No. 14 have been reaffirmed and strengthened by another ILO Convention (No. 106) concerning weekly rest in commerce and offices, which was adopted in 1957 and which has received to date 63 ratifications. ***In the light of the preceding observations, the Committee hopes that the Government will take all necessary steps in order to bring its legislation into conformity with the basic requirements of the Convention by giving specific legislative expression to the workers' entitlement to 24 consecutive hours of rest every week.***

Moreover, the Committee notes the comments made by the New Zealand Council of Trade Unions (NZCTU) concerning the problem of driver fatigue in the road transport sector principally due to existing legislation that allows up to 70 hours of work per week. The NZCTU acknowledges that government agencies work to address the issue, for instance, by developing a strategy to combat the issue of driver fatigue, announced in December 2007, but indicates that cumulative tiredness and stress from excessively long hours may not be resolved by short breaks. ***The Committee would appreciate receiving any comments the Government may wish to make in response to the observations of the NZCTU.***

Finally, the Committee takes this opportunity to recall that, based on the conclusions and proposals of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that the ratification of up to date Conventions, including the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), should be encouraged because these instruments continue to respond to current needs (see GB.283/LILS/WP/PRS/1/2, paragraphs 17–18). ***The Committee accordingly invites the Government to contemplate ratifying Convention No. 106 and to keep the Office informed of any decisions taken or envisaged in this respect.***

[The Government is asked to reply in detail to the present comments in 2010.]

Forty-Hour Week Convention, 1935 (No. 47) (ratification: 1938)

Article 1 of the Convention. Forty-hour week. The Committee notes that, in its observations on the application of the Convention, Business New Zealand (BNZ) confirmed the information contained in the Government's report with regard to respect for the principle of the 40-hour week, as well as the validity of the statistical methods used. The organization concerned also noted, based on the statistics provided by the Government, that the number of employees working long hours has fallen substantially since 2001.

The Committee also notes the observations made by the New Zealand Council of Trade Unions (NZCTU), in which it repeats its comments made in 2003 concerning the discrepancy between the principle of the 40-hour week established in New Zealand and the reality that a significant proportion of employees regularly work more than 40 hours per week. The NZCTU recalls that section 11B of the Minimum Wage Act 1983, which provides that the hours of work shall not normally exceed 40 hours per week, excluding overtime, also provides that the parties may agree to set the working week at more than 40 hours. It emphasizes that this provision does not prevent employers from setting a working week of more than 40 hours as a condition of accepting a job. The NZCTU also mentions the issue of workload which causes employees to work unpaid overtime and the issue of low wages which oblige them to maintain two jobs at the same time. Furthermore, the NZCTU mentions a study carried out by the Victoria University of Wellington, according to which 33 per cent of collective agreements in the mining sector provide for a working week of more than 40 hours, while no hours of work are set in 64 per cent of collective agreements in the agricultural sector, in 64 per cent of agreements in the education sector, and in 75 per cent of agreements in the food retail sector. According to the NZCTU, since 2000, around 40 per cent of employees have been working Monday to Sunday, in particular those employed in agriculture, retail and hospitality, as well as some service sector employees. With regard to the public sector, the NZCTU refers to the Career Progression and Development Survey carried out in 2005 by the State Services Commission, according to which 68 per cent of public servants surveyed indicated that their actual hours of work were higher than the number of hours provided for in their employment contract, although this rate has dropped since 2000, when it stood at 76 per cent. The NZCTU welcomes a number of positive developments, in particular its collaboration with the Government on several initiatives, such as the "work-life balance" project and the adoption of the Act on flexible working arrangements with a view to easing the financial pressure pushing some employees to work long hours and sometimes maintain two jobs to meet their essential needs. However, the NZCTU maintains that there is still considerable work to be done before the principle of the 40-hour week becomes a reality for all workers. *The Committee requests the Government to provide its comments in reply to the observations of the NZCTU.*

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

Norway

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1953)

Article 8 of the Convention. Consultations with employers' and workers' organizations. The Committee notes that the Government's report does not reply to earlier observations made by the Norwegian Confederation of Trade Unions (LO) alleging lack of consultations with the social partners prior to the adoption of the new regulations on overtime. *It therefore again requests the Government to specify whether the provisions of the new Working Environment Act (WEA) of 2005 on overtime regulations have been the subject of full and genuine tripartite consultations. It also requests the Government to discuss in the future with employers' and workers' organizations any problems arising out of Chapter 10 of the WEA on working hours and take the steps which may appear necessary to this end.*

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

Panama

Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) (ratification: 1959)

Article 7, paragraphs 2 and 3, of the Convention. Temporary exceptions – annual limit to the number of additional hours. The Committee notes with *regret* that, in reply to its previous comments, the Government merely indicates once again that it is currently unable to amend section 36(4) of the Labour Code in order to bring it into conformity with the provisions of the Convention. It notes that the Government refers, as an additional argument, to the elections which took place in the country in May 2009 in order to justify a further postponement of the adoption of the necessary measures in this area. The Committee reiterates that, although social dialogue is of course essential and the ideal is to find solutions on which a tripartite consensus has been reached, the Government bears the ultimate responsibility for the fulfilment of its international obligations, including the implementation of the ILO Conventions ratified by Panama. *The Committee therefore urges the Government to amend section 36(4) of the Labour Code in order to fix a reasonable annual limit to*

the number of additional hours authorized in the context of temporary exceptions and thereby bring the national legislation into conformity with the Convention on this point.

Furthermore, in reply to a point raised by the Committee concerning daily and annual limits on overtime applicable in the public sector, the Government refers to Executive Decree No. 222 of 12 September 1997 implementing Act No. 9 of 20 June 1994 regulating the administrative career service, which authorizes under the sole condition of obtaining the authorization of the responsible chief, the accumulation of 40 additional hours per month and 25 per cent of legal daily working time. However, *Article 7(2)* of the Convention only authorizes temporary exceptions to the normal limits on hours of work in a number of specific cases and in cases of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures. ***The Committee therefore requests the Government to indicate the measures taken or envisaged to limit, in conformity with the Convention, the cases in which public service employees are authorized to work additional hours.***

In addition, *Article 7(3)* of the Convention prescribes the setting of an annual limit on the number of additional hours authorized. ***The Committee requests the Government to take the necessary steps in order to introduce such a limit and to keep the Office informed of developments in this area.***

Finally, the Committee notes that, under the terms of section 122 of Executive Decree No. 222 of 12 September 1997, additional hours are paid only on condition that they have been previously authorized by the responsible chief. It notes that section 217 of Act No. 51 of 11 December 2007 fixing the general State budget for 2008 reaffirms this limitation concerning the remuneration of additional hours and states that the latter may not exceed 50 per cent of the normal monthly salary of the official concerned. The Committee emphasizes that, except for cases of accident and force majeure, additional hours must be paid at not less than one and a quarter times the regular rate, regardless of whether any compensatory rest is granted. ***The Committee requests the Government to provide information on the rates of pay applicable in cases of additional hours of work in the public service.***

[The Government is asked to reply in detail to the present comments in 2010.]

Peru

Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67) (ratification: 1962)

Article 3 of the Convention. Owners of vehicles. The Committee notes the legislative amendments which have occurred in the field of transport, particularly the abrogation of Supreme Decree No. 005-95-MTC and Supreme Decree No. 040-2001-MTC, which have been replaced by Supreme Decree No. 009-2004-MTC issuing national regulations for transport administration. Further to its previous comments concerning the legislation applicable to owners of vehicles and members of their families, the Committee notes the Government's indication that there is no specific legislation in this field. ***Recalling that the exclusion of owners of vehicles and the members of their families from the application of the provisions of the Convention is subject to precise conditions, the Committee requests the Government to indicate the measures taken or contemplated to ensure the protection in law and in practice of owners of vehicles and the members of their families with regard to hours of work.*** Moreover, the Committee notes with *regret* that the Government has never replied to the comments from the Single Union of Public Service Drivers in Lima alleging that workers employed in road transport work more than 16 hours a day, whether as owners of their vehicles or as employees of a transport company.

Article 7. Daily hours of work. Further to its previous comments regarding the provisions of Supreme Decree No. 005-95-MTC, which has now been repealed, the Committee notes section 121 of Supreme Decree No. 009-2004-MTC, which states that drivers of vehicles in the transport service may not drive for more than five consecutive hours during the day or four consecutive hours at night. It also notes that section 121(3) of the same Decree imposes a daily limit of 12 hours of work in each 24-hour period. The Committee reminds the Government that daily hours of work can only be extended under certain conditions, namely: (i) where the hours of work on one or more days of the week are less than eight and by no more than one hour per day (*Article 7(2)*); (ii) in respect of persons whose weekly hours of work do not exceed 48 in any week, or whose hours of work average 48 (*Article 7(3)(a)*); (iii) in respect of persons who ordinarily do a considerable amount of subsidiary work or whose work is frequently interrupted by periods of mere attendance (*Article 7(3)(b)*); (iv) in cases where lost time is made up (*Article 9*); (v) in cases where there is a shortage of skilled labour (*Article 10*); (vi) in the event of accident or other urgent necessity (*Article 11*); (vii) in cases of indispensable work in order to meet exceptional requirements in respect of the transport of passengers between hotel and station and also transport affected by funeral undertakings (*Article 12*); and (viii) in cases of overtime work (*Article 13*). ***The Committee requests the Government to indicate the steps taken or contemplated in order to bring its legislation into full conformity with the provisions of the Convention on this point.***

Article 15. Daily rest. The Committee notes the reference made by the Government to section 122(u) of Decree No. 009-2004-MTC, which requires the presence of two drivers for long journeys, thereby limiting the hours of driving. The Committee emphasizes that this provision does not in itself give effect to *Article 15* of the Convention, which states that a rest period of at least 12 consecutive hours shall be granted in every 24-hour period. ***The Committee again requests***

the Government to indicate the steps taken or contemplated in order to bring its legislation into conformity with this provision of the Convention.

Article 16, paragraph 1. Weekly rest. Further to its previous comment, the Committee notes that the Government does not supply any new information concerning the legislative provisions granting workers in both the private and public sectors a weekly rest period of at least 30 consecutive hours for each seven-day period. ***The Committee requests the Government to take the necessary steps without delay to ensure that drivers are granted the weekly rest period prescribed by this provision of the Convention.***

Article 18, paragraph 3. Individual control book. The Committee notes section 6 of Directive No. 6653-2006-MTC/15, which states that a book shall be used by the driver to record information in respect of each journey relating to the route, start and finish times of the journey and also rest periods. It also notes that the use of this book is only prescribed for drivers in the inter-provincial passenger transport service. Moreover, section 120 of Supreme Decree No. 009-2004-MTC, which provides for the use of a journey log containing information on hours of driving and rest periods, only applies to drivers in the regular inter-provincial passenger transport service. ***The Committee requests the Government to indicate the legislative provisions prescribing the keeping of an individual control book for workers not covered by the provisions of Directive No. 6653-2006-MTC/15 and Supreme Decree No. 009-2004-MTC.***

Finally, the Committee again recalls the decision of the ILO Governing Body, which considered that Convention No. 67 is outdated and invited the States parties to this Convention to contemplate the possibility of ratifying the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) (see GB.283/LILS/WP/PRS/1/2, paragraph 12). The ratification of Convention No. 153 by a State party to Convention No. 67 entails ipso jure the immediate denunciation of the latter. The Committee recalls that only three countries now remain bound by this Convention and encourages the Government to contemplate the possibility of ratifying the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153). ***The Committee requests the Government to keep the Office informed of any decision taken or contemplated in this regard.***

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

Sierra Leone

Holidays with Pay (Agriculture) Convention, 1952 (No. 101) (ratification: 1961)

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

Articles 1 and 8 of the Convention. Right to annual holidays with pay. The Committee notes the statement in the Government's last report that section 63(6) of the Draft Employment Act would provide that any agreement to relinquish the right to minimum annual holiday would be null and void. The Committee hopes that the Act will be adopted in the near future, bringing section 12(a) of Government Notice No. 888, which it has repeatedly highlighted as being in need of amendment, into conformity with the Convention. ***It requests the Government to provide a copy of the full text of the revised legislation as soon as it is adopted.***

The Committee also takes this opportunity to recall that, on proposal of the Working Party on Policy regarding the Revision of Standards, the ILO Governing Body has decided that Convention No. 101 is outdated and has invited States parties to that Convention to contemplate ratifying the Holidays with Pay Convention (Revised), 1970 (No. 132), which is not deemed to be fully up to date but remains relevant in certain respects (see GB.283/LILS/WP/PRS/1/2, paragraph 12). Acceptance of the obligations of Convention No. 132 in respect of persons employed in agriculture by a State party to Convention No. 101 involves the immediate denunciation of the latter. ***The Committee requests the Government to keep the Office informed of any decision it may take in this respect.***

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

The former Yugoslav Republic of Macedonia

Holidays with Pay Convention (Revised), 1970 (No. 132) (ratification: 1991)

Articles 3 and 12 of the Convention. Length of annual holidays and prohibition of agreements to relinquish or forego the right to annual paid leave. The Committee notes the observations of the Federation of Trade Unions of Macedonia (CCM), which were dated 2 October 2008 and transmitted to the Government on 11 November 2008. The CCM alleges that Decree No. 07-3614/1 of 26 August 2008 modifying and supplementing the Labour Relations Law of 1995, which entered into effect on 4 September 2008, was adopted without any consultations and contravenes several ratified ILO Conventions including the Convention on annual holidays with pay. More concretely, the CCM indicates that, following the amendment of the Labour Relations Law, the annual leave entitlement was lowered from 26 to 20 days and, most importantly, employers have been given the right to dispense with workers' right to annual leave and replace it with minimal cash compensation. To date, the Government has not communicated any reply to the matters raised by the CCM.

The Committee requests the Government to provide any comments it may wish to make in response to the observations of the CCM.

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 1** (Belgium, Bulgaria, Canada, China: Macau Special Administrative Region, Comoros, Czech Republic, Egypt, Equatorial Guinea, Greece, India, Lebanon, Luxembourg, Malta, Mozambique, Myanmar, Paraguay, Saudi Arabia, Slovakia, United Arab Emirates); **Convention No. 4** (Colombia, Lao People's Democratic Republic, Nicaragua); **Convention No. 14** (Bahrain, Belgium, Belize, Benin, Botswana, Burundi, Canada, China, China: Hong Kong Special Administrative Region, China: Macau Special Administrative Region, Côte d'Ivoire, Czech Republic, Denmark, Denmark: Faeroe Islands, Denmark: Greenland, Dominica, Estonia, France, Guinea-Bissau, Hungary, India, Iraq, Ireland, Kenya, Lesotho, Libyan Arab Jamahiriya, Luxembourg, Malaysia: Sarawak, Malta, Montenegro, Mozambique, Myanmar, Nepal, Netherlands: Aruba, Netherlands: Netherlands Antilles, Norway, Russian Federation, Rwanda, Saint Lucia, Saudi Arabia, Slovakia, Solomon Islands, Swaziland, Sweden, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom: Anguilla, United Kingdom: Montserrat, Viet Nam, Yemen); **Convention No. 20** (Bolivia); **Convention No. 30** (Bulgaria, Egypt, Equatorial Guinea, Lebanon, Luxembourg, Mozambique, Norway, Paraguay, Saudi Arabia); **Convention No. 41** (Chad, Côte d'Ivoire); **Convention No. 47** (Australia, Australia: Norfolk Island, Azerbaijan, Belarus, Finland, Kyrgyzstan, Lithuania, Republic of Moldova, New Zealand, Norway, Russian Federation, Sweden, Tajikistan, Ukraine, Uzbekistan); **Convention No. 52** (Burundi, Colombia, Côte d'Ivoire, Denmark, Denmark: Faeroe Islands, Dominican Republic, France, Lebanon, Panama, Slovakia, Syrian Arab Republic, Tajikistan); **Convention No. 67** (Peru); **Convention No. 89** (Belize, Burundi, Congo, Costa Rica, Guinea, Guinea-Bissau, Iraq, Libyan Arab Jamahiriya, Madagascar, Malawi, Montenegro, Netherlands: Aruba, Panama, Paraguay, Rwanda, The former Yugoslav Republic of Macedonia); **Convention No. 101** (Austria, Barbados, Belize, Burundi, China: Hong Kong Special Administrative Region, Colombia, Djibouti, Netherlands: Aruba, Netherlands: Netherlands Antilles, Saint Lucia, Saint Vincent and the Grenadines, Swaziland, Syrian Arab Republic, United Republic of Tanzania: Tanganyika, United Kingdom: Anguilla, United Kingdom: Isle of Man); **Convention No. 106** (China: Macau Special Administrative Region, Cyprus, Denmark, Denmark: Faeroe Islands, Denmark: Greenland, France, Guinea-Bissau, Islamic Republic of Iran, Iraq, Italy, Jordan, Malta, Montenegro, Netherlands: Aruba, Netherlands: Netherlands Antilles, Paraguay, Russian Federation, Sao Tome and Principe, Saudi Arabia, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Ukraine); **Convention No. 132** (Armenia, Belgium, Brazil, Chad, Croatia, Czech Republic, Finland, Germany, Guinea, Hungary, Ireland, Latvia, Luxembourg, Madagascar, Malta, Montenegro, Norway, Rwanda, Sweden, The former Yugoslav Republic of Macedonia, Ukraine, Yemen); **Convention No. 153** (Iraq, Turkey); **Convention No. 171** (Albania, Belgium, Brazil, Cyprus, Czech Republic, Lithuania, Slovakia); **Convention No. 175** (Cyprus, Finland, Guyana, Italy, Luxembourg, Mauritius, Netherlands, Slovenia, Sweden).

Occupational safety and health

Afghanistan

Occupational Cancer Convention, 1974 (No. 139) (ratification: 1979)

The Committee notes the brief information provided by the Government concerning the new Labour Code, and notes with *satisfaction* that sections 10 (general requirement to provide a safe and healthy working environment) and 107 (requirement to use safety equipment to prevent occupational diseases) provide a basis for further regulation of the issues covered by this Convention. It also notes the reference to section 107, paragraphs 1 and 2, which provides that lists of occupational diseases and arrangements for the payment of damages for disabilities and health injuries are to be drawn up. While recognizing the continued challenges and difficulties the new authorities are faced with, the Committee is encouraged by the efforts made by the Government to progress towards the assumption of full responsibility in regard to the Convention and taking the necessary action to bring national laws and regulations into conformity with the occupational safety and health standards contained, *inter alia*, in the present Convention. The Committee draws the Government's particular attention to the need for setting up a system for determining carcinogenic substances and agents used at workplaces in the country and which may require the introduction of prohibitions or be made subject to national authorization or control, in accordance with *Article 1 of the Convention*. ***The Committee requests the Government to provide information in its next report on the progress achieved in this respect as well as regards further efforts made to give effect to this Convention, including any regulations adopted under sections 10 and 107 of the new Labour Code.***

Part IV of the report form. Application in practice. The Committee notes that the Government's report does not include a response to the observations submitted by the All Afghanistan Federation of Trade Unions (AAFTU), which the Committee referred to in its 2006 and 2007 comments on the Convention. ***The Committee asks the Government to respond to the points raised in the abovementioned observations.***

Algeria

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1969)

Article 14 of the Convention. Suitable seats for workers. The Committee notes the information provided by the Government indicating that labour legislation is currently being reviewed, and that the obligation to provide suitable and sufficient seats for workers has been taken into consideration in the provisions of the future Labour Code. ***The Committee once again requests the Government to adopt, as soon as possible, appropriate measures in law and practice to ensure that all workers covered by the Convention have sufficient and suitable seats, and the possibility of using them, and to keep the Office informed of any progress achieved in this respect.***

Article 18. Protection against noise and vibrations. The Committee notes the reference by the Government to sections 15 and 16 of Executive Decree No. 91/05 of 19 January 1991 which states the obligations of employers to reduce the impact of noise on workers' health, and where this is not possible, to provide such workers with personal protective equipment. ***The Committee reiterates its request that the Government adopt, as soon as possible, appropriate measures in law and practice to give effect to the provisions of this Article with regards to vibrations, and to keep the Office informed of any progress achieved in this respect.***

Part IV of the report form. Application in practice. With reference to its previous comments, the Committee notes that the Government's report does not contain information on this matter. ***The Committee accordingly requests the Government to provide information on the manner in which the Convention is applied in practice, for example by supplying extracts from inspection reports and, where such information exists, the number of workers covered by the legislation; the number and nature of the contraventions reported; and the number, nature and cause of accidents reported.***

Belize

Radiation Protection Convention, 1960 (No. 115) (ratification: 1983)

Article 3, paragraph 1, and Article 6, paragraph 2, of the Convention. Maximum permissible doses of ionizing radiation. With reference to its previous comments, the Committee notes the Government's response indicating that, on 13 March 2009, the Labour Advisory Board was re-activated and that its main duty is the revision of national labour legislation. The Committee notes that the Ministry is currently in the process of identifying a consultant that will work with the Labour Advisory Board to conduct the revision of the legislation, and that comments made by the Committee will be submitted to the Board. ***The Committee hopes that in the course of the ongoing revision of national labour legislation due account will be taken to the exposure limits adopted by the International Commission on Radiological Protection in its 1990 Recommendations, to which the Committee referred in its 1992 general observation under the***

Convention, in order to ensure the effective protection of workers exposed to ionizing radiation in the course of their work.

Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable. The Committee notes the Government's response indicating that there is no provision in the Labour Act for the transfer of pregnant women from work involving exposure to ionizing radiation to another job. The Committee notes, however, the Government's statement that the National Occupational Safety and Health Policy, adopted by the Cabinet on 9 November 2004, can provide a suitable framework for drafting legislation that could make provision for such transfer and that legislation is drafted in consultation with the Labour Advisory Board. **The Committee hopes that in the course of the ongoing revision of the national labour legislation, due account will be taken to the need to ensure that suitable alternative employment opportunities, not involving exposure to ionizing radiations, be provided for workers having accumulated an effective dose beyond which detriment to their health considered unacceptable is to arise, as well as for pregnant women, who otherwise may be faced with the dilemma that protecting their health means losing their employment.**

Occupational exposure during an emergency. The Committee notes that there is currently no provision in the Labour Act laying out the circumstances in which exceptional exposure is authorized. **With reference to paragraphs 16 to 27 and 35(c) of its 1992 general observation under the Convention, and paragraphs V.27 and V.30 of the International Basic Safety Standards issued in 1994, the Committee requests the Government, in the course of the ongoing revision of the national labour legislation, to take due account of the need to determine circumstances in which exceptional exposure is authorized, and to make protection as effective as possible against accidents and during emergency operations, in particular with regard to the design and protective features of the workplace and the equipment, and the development of emergency intervention techniques, the use of which in emergency situations would enable the exposure of individuals to ionizing radiations to be avoided.**

Bolivia

Benzene Convention, 1971 (No. 136) (ratification: 1977)

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

The Committee notes the adoption of Supreme Decree No. 26171 of 4 May 2001, supplementing the Environmental Regulations for the hydrocarbon sector issued by Supreme Decree No. 24335 of 19 July 1996. The Committee notes that the new Decree covers activities and factors liable to affect the environment in general, that is to contaminate the air, water in all its states, soil and subsoil, in excess of the permissible limits established, but that it does not contain measures respecting the protection of workers against risks of poisoning deriving from their exposure to benzene. The Committee notes that this report does not contain sufficient information in reply to its previous comments, and recalls that from its first comments in the 1980s the Committee has been drawing the Government's attention to the necessity to adopt measures to give effect to many substantive provisions of the Convention, in accordance with *Article 14 of the Convention*. **The Committee notes that such measures have not been adopted and urges the Government to ensure that they are adopted in the near future by the competent authorities, including the government body referred to above, in relation to the following provisions of the Convention: Article 1(b) (adoption of protective measures in relation to products the benzene content of which exceeds 1 per cent by volume); Article 2 (use of harmless or less harmful substitute products); Article 4, paragraphs 1 and 2 (prohibition of the use of benzene and products containing benzene as a solvent or diluent in certain work processes, except where the process is carried out in an enclosed system or where there are other equally safe methods of work); Article 6, paragraphs 1, 2 and 3 (measures taken to prevent the exposure of workers to benzene; to ensure that, in any case, workers are not exposed to a concentration of benzene in the air exceeding a ceiling value of 25 parts per million; and to issue directions on carrying out the measurement of the concentration of benzene in the air of places of work); Article 7, paragraph 1 (the carrying out of work processes involving the use of benzene or of products containing benzene in an enclosed system); and Article 11, paragraphs 1 and 2 (prohibition to employ pregnant women, nursing mothers and young persons under 18 years of age in work processes involving exposure to benzene or products containing benzene).**

Article 9. Pre-employment and subsequent medical examinations. The Committee refers to its previous comments concerning draft regulations respecting medical services covering, among other matters, the need to perform medical examinations prior to employment and during and after employment. **As its latest report does not contain information in this respect, the Committee requests the Government to indicate in its next report whether, in the meantime, the above regulations respecting medical services have been adopted and, if so, it requests the Government to indicate whether the provisions contained in the draft regulations have been established in such a manner as to ensure that medical examinations are carried out taking into account this Article of the Convention. The Committee also requests the Government to provide a copy of the above text.**

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

Brazil

Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)

Legislation. The Committee notes with *satisfaction* the adoption by the National Committee on Nuclear Energy (CNEN) of standard NN 3.01/2005 which, inter alia, establishes exposure limits which are in line with those recommended by the International Commission on Radiological Protection (ICRP) for workers who are directly engaged

in radiation work, pregnant workers and in emergency situations to which the Committee referred in its 1992 general observation on the Convention in relation to *Articles 3(1), and 6(2), of the Convention*.

Article 1. Competent authority. With reference to its previous comments, the Committee understands that Decree No. 2210/97 continues to be fundamental with regard to the distribution of competencies in relation to the Convention. This Decree creates the Protection System for the Brazilian Nuclear Programme (SIPRON) which establishes the functions and relationship of the CNEN, the Coordinating Committee for Protection concerning the Brazilian Nuclear Programme (COPRON), the Ministry of Labour and the Jorge Duprat Figueiredo Foundation of Occupational Safety and Medicine (FUNDACENTRO) in the drafting of standards on radiation protection. In this regard, the Government indicates that the body responsible in Brazil for standards on radiation protection is the CNEN, which is linked to the Ministry of Science and Technology, and that the Ministry of Labour plays a complementary role. ***The Committee requests the Government to provide: (a) information on the manner in which the competent authority consults representatives of employers and workers when drafting such standards in accordance with this Article of the Convention, and (b) information on the consultations held during the period covered by the next report.***

Articles 3(1) and 6(2). Pregnant workers. The Committee notes that according to paragraph 5.4.2.2 of the standard mentioned, workers exposed to radiation in the course of their work must undergo monitoring from the declaration, and for the remaining duration, of their pregnancy, to the extent necessary to ensure that the foetus does not receive an effective dose superior to 1 mSv. ***The Committee requests the Government to provide information on the measures taken to ensure that all pregnancies are declared without delay, as indicated in its 1992 general observation on the Convention, and on any protection measures taken with regard to women of child-bearing age.***

Article 14. Alternative employment or other measures offered for maintaining income where continued assignment to work involving exposure is medically inadvisable. In its previous comments, the Committee requested the Government to indicate the steps taken or envisaged, with a view to ensuring effective protection of workers, to provide alternative employment to workers who have accumulated exposure beyond which an unacceptable risk of detriment could occur. The Committee notes that the activities of the Department of Safety and Health relate to the prevention of occupational accidents and health hazards but also notes that these activities do not include matters such as offering alternative employment to workers exposed to radiation or other harmful agents beyond the authorized limits. The Committee draws the Government's attention to the fact that the indication that the Department of Safety and Health is not competent to deal with alternative employment is irrelevant since the obligations assumed when ratifying the Convention are obligations of the Government and not of a particular ministry or department. ***Recalling paragraphs 28–34 and 35(d) of its 1992 general observation on the Convention and the Basic Safety Standards for Radiation Protection, which recommend establishing the possibility of alternative employment or social security measures for all workers who have accumulated an effective dose beyond which detriment considered unacceptable may occur, the Committee requests the Government to provide information on the measures taken to that end.***

Part V of the report form. Application in practice. The Committee notes that the Government provides very little of the information requested by the Committee on the application of the Convention in practice and that it indicates that it is unable to provide such information since it is beyond the remit of the Ministry of Labour. The Committee considers that there is a series of standards and institutions in Brazil which meet the requirements of the Convention but that it is not possible to obtain a comprehensive picture concerning the application of the Convention if it does not have information on its application in practice. ***The Committee requests the Government to provide information on the protection measures to ensure that the exposure limits established in standard NN 3.01/2005 are not exceeded in practice. Furthermore, it requests the Government to make an effort to obtain from the relevant institutions the information requested by the Committee in the last paragraph of its previous observation and to provide it together with any information available on the application of the Convention in practice, including, for example, a copy of the radiological protection plans under standard NN 3.01/2005, as well as information on their application in practice. Furthermore, referring to its comment on the application of the Occupational Safety and Health Convention, 1981 (No. 155), in particular concerning the difficulties encountered by the labour inspectorate in enforcing the legislation in certain companies, the need for a coherent policy and the coordination between the various authorities, the Committee requests the Government to take these aspects into account with regard to Convention No. 115 and to provide information on this matter.***

Benzene Convention, 1971 (No. 136) (ratification: 1993)

The Committee notes the Government's report, received on 31 October 2008, with its reply to the comments made by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILÍQUIDA/RS), with the attachments referred to in the Committee's comments under the Occupational Safety and Health Convention, 1981 (No. 155).

The Committee notes that SINDILÍQUIDA/RS's allegations concern the application of the Convention more specifically in the petrochemical sector. These allegations relate to the application of the following Articles of the Convention:

- *Article 5 of the Convention. Effective protection of workers exposed to benzene in the petrochemical sector.* SINDILÍQUIDA/RS indicates that since 2003 and up to the present time, the enterprises Petrobras Distribuidora SA,

Shell Brazil and Distribuidora de Produtos de Petróleo IPIRANGA S/A have not adopted appropriate measures to ensure the effective protection of workers exposed to benzene, despite the instructions of the Ministry of Labour and a conviction of Petrobras in the labour courts. It affirms that in the present case there is a deliberate intention not to comply with clear legal provisions and the orders of the labour delegation and the courts. SINDILÍQUIDA/RS states that certain products handled by workers in the sector contain over 3 per cent of benzene and that the workers are exposed to serious risks, with particular reference to “driver-operators”, in view of the absence of prevention and protection measures in the sector. In general, these driver-operators are not employees of the enterprises concerned, as their services are engaged under different forms, and they perform the tasks of loading and unloading without protection or supervision of any type by the approved employees of these enterprises.

- *Article 6. Measures taken to prevent the escape of benzene vapour into the air of places of employment.* SINDILÍQUIDA/RS indicates that multinational enterprises in the sector do not take the technical measures for the implementation of the Article and adopt a confrontational attitude in relation to the labour inspectorate and the courts. According to the report of the labour inspectorate attached to the communication, Petrobras is not taking the measures required under this Article in relation to driver-operators, and Shell has reached the point of denying any responsibility in relation to these workers. The report adds that the Shell enterprise depends almost solely on appropriate human behaviour for the prevention of accidents in inflammable environments, in contradiction with international trends in this respect.
- *Article 8. Adequate means of personal protection against the risk of absorbing benzene through the skin and the risk of inhaling benzene vapour.* SINDILÍQUIDA/RS indicates that enterprises in the sector do not give effect to this Article and, according to the report of the labour inspectorate, driver-operators do not even use respiratory masks and, in certain enterprises, they do not even know what that means. SINDILÍQUIDA/RS states that the administration has not adopted measures for the rapid imposition of penalties in such cases, and that the respective procedures can drag on indefinitely without any solution being found.
- *Article 9. Regular medical examinations and exemptions.* According to the communication referred to above, medical examinations are not undertaken of workers exposed to benzene, particularly in the case of driver-operators. The union organization refers to the conclusions of the labour inspection report referred to previously.
- *Article 14(c). Labour inspection.* SINDILÍQUIDA/RS indicates that despite the existence of an appropriate inspection system to supervise the application of the provisions of the Convention, the notifications and orders that it issues, and the penalties imposed, have not resolved the major problems that arise, certain of which constitute serious and imminent risks to health. The trade union considers that the existence of supervision that is no more than “a legal fiction” amounts to a failure to give effect to *Article 14*.

The Committee notes that the reports of the labour delegation submitted by SINDILÍQUIDA/RS confirm that enterprises in the sector do not give effect in practice to the legislation implementing the Convention. With regard to Petrobras, the report of the regional labour delegation indicates that no effect has been given to the requirement to formulate and implement the various prevention and monitoring programmes for occupational exposure to chemicals that are envisaged in the legislation, and that driver-operators do not use protective equipment, even though it is recognized that they are in contact with carcinogenic substances. The report of the labour delegation concludes that no effect has been given to the court ruling of 2003, and that the situation has deteriorated. The Committee considers that the conclusions of the report on Shell are a cause for even greater concern, as they indicate that the enterprise is persevering with their policy of excluding driver-operators from the process of the management and control of risks by transferring these responsibilities to third parties. The Committee further observes that, in its reply, the Government indicates that SINDILÍQUIDA/RS represents workers who are engaged in the road transport of liquids or gases that are hazardous and inflammable, including benzene, and participates in the Benzene Commission of Rio Grande do Sul. It refers to the various inspections carried out in areas where these workers operate, and principally in terminals of the petrochemical industry and refineries, which have resulted in various reports being drawn up indicating repeated violations. Some of these reports have been sent to the Office of the Public Prosecutor for Labour Matters and have provided the basis for public civil actions in the courts that are still ongoing. However, certain inspection activities carried out by the Ministry of Labour have been interrupted by court injunctions suspending them as a preliminary measure. The Government adds that, despite these circumstances, it has continued its efforts and it should be noted that all the supervisory measures taken have been intended to achieve compliance with the provisions of the Convention. The Government affirms that the labour inspectorate will continue to supervise the application of the Convention in the sector. The Committee observes that the Government does not deny the failure to give effect to the above Articles of the Convention in the present case. It also notes that the labour delegation of Rio Grande do Sul appears to have followed the situation carefully. Violations have been reported, civil action taken against the enterprises and reports drawn up on the effect given to the recommendations made by the courts. The follow-up reports conclude however that none of the recommendations have been implemented and that the situation has deteriorated. **The Committee therefore requests the Government to:**

- ***examine the causes of this situation and to undertake an assessment of the reasons why, in this case, its efforts have not resulted in an improvement in the situations described in practice;***

- *work with the social partners to seek solutions with a view to drawing up proposals for action to find a way out of this impasse, which has occurred despite the efforts of the labour inspectorate;*
- *take this situation into account when formulating the national policy envisaged by Convention No. 155, in consultation with the social partners;*
- *make efforts to ensure that effect is given in practice to Articles 5, 6, 8 and 9 of the Convention in the present case and in all sectors engaged in activities resulting in the exposure of workers to benzene; and*
- *provide detailed information on the measures adopted and the results obtained in practice. In particular, the Committee requests it to provide detailed information of developments in the situation in practice of driver-operators in the Rio Grande do Sul region.*

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

Occupational Cancer Convention, 1974 (No. 139) (ratification: 1990)

The Committee notes the Government's report of 31 October 2008, containing a reply to the comments made by the Committee and those made by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of Rio Grande do Sul (SINDILÍQUIDA/RS), including the attachments referred to in the Committee's comments under the Occupational Safety and Health Convention, 1981 (No. 155).

Article 1 of the Convention. Carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control. The Committee notes that Decree No. 6042/07 contains a list of substances which causes diseases and occupational risk factors in which a series of substances are recognized as being carcinogenic. According to the report, by means of this Decree the Ministry of Social Security established a new mechanism to determine the link between health impairments and the work performed, and whether or not the enterprise has provided notification of the incident. The existence of links is recognized at three sequential and hierarchical stages: (1) the link is established between a substance and a health impairment when it is included in the list annexed to Decree No. 6042/07 and is known as a *technical-occupational or work-related link*; (2) the link is established when the worker suffers a health impairment related to the economic activities mentioned in the Decree, except when an expert from the Ministry issues a reasoned opinion setting aside the existence of the link, which is known as a *technical-epidemiological prospective link*; and (3) the link is established by an expert from the Social Security Department following an examination, even where the economic activity is not listed in the Decree, which is known as a *technical individual link*. The Government also refers to a series of recent developments regarding legislative and technical standards, such as the adoption of Act No. 12684 of the State of São Paulo prohibiting chrysotile asbestos and the discussion in the Standing Joint Tripartite Commission concerning Regulatory Standard No. 15 on ionizing radiations. ***The Committee requests the Government to provide information on the effect given in practice to this mechanism for the establishment of occupational links envisaged in Decree No. 6042/07. The Committee also requests the Government to provide information on the manner in which the list of carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control is periodically updated, and to keep it informed of any further developments in this respect.***

Articles 4 and 5. Information on carcinogenic substances and agents and on the measures to be taken, to ensure that workers benefit from medical examinations and supervision of their state of health. SINDILÍQUIDA/RS refers to the situation of workers in the petroleum sector in Rio Grande do Sul, and particularly to driver-operators. It affirms that in practice effect is not given to these provisions of the Convention, as information is not provided on the hazards of carcinogenic products, such as benzene. It adds that in innumerable cases appropriate medical examinations are not carried out to assess the exposure and state of health of workers in relation to occupational risks. SINDILÍQUIDA/RS affirms that it is not possible to document all the cases in Brazil where there is a breach of these rules, but that through the report of the labour delegation of Rio Grande do Sul evidence is provided on a few specific cases such as violations by Petrobras, Shell and other enterprises in the sector. It concludes that such situations occur throughout the country and that action is not taken to bring an end to these abuses involving serious and often irreversible exposure. In its reply, the Government indicates that in Brazil the relevant Standards are NR-01, NR-07 establishing the Occupational Health Medical Programme and NR-09 on the Environmental Risks Programme. The Committee observes that the matter at issue is the effect given in practice to these provisions. The Committee, on the one hand, welcomes the quality and exhaustive nature of the reports of the labour delegation and, on the other, observes that these efforts have not yet succeeded in securing effective compliance with the legislation in practice. Nevertheless, these reports provide a useful assessment of the situation in practice. ***The Committee urges the Government to increase its efforts to take all necessary measures to give full effect to these provisions of the Convention and requests it to provide detailed information on measures taken and results achieved in practice, particularly in relation to the workers and sectors referred to above.***

Article 6(c), and Part IV of the report form. Labour inspection services. The Government indicates that when enterprises are found to be systematically failing to comply with the legislation, the Ministry of Labour and the Office of the Public Prosecutor for Labour Matters can take civil action, in addition to increasing supervision carried out by the labour inspection services. ***Bearing in mind the communication of SINDILÍQUIDA/RS, which indicates that neither the actions of the labour inspectorate nor the civil actions taken have succeeded in ensuring that the enterprises at***

issue comply with the legislation giving effect to the Convention, the Committee invites the Government to take all relevant measures to achieve progress in practice in such serious matters as exposure to carcinogenic substances.

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

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)

The Committee notes the Government's report of 31 October 2008, containing replies to certain points of the Committee's previous comments and the observations by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILÍQUIDA/RS), including the attachments referred to in the Committee's comments under the Occupational Safety and Health Convention, 1981 (No. 155).

Article 5, paragraph 4, of the Convention. Right of workers' representatives to accompany labour inspectors on their supervisory visits. With reference to its previous comments in which it noted a communication made by various organizations of public employees (SERGIPE), alleging that the regional delegate of the Ministry of Labour was prohibiting inspectors from being accompanied by workers' representatives, the Committee notes that, according to the Government, this situation has now been resolved. The Committee notes the allegation by SINDILÍQUIDA/RS that, in violation of this provision of the Convention, there is an attitude of non-collaboration and flagrant disrespect of workers and their representative organizations in most enterprises. SINDILÍQUIDA/RS affirms that its current President-elect, who signed the communication, is not able to accompany inspectors in their work. It further notes that, according to the Government, under the terms of section 1.7 of Regulatory Standard NR-01 of Order No. 3214/78, as amended by Order No. 03 of 7 February 1988, employers are required to allow workers' representatives to accompany them in supervision of occupational safety and health laws and regulations. The Government adds that it has no knowledge of any cases of obstructions of this right related to inspection in the workplace. The Committee considers that the Government does not respond to the issues raised in this respect. ***The Committee therefore invites the Government to take the necessary measures to give full effect in practice to this Article of the Convention, including measures to ensure that representatives of SINDILÍQUIDA/RS can accompany labour inspectors in their supervisory visits.***

Article 6, paragraphs 1 and 2. Required collaboration where several employers undertake activities simultaneously. The Committee notes that, according to SINDILÍQUIDA/RS, many employers, encouraged by the failure of the authorities to take action, do not feel responsible for the application of the Convention. The union adds that employers consider themselves exempt from the need to adopt measures to give effect to the Convention on the pretext of the contracting out of their activities, or in other words the transfer of the responsibility to other employers. It adds that, in practice, when there is more than one employer, instead of collaborating with a view to the application of the Convention, nobody takes on responsibility for anything, which is prejudicial to the workers. The Committee notes that, according to the Government, contracting out or subcontracting is a very topical and significant issue in industrial relations and in the increasing precariousness of conditions of employment. The Government adds that the privatization processes of major enterprises, which were formally public, have been responsible, especially over the past ten to 15 years, for major changes in the relations between enterprises, which have begun to be reflected in the legislation. However, various issues related to health and safety, such as medical examinations and the supervision of environmental risks, are under the responsibility of the Internal Commission for Accident Prevention (CIPA) and the Specialized Occupational Engineering, Safety and Medicine Services (SESMT), among other institutions. The Committee notes that various regulatory standards refer to this issue (NRs 04, specialized services – as amended by NR 17 –; 05, accidents; 07, medical examinations; 09, environment-related hazards; 18, construction; 22, mining; and 24, workplaces). It adds that section 4.5.3 of NR 04, as amended by NR 17, provides for the possibility of establishing joint SESMTs, although this is optional and subject to certain conditions, which would appear to indicate that the establishment of SESMTs in the presence of several employers is not compulsory. The Committee notes the union's reference to the situation of driver-operators for Petrobras, Shell and other enterprises in the refining sector of Rio Grande do Sul in respect of whom, according to the union, none of the employers take responsibility for the application of the Convention. The Committee draws the Government's attention to the fact that this Article establishes the requirement that whenever several employers undertake activities simultaneously at one workplace, they shall have the duty to collaborate in order to comply with the prescribed measures and that "in appropriate circumstances, the competent authority shall prescribe general procedures for this collaboration". Accordingly, collaboration between employers is not optional, but a requirement. ***The Committee therefore requests the Government to adopt the necessary measures to give full effect to this Article in practice, and in particular to re-examine the provisions requiring collaboration between the various employers involved in undertaking activities, including in refineries, with a view to securing compliance with the requirement of collaboration in practice, and to provide information on this matter. The Committee also requests the Government to provide specific information on the application of this Article in the case of the driver-operators to which SINDILÍQUIDA/RS refers.***

With regard to its previous comments on the working conditions in the various branches of the telecommunications company TELEMAR, the Government indicates that the adoption of Regulatory Standard NR 17, of 1 August 2007, amended the wording of NR 04. ***Noting that the latter NR includes section 4.5.3 respecting the apparently optional establishment of SESMTs, the Committee reiterates its comments made in the previous paragraph. The Committee also***

once again requests information on the application in practice of the measures adopted to address the deterioration of safety and health conditions in the telecommunications industry, including information on the establishment of SESMTs, the measures adopted to secure in practice the collaboration envisaged in Article 6 of the Convention, and the results achieved in the telecommunications sector.

*Articles 10, 13 and 16. Personal protective equipment, the requirement to provide information, appropriate penalties and appropriate inspection. SINDILQUIDA/RS alleges that in various cases personal protective equipment is not supplied, workers are not provided with information on occupational hazards and that, even though the labour inspectorate provides guidance, issues notifications and reports situations, this does not imply a change of attitude. **The Committee refers to its comments under Convention No. 155 and hopes that, in collaboration with the social partners, the Government will develop an effective strategy, including the provision of appropriate penalties, to ensure that the measures adopted by the labour inspectorate are given effect in practice and it requests the Government to provide information on this matter.***

*Article 12. Notification to the competent authority of the use of processes, substances, machinery and equipment which involve the exposure of workers to occupational hazards in the working environment due to air pollution. The Committee notes the information provided by the Government indicating that the occupational exposure limit values adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) are applied, or those established by collective bargaining where they are more rigorous, and it notes the standards for their implementation annexed to the report. **The Committee requests the Government to provide more detailed information on the effect given in law and practice to the obligation of notification as set out in this Article.***

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1992)

The Committee notes the Government's report of 31 October 2008, the observations of the Single Confederation of Workers (CUT) of 28 August 2008, the observations of the Union of Forensic Experts of the State of São Paulo (SINPCRESP) of 19 September 2008 and the Government's reply to these observations. The Committee also notes that the elements provided by the Government in relation to the observations made by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILQUIDA/RS), which were forwarded to the Government on 8 November 2007, do not address the specific concerns raised in the observations. The latter comments were accompanied by the following attachments: a report of the regional labour delegation of Rio Grande do Sul, dated 31 July 2007, on the implementation of the orders issued in Ruling No. 00075-2003-024-04-00-0 of the 24th labour jurisdiction of Porto Alegre; two reports on similar issues relating to the enterprise Shell Brazil from 2004 and 2005; and newspaper articles on the increase in accidents affecting the road transporters of liquids and gases. In addition, the Committee notes that observations by the Federal District Teachers' Union (SINPRO-DF) on the application of some of the articles of the Convention were received by the Office on 1 December 2009. **The Committee invites the Government to submit any comments it deems relevant in response to these observations with its next regular report, due in 2010.**

*Articles 1 and 2 of the Convention. Application of the Convention to all branches of economic activity and to all the workers in the branches concerned. The CUT indicates that informal work is a persistent problem, that a large number of workers are not declared and that, accordingly, policies are not adapted to the real number of workers who should normally be covered by them. According to the CUT, in the metropolitan areas of Recife/PE, Salvador/BA, Belo Horizonte/MG, Rio de Janeiro/RJ, São Paulo/SP and Porto Alegre/RS, the active population amounts to 23,576,000 persons, of whom 21,668,000 are considered to be in work, of whom only 9,494,000 possess a card giving entitlement to employment injury insurance (SAT). The CUT indicates that undeclared work prevents the formulation of policies for the prevention of accidents which take into the account the real number of workers concerned. The Committee notes that in its report the Government does respond fully to the Committee's request for information made in 2007 concerning the progress achieved by the Government to increase occupational safety and health protection for all Brazilian workers. The Government indicates, however, that the labour inspectorate plays an important role in the fight against undeclared work. For example in 2008, 668,857 employment relationships were regularized after intervention by the labour inspectorate. **The Committee requests the Government to continue to provide information on the measures adopted, in consultation with the social partners, to extend protection in relation to occupational safety and health to all Brazilian workers, taking due account of the CUT's observations.***

Articles 4 and 8. Formulation of a coherent national policy and consultation with the representative organizations of employers and workers for the formulation, implementation and periodical review of the national policy on occupational safety and health. The Committee notes that, according to the conclusions of the report of the regional labour delegation of Rio Grande do Sul, dated 31 July 2007, concerning Petrobras, none of the six following requirements established by the court have been given effect by the enterprise: (1) the obligation to ensure that drivers of service-providing enterprises do not undertake loading and unloading; (2) the obligation to prepare and implement audio prevention and protection programmes; (3) the obligation to prepare and implement a prevention and supervision programme for occupational exposure to chemicals, including respiratory protection programmes; (4) the obligation to implement numerous measures for the prevention of employment accidents, including vocational training; (5) the

obligation to prepare and apply a system of integrated occupational risk management based on the programmes envisaged in the Safety and Health Regulatory Standards of the Ministry of Labour, including in service-providing enterprises; and (6) the obligation to carry out biological tests of drivers, particularly where there is a risk of developing work-related diseases. An opinion issued by the labour delegation referring to the Shell enterprise reaches similar conclusions. The Committee notes that the Government confines itself to recalling the existing Regulatory Standards, but it recalls that *Article 4* establishes, among other requirements, the obligation to implement the policy. Furthermore, under the terms of *Article 8*, governments are under the obligation to take such steps as may be necessary to give effect to *Article 4* of the Convention. The Committee further notes that the new information provided by the Government in its latest report is confined to indicating that the proposed national policy has been submitted for public consultation and should be re-examined by the Tripartite Inter-Ministerial Occupational Safety and Health Commission (CTSST), established by Inter-Ministerial Order No. 152 of 13 May 2008. In its 2008 observations, the CUT emphasizes that, following the public consultation on the paper “National Occupational Safety and Health Policy (PNSST)” little progress has been made in the adoption of the policy. In this context, the Committee draws the Government’s attention to the 2009 General Survey on occupational safety and health (the General Survey), with particular reference to its paragraphs 53–89. ***The Committee invites the Government to take measures as rapidly as possible to finalize the process of the adoption, implementation and review of a coherent national policy on occupational safety and health, as required by Article 4 of the Convention, and to provide detailed information in its next report on the progress achieved. It also requests it to take the necessary measures for the implementation of the national policy, in accordance with Articles 4 and 8 of the Convention, and to provide detailed information on this subject, including on the petrochemicals sector in Rio Grande do Sul.***

Article 9, paragraph 1. An adequate and appropriate system of labour inspection to secure the enforcement of laws and regulations concerning occupational safety and health. Comments made by SINDILQUIDA/RS. The petrochemical industry. The Committee notes that the Government has not fully replied to the comments made by SINDILQUIDA/RS. According to SINDILQUIDA/RS, the labour inspectorate has been unable to enforce, despite the efforts made, the following Articles of the Convention: *Article 16(3)*: The union indicates that driver-loaders have no protective equipment; *Article 17*: The union indicates that, in practice, simultaneous operations by several employers result in none of them taking responsibility for the application of safety and health standards to driver-loaders; *Article 18*: Measures to deal with emergencies and first-aid arrangements; *Article 19(d)*: Training of workers and their representatives; and *Article 20*: Cooperation between management and workers. The Committee notes with particular attention the opinion of the regional labour delegation of Rio Grande do Sul dated 31 July 2007, in which it appears that Petrobras, despite the orders issued by the labour inspectorate, the penalties and even the conviction in a court of law, has not taken the necessary measures to improve the safety and health situation. A similar opinion was issued with regard to the Shell enterprise. The Committee notes that, despite the vigilance of the labour inspection services of Rio Grande do Sul to enforce the relevant legislation, enterprises persist in failing to give effect to the laws and requirements relating to occupational safety and health and that this raises a doubt as to whether the inspection system is appropriate and sufficient. ***The Committee requests the Government to provide its assessment of the effectiveness of the means that exist to address these issues, invites it to continue making efforts to ensure that the enterprises concerned give effect to safety and health standards and requests it to provide information on the measures adopted or envisaged. It once again requests the Government to provide its comments in reply to the communication from SINDILQUIDA/RS.***

Article 11(c). Occupational accidents and diseases – Notification procedures and annual statistics. The CUT indicates that undeclared work not only hampers the formulation of accident prevention policies that take into account the real number of workers, but that this situation also has an impact on employment accident statistics, as undeclared workers do not appear in the records. In this respect, the CUT provides information supplied by, inter alia, the Wood Industry Workers’ Confederation (CONTICOM), which demonstrates that all occupational accidents and diseases are not properly notified. With reference to subcontracting, the Committee notes the information communicated by the CUT from the Union of Oil Workers of Minas Gerais (SINDIPETR/MG), according to which it is common practice for the number of accidents officially recorded to be significantly lower than the number that actually occur, and the Union of Oil Workers of Ceará (SINDIPETRO/CE), according to which workers covered by subcontracting arrangements are the most vulnerable. The CUT indicates that this problem affects the whole petroleum sector, including Petrobras. It also indicates the problem of inadequate criteria for notification and gives the example of the enterprise Arcelor-Mittal, with the indication that the deaths of six metallurgical workers in Espírito Santo were not registered. In Minas Gerais, only deaths occurring at the workplace are declared, while those that occur in ambulances or in hospitals are not taken into account. The CUT concludes that, despite the praiseworthy attempt by the Government to adopt and endeavour to implement a safety and health policy, the measures taken have not proven to be effective and these difficulties should incite the Government to take adequate measures for the effective implementation of the Convention. The CUT considers that technical assistance from the Office is essential for this purpose. In reply, the Government indicates that the labour inspectorate has prepared a plan making the investigation of occupational accidents the priority for 2009 and including, among other action, a review of the procedures for the identification of critical sectors. The Government adds that, among the measures adopted to address this problem, the Ministry of Labour has promoted the use of more effective techniques for the analysis of accidents through the publication of a paper on approaches to the analysis of occupational accidents, which is available on the web site of the Ministry of Labour. In this context, the Committee also draws the Government’s attention to the General Survey referred to above, and particularly its paragraphs 135 to 137 and to 296, as well as

paragraph 209(b) and (i) of the conclusions adopted following the discussion of the General Survey at the Conference. ***The Committee welcomes the Government's decision to make the analysis of employment accidents a priority for 2009. It invites the Government to take into account the problems indicated by the CUT and to provide detailed information on the measures adopted or envisaged to address the problems in this area, including the construction, petrochemicals and metallurgy sectors. The Committee reminds the Government that it may request the technical assistance from the Office, if it considers it necessary.***

Article 15. Coordination between the various authorities. Communication of the SINPCRESP. The Committee notes that the observations by the SINPCRESP refer to the occupational safety and health conditions of criminology experts of the State of São Paulo. The latter are auxiliaries in the criminal justice system, with highly specialized technical knowledge. The SINPCRESP describes in detail their conditions of work and alleges that they work in premises that are not suitable, without protective equipment, even though they use hazardous products and work on average 13 hours a day. It adds that the safety and health conditions are deplorable and that preventative action is not taken. As employees of the State of São Paulo, they are covered by general legislation and that of the State of São Paulo, but are not covered by the relevant regulations of the Ministry of Labour. According to an information note of the Ministry of Labour entitled "Information/SRT No. 96/2008" of 30 June 2008, the federal Government cannot intervene in the above case due to the autonomy of the federal states by virtue of which they formulate their own policies with respect to their relations with their public officials. Nevertheless, according to the same note, the Ministry of Labour can propose measures to reinforce the social partners and request a technical opinion from the Office of the Regional Superintendent of Labour of São Paulo on the safety and health conditions of criminology experts. This technical opinion would provide a basis for the Ministry of Labour to request the competent authorities in São Paulo to improve the working conditions of the experts. The Committee also notes that, under the terms of section 5 of Decree No. 5.961 of 2006, agreements may be concluded with, among other parties, the States of the Union for the implementation of the activities entrusted to the Integrated Occupational Health System for Federal Employees (SISOSP). The Committee considers that, in addition to the specific safety and health situation of criminology experts in the State of São Paulo, this communication raises an issue of a general nature relating to the application of the Convention in the various States and public administrations. The Committee recalls that it examined a similar issue in its 2007 observation following a communication from the Federal Union of Public Service Workers of the State of Goiás (SINDSEP-GO), according to which initiatives to improve occupational safety and health in the public sector have only had a limited impact due, among other factors, to the division of responsibilities between the Federal Government and local government. These cases appear to bear witness to a problem in the application of the Convention in the public sector in the various states of Brazil. Although aware of the difficulties that the application of the Convention can raise in federal states, the Committee emphasizes that the Government is under the obligation to adopt appropriate measures to ensure the application of ratified Conventions throughout its territory. It recalls in particular that, under the terms of *Article 15* of the Convention, with a view to ensuring the coherence of the national policy referred to in *Article 4* and of measures for its application, each Member shall make arrangements to ensure the necessary coordination between various authorities and bodies called upon to give effect to Parts II and III of the Convention. The Committee notes that the measures envisaged in Information Note SRT No. 96/2008 and the agreements envisaged in section 5 of Decree No. 5.961 of 2006 could contribute to this. ***The Committee requests the Government to: (i) make appropriate arrangements to ensure the necessary coordination, as provided for in Article 15, to secure the application of the Convention, including to employees in the various public administrations; (ii) give effect to the measures set out in Article 7 of the Convention in relation to the criminology experts of the State of São Paulo; and (iii) provide detailed information on the measures adopted and their impact in its next report.***

Articles 4, 8 and 15. Coordination and coherence of the national policy. The Committee notes the information on the efforts made by the various ministries, specialized institutions such as FUNDACENTRO, and the operation of: (a) several tripartite commissions specializing in various aspects of safety and health, the reports of which can be consulted on the web site of the Ministry of Labour (http://www.mte.gov.br/seg_sau/comissoes.asp); and (b) tripartite groups formulating technical standards in the field of occupational safety and health. In this respect, the Committee recognizes the efforts made by the Government to achieve progress in the formulation and implementation of occupational safety and health standards. However, noting the communications reporting numerous problems of application in practice, the Committee considers that these efforts should be accompanied by an appropriate methodology with a view to ensuring the coherence of the national policy required by the Convention, and the necessary coordination between the various authorities and institutions responsible for giving effect to Parts II and III of the Convention, with a view to its effective application. ***The Committee therefore invites the Government to take these fundamental aspects into account and to provide its comments on this subject.***

Article 17. Collaboration between enterprises engaged in activities simultaneously at one workplace. With reference to its comments under Article 9 of the present Convention and Article 6 of the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148), the Committee requests the Government to take measures to secure the effective application of this Article in practice, and to provide detailed information on the measures adopted and their impact in its next report.

Part V of the report form. Application in practice. The Committee notes the difficulties in the application of the Convention raised in the observations examined above. These problems appear largely to relate to insufficient coordination between federal and local bodies in relation to OSH in the public sector and to problems related to enforcement encountered by the labour inspectorate, for example in the petrochemical sector. These problems appear to be compounded by the extent of subcontracting in the sector and the difficulties involved in ensuring the application of the Convention as regards these vulnerable workers. Another problematic area relates to shortcomings in the recording and notification of occupational accidents and diseases which implies that the possibilities are hampered for the authorities to have a proper appreciation of the actual situation in the country as regards occupational safety and health and the impact of the actions taken. Against this background, the Committee notes with *interest* that Inter-Ministerial Order No. 152, of 13 May 2008, establishes the Tripartite Committee on Occupational Safety and Health (CTSST), with the objective, inter alia, of evaluating and proposing measures for the implementation of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Committee considers that an effective implementation of the systematic methodology reflected in Convention No. 187 – which constitutes a more express regulation of the strategy underlying Convention No. 155 – could contribute to addressing the problems referred to above. The Committee also invites the Government to consider whether a ratification of the Protocol of 2002 to Convention No. 155 would be helpful as a means to ensure that the Government would dispose of the tools to be able to assess its progress in this area as reflected in statistics. ***With reference to the task entrusted by Order No. 152 to the CTSST in relation to the national policy, the Committee requests the Government to adopt every measure necessary to address the issues raised above in this context, and to ensure that all public employees at the federal, State and local levels participate in the development and are covered by the national policy, as required by the present Convention. The Committee requests the Government to keep it informed of all relevant progress in this respect.***

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2006)

The Committee notes the communication of 28 August 2008 sent by the Single Confederation of Workers (CUT) and the Government's reply of 3 March 2009. The CUT states that with the growth in the economy, civil construction has expanded significantly but has not been matched by investment in developing the labour force, so the amount of skilled labour has not kept pace with the expansion in the sector, adding to the weaknesses that already existed. The CUT lists the weaknesses as follows: (a) policies and measures for the sector overlook the informal economy and are therefore unrealistic; (b) registration of occupational accidents does not take account of undeclared workers, so accident figures in official registers do not reflect reality; and (c) very few occupational accidents are investigated, for example in 2006, of 31,429 accidents recorded only 330 were investigated. On the matter of suitable policies, the Government states that it has published a series of occupational accident indicators by sector of activity and federal unit allowing measurement of workers' exposure to the risk levels involved by economic activity and also allowing suitable policies to be drawn up. With regard to the registration of accidents, this is done by the National Social Security Institute (INSS), which collects the relevant data by means of a special form known as an "occupational accident communication" (CAT). As to the investigations of accidents, the Government states that it is not possible to analyse all cases because the Ministry of Labour in charge of occupational safety and medicine has few inspectors. The Government further indicates that labour inspectorate provides an important stimulus for the formalization and improvement of working conditions and that in 2009, thanks to the inspectorate's work, formal employment relationships were secured for 668,857 workers. On the matter of training, the Government states that training is provided through the Workers' Protection Fund. The Committee has also studied these comments in examining the application of the Occupational Safety and Health Convention, 1981 (No. 155). With regard to the present Convention, it will deal with the observations at greater length at its next session, when it examines the Government's first report, which has already been received. ***The Committee therefore asks the Government to provide information on the total number of workers in the construction sector, indicating to the extent possible the number of workers who have a formal employment relationship and the estimated number of those who do not. With regard to the latter, please indicate how they are taken into account for the purpose of: (a) preparing policies for the sector; (b) registering occupational accidents; and (c) training. Referring to the Government's decision to treat the investigation of occupational accidents as a priority for 2009, noted by the Committee in its comments on the Occupational Safety and Health Convention, 1981 (No. 155), the Committee asks the Government to provide details of the activities undertaken and the results obtained in the construction sector.***

Chemicals Convention, 1990 (No. 170) (ratification: 1996)

The Committee notes with *interest* the Government's detailed report of 31 October 2008 containing full particulars (including attachments) on the relevant legislation and the work of the labour inspectorate.

The Committee notes the full particulars supplied by the Government in reply to its previous comments in which it requested information on the manner in which the legislation gives effect to *Articles 2, 4, 5, 8(1), 8(3), 9, 10, 12, 18 and 19 of the Convention*. In particular, it welcomes the information on the manner in which *Article 4* is implemented, and on the work done by FUNDACENTRO and the National Commission on Chemical Safety (CONASQ). ***The Committee requests the Government to continue to provide information on the practical effect given to Article 4 of the Convention, including particulars of how it periodically reviews its policy on safety in the use of chemicals at work.***

Petrochemical sector. SINDILQUIDA/RS. In its previous comments, the Committee referred to observations sent by the Workers' Union of the Road Transport of Liquids and Gases, Oil Derivatives and Chemical Products of the State of Rio Grande do Sul (SINDILQUIDA/RS), which were received together with the attachments mentioned in the Committee's comments under the Occupational Safety and Health Convention, 1981 (No. 155). The Committee notes that the Government has not provided the information requested on this matter. It refers the Government to its comments on the application of Convention No. 155, the Benzene Convention, 1971 (No. 136), and the Occupational Cancer Convention, 1974 (No. 139). The Committee reiterates its request for information on the Union's assertion that in the case indicated in its observation, the Government breached the following Articles of the Convention: *Article 12* (exposure to chemicals and assessment of the exposure); *Article 13* (assessment of risks arising from the use of chemicals at work, limiting exposure and arrangements to deal with emergencies); and *Article 15* (information and training for workers). The Committee also requests the Government to provide information on the union's assertion that PETROBRAS DISTRIBUIDORA failed to prepare or implement a programme for the prevention and monitoring of occupational exposure to chemicals, failed to take measures to prevent occupational accidents and prepare for emergencies, including relevant training for the workers, and also failed to carry out biological monitoring of workers. It further alleges that the situation is the same in other enterprises in the sector. ***The Committee requests the Government to provide detailed information on the measures taken to ensure that effect is given to the provisions of the Convention in PETROBRAS and in the petrochemical sector in general, and particularly to Articles 12, 13 and 15, referred to by SINDILQUIDA/RS, and the practical results obtained.***

Articles 6 and 7. Criteria for the classification of chemicals and assessing the hazardous properties of mixtures. Article 16. Cooperation between employers and workers with respect to safety in the use of chemicals. Article 17. Requirement for workers to cooperate with their employers in the latter's discharge of their responsibilities. Article 18, paragraph 3. Rights of workers and their representatives. The Committee notes the information sent by the Government on the legislation pertaining to these Articles and requests it to send full particulars on the effect given to them in practice in the petrochemical sector with special reference to the situations referred to by SINDILQUIDA/RS.

Part V of the report form. Application in practice. The Committee asks the Government to provide information on the number of workers exposed to chemicals and on the trends in the nature of the infringements of the Convention that have been observed.

Chile

Occupational Health Services Convention, 1985 (No. 161) (ratification: 1999)

The Committee notes the Government's first two reports and the comments made by the Government concerning the observations submitted by the Latin American Confederation of Workers (CLAT) and the World Confederation of Labour (WCL), to which it referred briefly in its previous observation.

Article 5, paragraphs (a), (b) and (f), of the Convention. Occupational health services which ensure that the functions set out in this Article are adequate and appropriate to the occupational risks of the undertaking. The observations allege a failure to comply with the above provisions in relation to the Chilean National Copper Corporation (Codelco), Andina Division, in which there was allegedly a silicosis epidemic caused by a dust and silica concentration which exceeded the maximum permitted. It is indicated that the company threatened workers, denied the existing epidemic and failed to assume responsibility. According to the observation between 2000 and 2003, following the assessment of occupational diseases carried out by the Preventive Medicine and Disability Committee (COMPIN), Aconcagua Health Service, 171 cases of silicosis were detected. The trade unions state that, taking into account that there was a total of 600 employees, the figure of 171 cases of silicosis indicates that 28 per cent of the company's workers were affected. The trade unions state that the real situation could be even more serious given that the tests were limited to only a group and not to all workers in the company. Only 271 workers were examined using computerized axial tomography (CAT), which revealed 171 cases of silicosis. In other words, 60 per cent of the workers who underwent the examination were found to have silicosis. According to the communication, this indicates that the workers were exposed to physical agents which exceeded the permissible limits. The trade unions indicate that, as a result of this, the company prohibited the use of CAT and doctors were limited in the future to using only conventional X-ray systems, which, according to the trade unions, are clearly not sufficient for diagnosing silicosis. The Committee notes that, according to the Government, during the period mentioned in the observation, the authority of the Aconcagua Health Service declared 115 workers to be disabled. The Government indicates that 50 per cent of these declarations were subsequently overturned by the health authority on the basis of various technical arguments put forward in the respective appeal processes initiated in accordance with the law. The Government indicates that approximately half of the cases in which partial disability was originally declared as a result of silicosis were rejected on appeal on the basis of false positives and incorrect diagnosis using the CAT technique, which is not suitable for diagnosing this disease. The Government also indicates that, in November 2003, the country's 28 COMPINs met together and concluded that CAT scans of the chest would not be used to assess silicosis. Instead, X-rays would be carried out every six months. With regard to exposure levels, the Government indicates that levels of exposure to silica decreased between 1999 and 2004, including exposure thereto by staff. In the working areas of the underground mine and crushing plant plans were implemented to mitigate and reduce dust contamination. The

Committee recalls that under *Article 5* of the Convention, occupational health services shall ensure that the functions set out in *paragraphs (a), (b) and (f)* of that Article (identification and assessment of risks, surveillance of factors in the working environment and surveillance of workers' health) are adequate and appropriate to the occupational risks of the undertaking. The Committee cannot fail to note that the use of a methodology determined by a COMPIN and subsequently declared unsuitable by the same institutions once serious diagnoses have been established, as well as the uncertainty thereby created among the workers initially diagnosed with silicosis, raises doubts as to whether these functions have been carried out in an adequate and appropriate manner. ***With regard to paragraphs (a) and (b) of this Article, the Committee requests the Government to provide detailed information on the manner in which occupational risks are identified and how factors in the working environment are subject to surveillance, including information on prevention and exposure levels in the copper industry and in particular in the company concerned, and to include documentation on this matter, such as reports of the company's joint health and safety committees. With regard to paragraph (f) of this Article, the Committee requests the Government to provide detailed information on the manner in which surveillance of workers' health is carried out in the copper industry and, in particular, in the company in question, indicating, in particular, the type and frequency of examinations carried out by the medical services to prevent and detect silicosis. It also requests information on the current state of health of the 171 workers whose initial diagnosis of silicosis was reversed by subsequent X-ray examinations.***

Article 5(h). Vocational rehabilitation. According to the observation, the company has not transferred the workers, in accordance with section 71 of Act No. 16744, to other workplaces where they would not be exposed to the agent which caused the disease and the Aconcagua Health Service expressly indicates that it has not been established that the workplaces to which workers were transferred were free of the agent which caused the disease. In this regard, the Government indicates that, on 1 January 2005, the Andina Division had already transferred all workers for whom a valid decision had been issued declaring incapacity due to silicosis to other jobs in which they were not exposed to dust. ***The Committee requests the Government to continue to provide information on this matter, including on the measures taken in respect of the workers who have lodged appeals against the invalidation of their initial diagnosis.***

Article 10. Full professional independence of health services personnel. According to the observation, Codelco, the Andina Division, has the delegated administrative authority provided for in Act No. 16744, but it adds that this authority is not appropriate given that section 72 of the Act concerned requires an enterprise to have at least 2,000 employees before it can act as a delegated administrator and the company in question only has 600 employees. It indicates that by having delegated administration, Codelco, the Andina Division, controls the entire system of health and management of risk prevention plans and operates as a closed system in which workers are unable to resort to an external system. The Committee notes that, according to the Government, Codelco, the Andina Division, is authorized to act as a delegated social insurance administrator in accordance with section 71 of the above Act and section 23 of the Ministry of Labour Supreme Decree No. 101 of 1968. ***The Committee requests the Government to provide information on the manner in which it ensures the professional independence of the personnel providing occupational health services in relation to the functions listed in Article 5 of the Convention as required under Article 10 of the Convention, in the case of delegated administrators, including Codelco, the Andina Division.***

Part IV of the report form. Judicial and administrative decisions. The Committee notes that, according to the observation, among the 171 workers diagnosed by COMPIN as having silicosis and a disability causing them a loss of earning of between 27.5 and 80 per cent, 41 had been relieved of their functions and, at the time of the submission of the observation, another 23 were in the process of being relieved. It indicates that, at the end of 2003, a group of 23 active workers who were sick took legal action against the company, claiming compensation for damages, while, 17 of the workers relieved of their functions filed a criminal complaint alleging responsibility on the part of the company for what they referred to as an epidemic of silicosis. They referred to the defencelessness and helplessness of the workers, who were to receive \$10,000 due to having contracted silicosis. They indicated that the company denied everything, and even questioned the validity of the examinations requested by the company itself at the Clínica Santa María and the Clínica las Condes, calling into question these institutions and the responsibility of health services, in particular of COMPIN, for certifying disability. The Committee notes that the Government indicates that there have been no dismissals but that workers who requested it were able to take advantage of voluntary retirement plans which included special compensation. It also indicates that the Social Security Supervisory Authority reported that eight workers had taken legal action against the company attributed delegated administration and that the Supervisory Authority had received a series of appeals from workers from the Andina Division of Codelco-Chile which have not yet been resolved and are awaiting a judicial decision. ***The Committee requests the Government to provide detailed information on any developments relating to the cases which are being dealt with through judicial and/or administrative channels with regard to the situation being examined.***

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

China

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2007)

The Committee notes with interest the comprehensive first report submitted by the Government including copies of relevant national legislation. The Committee also notes the observations submitted by the International Trade Union Confederation (ITUC) concerning the application of the Convention in China transmitted to the Government on 1 October 2009 to which the Government has not yet responded. The Committee will examine this report, including the observations by the ITUC as well as any comments the Government may deem relevant to make thereon, at its next session in 2010.

Croatia

Asbestos Convention, 1986 (No. 162) (ratification: 1991)

The Committee notes the observations submitted by the Croatian Association of Unions (HUS) submitted on 18 September 2009 and transmitted to the Government on 2 October 2009 for comments. The Committee notes that the HUS alleges that there has been no change in solving the workers status, that the workers have still not been compensated and that they still have major problems in defining their working status as the ex-owner still controls the bankruptcy process. The Committee also notes the information submitted by the HUS that around ten workers decided to start a hunger strike in September 2009 in order to call attention to an urgent solution to their problems. The Committee refers to its previous observation, in which it requested the Government to report in detail in 2010 and the Committee requested the Government, to take, inter alia, action as follows:

... [The Committee] urges the Government to adopt all relevant implementing legislation, take all relevant measures to ensure that the legislative measures taken are effectively implemented and to pursue its efforts to raise awareness among all workers occupationally exposed to asbestos regarding the possibilities to seek redress and to facilitate the procedures for those who wish to do so by filing claims for compensation. ...

... [The Committee] urges the Government to take all measures necessary to minimize the delays incurred for those entitled to compensation and to old age pension, to ensure that all claims and requests are handled as expeditiously as possible. ...

In the light of the foregoing, and in the context of the detailed report requested for 2010 on the follow-up to its 2008 comment, the Committee requests the Government to respond in detail to the abovementioned observations submitted by the HUS and yet again urges the Government to take all necessary action to ensure a complete and timely follow-up to the conclusions of the High-level Direct Contacts Mission in 2007, to the Committee's 2008 comments and to ensure full application of the Convention in the country.

Democratic Republic of the Congo

Guarding of Machinery Convention, 1963 (No. 119) (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:

*Article 2, paragraphs 2–4, of the Convention. Prohibition against the sale, hire, transfer in any other manner and exhibition of unguarded machinery. The Committee notes the information provided by the Government according to which a draft law has been prepared concerning the guarding of machinery and other mechanical devices and prohibiting the sale, hire, transfer in any other manner and exhibition of machinery not provided with appropriate protection of their dangerous parts. It notes that this law is to be submitted for examination during the next session of the Labour Council. **The Committee asks the Government to ensure that the draft legislation gives effect to the Convention and requests it to transmit a copy thereof as soon as it has been adopted.***

*Article 3. Exemptions to the obligation to provide guards. Article 4. Responsibility for ensuring compliance. With reference to its previous comments, the Committee notes that the Government's report does not provide an answer to the questions raised by the Committee. **The Committee urges the Government to provide information on measures taken or envisaged to give effect, in law and in practice, to Articles 3 and 4 of the Convention.***

*Part V of the report form. Practical application of the Convention. **The Committee requests the Government yet again to provide a general appreciation of the manner in which the Convention is applied in the country, including, for instance, extracts from official reports, such as labour inspection reports, and information on any practical difficulties in the application of the Convention, the number and nature of work accidents reported, as well as any other information allowing the Committee to assess more accurately how the Convention is applied in practice in the country.***

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

Djibouti

Radiation Protection Convention, 1960 (No. 115) (ratification: 1978)

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

The Committee notes with *regret* that, since 2000, the Government has submitted the same report which does not provide any new information in reply to its previous comments. The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. According to previously submitted information, the relevant legislation would also include Order No. 1010/SG/CG of 3 July 1968 concerning the protection of workers against ionizing radiation in hospitals and health-care institutions, or in Order No. 72/60/SG/CG of 12 January 1972 on occupational medicine. *With reference to article 125(a) of the newly adopted law providing for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, on a series of different issues including radiation protection, the Committee requests the Government to clarify whether the abovementioned Orders remain in force, and, as appropriate, to transmit to it copies of any revised or complementing legislation once it has been adopted.*

The Committee also notes the observations submitted by the General Union of Djibouti Workers (UGTD) on 23 August 2007 raising concerns regarding insufficient protection against ionizing radiation for employees at health-care centres. These observations were transmitted to the Government for comment on 21 September 2007, but no comments have been received to date.

Article 3, paragraph 1, of the Convention. Effective protection of workers against ionizing radiations. Article 6, paragraph 2. Maximum permissible doses. Article 9, paragraph 2. Instruction of the workers assigned to work under radiations. With reference to the foregoing and its previous comments, the Committee recalls that all appropriate steps shall be taken to ensure effective protection of workers against ionizing radiations and to review maximum permissible doses of ionizing radiations in the light of current knowledge. In this context, the Committee notes that the UGTD indicates that, in practice, industrial undertakings using procedures involving ionizing radiation do not seem to apply uniform rules for the protection of workers against exposure thereto and that the workers engaged in, for example, health-care centres, are not sufficiently informed of the dangers related to their activity and are not protected in an adequate way. The Committee again draws the Government's attention to the revised dose limits for exposure to ionizing radiation established on the basis of new physiological findings by the International Commission on Radiological Protection (ICRP) in its 1990 recommendations. *The Committee requests the Government to respond to the observations made by the UGTD and urges the Government to take all appropriate measures, in the very near future, and with due account taken of the 1990 recommendations of the ICRP, to give full effect, in law and in practice, to these provisions of the Convention.*

Article 7, paragraphs 1(b) and 2. Exposure limits for young persons between 16 and 18 years of age. Prohibition against employing young persons under 16 in work involving exposure to radiation. In its previous comments, the Committee had noted that there were no provisions in relevant legislation prohibiting the employment of children under 16 years of age in radiation work and fixing maximum permissible doses for persons between 16 and 18 who are directly engaged in radiation work, as called for by these provisions of the Convention. *The Committee urges the Government to take all appropriate measures to ensure the application of these provisions of the Convention in the near future.*

Occupational exposure during an emergency. With reference to its previous comments, the Committee again draws the Government's attention to paragraphs 16 and 17 of its 1992 general observation under this Convention which concern occupational exposure during and after an emergency. *The Government is requested to indicate whether, in emergency situations, exceptions are permitted to the normally tolerated dose limits for exposure to ionizing radiation and, if so, to indicate the exceptional levels of exposure allowed in these circumstances and to specify the manner in which these circumstances are defined.*

With reference to the advances that hopefully will be made through the Decent Work Country Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1978)

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

The Committee notes with *regret* that, since 2000, the Government has submitted the same report, which does not provide any new information in reply to its previous comments. The Committee understands, however, that a new Labour Code has recently been adopted (Act No. 133/AN/05 of 28 January 2006) and notes with interest that it contains provisions concerning occupational safety and health that constitute a general framework for the protection of workers against risks related to work. *The Committee nevertheless requests the Government to provide additional information concerning the following points.*

Articles 10, 13, 14, 15, 16 and 18 of the Convention. With reference to the comments that it has formulated for several years, the Committee notes that article 125(a) of the Labour Code provides for the adoption of implementing legislation to regulate measures for the protection of safety and health in all establishments and companies covered by the Labour Code, in particular, with regard to lighting, ventilation or aeration, drinking water, sanitary facilities, evacuation of dust and fumes, precautions to be taken against fire, installation of emergency exits, radiation, noise and vibrations. *The Committee trusts that the Government will adopt the abovementioned legislation in the very near future and that it will give full effect to Articles 10, 13, 14, 15, 16 and 18 of the Convention. The Committee requests the Government to provide a copy of this legislation as soon as it has been adopted.*

With reference to the advances that hopefully will be made through the Decent Work Country Programme 2008–12, including, inter alia, further cooperation with the social partners, the Committee urges the Government to make every effort to take the necessary action in the very near future.

Ecuador

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1978)

Legislation. The Committee notes the Andean Community Decision No. 584, the “Andean Occupational Safety and Health Instrument”, replacing Decision No. 547, and Resolution No. 957 issuing regulations for the Andean Occupational Safety and Health Instrument. The Committee observes that these instruments appear to pave the way for a ratification of the Occupational Safety and Health Convention, 1981 (No. 155) and its Protocol, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and draws the Governments attention to paragraphs 295 and 296 of its 2009 General Survey on Convention No. 155. ***The Committee asks the Government to provide information on any developments in this regard.***

The Committee notes Ministerial Agreements Nos 219 and 220 of 2005, the first of which refers to a register of occupational safety and health professionals and the second to the adoption of internal safety and health regulations. ***The Committee requests the Government to provide copies of the internal safety and health regulations in the sectors covered by the Convention and to continue to provide information on all legislation relating to the Convention.***

Article 4. Measures for the prevention and control of occupational hazards due to air pollution, noise and vibration; Article 5. Cooperation between employers and workers; and Article 11. Periodical medical examinations. For several years the Committee has been discussing with the Government on the safety and health status of workers in the telephone sector, with reference to observations from trade union organizations citing serious repercussions on the health of workers in this sector from prolonged exposure to risk factors and the extended working day, which was fixed at four and a half hours, to reduce the risk of exposure until 1999, when it was modified by collective agreement. The Government states that the technology has been changed and is now safer, so these problems no longer exist. In its last observation the Committee sought information on the repercussions on the sector of the extension of the working hours. The Committee notes that the Government has not provided this information. It points out to the Government that the examination of this issue was triggered by serious allegations from workers’ organizations regarding the telephone sector, referring among other things to deaths, ruptured cerebral aneurisms, pulmonary oedema, and loss of visual and hearing capacity. The Committee therefore needs detailed information about the present situation in the sector so that it can ascertain whether or not these issues have been resolved. ***The Committee invites the Government to consult with the employers and workers as provided in Article 5 of the Convention on the measures for prevention and protection referred to in Article 4, which apply in the telephone sector, and to provide information on such consultations as well as on measures taken or envisaged. The Committee also asks the Government to provide particulars of the medical examinations conducted for workers in the sector, indicating their frequency and providing information on their results.***

Article 6, paragraph 2. Requirement for employers to cooperate in applying prescribed measures. The Committee notes that the Government merely refers to its previous report without answering the question raised by the Committee. It reminds the Government that under this Article, whenever two or more employers undertake activities simultaneously at one workplace, they shall have the duty to collaborate in order to comply with the prescribed measures and that, in appropriate circumstances, the competent authorities shall prescribe general procedures for this collaboration. ***The Committee asks the Government to provide information on the manner in which it ensures compliance in law and in practice with the duty to collaborate laid down in this Article and, if necessary, to prescribe the procedures for such collaboration.***

Article 8, paragraphs 1 and 3. Air pollution and vibration. For several years the Committee has been asking the Government provide information on the establishment, by the Inter-institutional Committee on Occupational Safety and Health, of exposure limits for corrosive, irritating and toxic substances, by adopting the standards established for such substances by the American Conference of Governmental Industrial Hygienists. The Committee notes that according the Government, Ecuador has regulated maximum permissible limits of exposure only for asbestos and for all other cases, they apply international standards. ***The Committee requests the Government to indicate which international standards it applies, and submit a copy of the legal provisions providing for the application of these standards. Please also provide documentation on the criteria currently used to define the risks of exposure to air pollution and vibration in the workplace, and the exposure limits, as well as on the manner in which these criteria and limits are supplemented and revised in practice, together with relevant documentation.***

Article 10. Exceeding exposure limits and protective equipment. The Committee once again notes that the Government has not sent the information requested. ***It invites the Government to indicate the methods prescribed for determining whether the limits specified in pursuance of Article 8 are exceeded and to specify the guidelines or instructions on the type of personal protective equipment to be provided to the workers exposed should these limits be exceeded.***

Article 11. Medical examinations (pre-assignment and periodical). Please provide information on measures taken, in law and in practice, to regulate how these examinations are carried out and that periodicity.

Article 12. Notification to the competent authority of processes, substances, machinery and equipment which involve exposure. The Committee repeats its request to the Government for information on the measures taken or envisaged to ensure that the use of processes, substances, machinery and equipment involving exposure to air pollution, noise or vibration are notified to the competent authorities.

Part IV of the report form. Application in practice. Please provide general information on the manner in which the Convention is applied, together with extracts from inspection reports with an indication of the number and nature of infringements detected in connection with the Convention, including in the telephone sector. Please also provide reports prepared pursuant to the Andean Occupational Safety and Health Instrument that may be relevant, to enable the Committee to ascertain more fully the extent to which the Convention is applied.

In general, the Committee notes that although it has asked the Government to reply in detail to its comments of 2006, the information sent by the Government is summary and general in nature. The Committee also notes that the type of reply sent by the Government does now allow it to resolve the application of the issues that it has been raising for several years. **The Committee requests the Government to reply in detail to the present comments attaching copies of the legislative provisions, and to provide examples that illustrate the assertions it makes in its report. The Committee draws the Government's attention to the fact that it may seek technical assistance from the Office should it deem this necessary.**

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

Ghana

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1965)

The Committee notes with *regret* that the Government's reports received in 2006, 2007 and 2008 do not contain any new information nor any reply to its previous comments and that the Government's report for 2009 has not been received. It must therefore repeat its previous observation which read as follows:

Articles 1 and 17 of the Convention. Scope of application. The Committee reminds the Government that, for more than 30 years, the Committee has drawn the Government's attention to the need to extend the legislation giving effect to the Convention to agriculture, forestry, road and rail transport and shipping. In its 1986 report, the Government indicated that it was due to submit the Committee's observations to the tripartite National Advisory Committee on Labour so that it could examine them and take the necessary steps to give full effect to the provisions of the Convention. The Committee trusts that, in the context of the revision of the labour legislation launched with the adoption of the Labour Code in 2003, the Government will focus on the need to revise the legislation in the field of occupational safety and health, especially in order to give effect to the Convention. **The Committee urges the Government to take the necessary steps in the very near future to ensure the guarding of machinery in all sectors of economic activity, particularly agriculture, forestry, road and rail transport and shipping, and invites the Government to request assistance from the ILO in due course in order to ensure the effective application of 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.

[The Government is asked to report in detail in 2010.]

Guinea

Radiation Protection Convention, 1960 (No. 115) (ratification: 1966)

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

The Committee notes that the Government indicates, in its last report, that a draft Order respecting air pollution, noise and vibration, cesspools, drinking water and protection against radiations had been prepared, but was subsequently separated into several draft Orders to make them more easily applicable. These draft Orders should have been adopted some time ago. However, the Advisory Commission on Labour and Social Legislation, as a tripartite commission, is composed of various members with very different concerns and sometimes constraints at the national level, which prevented it from completing its usual session. Furthermore, the Government states that the State of Guinea has priorities, even with regard to the adoption of laws and regulations. The Committee states that the Government has been expressing the intention for many years of adopting regulations to protect workers against ionizing radiations, without however in practice taking the necessary measures to this effect. It notes with regret that the Government's attitude disregards the urgency of taking the necessary legislative action for the adoption of regulations respecting protection against ionizing radiations. In this respect, the Committee recalls that this Convention was ratified by Guinea in 1966 and that since then the Committee has had to comment on various points concerning the application of the Convention. The Committee recalls that, when the Government takes the sovereign decision to ratify a Convention, it undertakes to adopt all the necessary measures to give effect to the provisions of the Convention in question. The Committee also considers that, while the Government may cite the existence of other matters which must take priority in the adoption of laws and regulations, it would be appropriate after the number of years that have elapsed for it to take the necessary measures to ensure that the draft Orders relating to the application of the provisions of this Convention are adopted as soon as possible. **The Committee therefore once again hopes that the Government will soon be in a position to report on the adoption of provisions covering all activities involving the exposure of workers to ionizing radiations in the course of their work and in conformity with the dose**

limits referred to in its general observation of 1992, in the light of current knowledge, such as that contained in the 1990 Recommendations of the International Commission on Radiological Protection (ICRP) and in the Basic Safety Standards for Protection Against Ionising Radiation and for the Safety of Radiation Sources of 1994.

Articles 2, 3, paragraph 1, 6 and 7 of the Convention In its previous comment, the Committee noted the Government's statement that the current dose limits correspond to an equivalent of an annual dose of 50 mSv for persons exposed to ionizing radiations. The Committee had recalled the maximum dose limits for ionizing radiations established in the 1990 Recommendations of the International Commission on Radiological Protection and in the 1994 Basic International Safety Standards for Radiation Protection. For workers directly engaged in work exposed to radiation, this limit is 20 mSv per year averaged over five years (100 mSv over five years), and the actual dose must not exceed 50 mSv in any year. The Committee also draws attention to the dose limits envisaged for apprentices aged from 16 to 18 years, set out in Annex II, paragraph II-6, of the 1994 Basic International Safety Standards for Radiation Protection. ***The Committee once again hopes that the maximum doses and quantities to be included in the Government's draft Order will be in conformity with the maximum permitted doses and quantities, and that the Government does indeed envisage adopting the above draft Order.***

Situations of occupational exposure in emergencies and provision of alternative employment. ***The Committee once again requests the Government to indicate the measures which have been taken or are envisaged in relation to the points raised in paragraph 35(c) and (d) of the conclusions of its 1992 general observation under this Convention.***

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

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1966)

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

Article 11 of the Convention. The Committee notes the Government's reply to its previous comments indicating that it has taken due note that section 170 of the Labour Code seems to permit employers to authorize or to order workers to remove safety devices, contrary to *Article 11* of the Convention. It also notes the Government's statement that such authorization is only based on prior measures taken by the employer to avoid all exposure to occupational risks, and that in any event it is the responsibility of the employer to promote best safety conditions at workplaces periodically visited by the labour inspectorate. ***The Committee would nonetheless request the Government to consider including in the draft Labour Code implementing regulations that are in preparation, a specific provision prohibiting such authorization or order to remove safety devices, as required by this Article of the Convention.***

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

Benzene Convention, 1971 (No. 136) (ratification: 1977)

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

The Committee notes that the Government does not presently intend to amend Order No. 2265/MT of 9 April 1982, but envisages formulating, in consultation with the social partners, technical guidelines on harmful, hazardous and carcinogenic products, particularly benzene. The Committee also notes that the guidelines envisaged will be made available to all users. ***It hopes that the guidelines will be formulated and adopted without delay and requests the Government to provide information on any progress made in this matter.***

Article 4, paragraph 2, of the Convention. The Committee notes the Government's information on processes which use methods of work that are as safe as those carried out in an enclosed system. It notes in particular that the increase in labour and health inspections in enterprises and the involvement of Workers' Committees for Health, Safety and Working Conditions (CHSCT) ensure that the processes are carried out under the safest possible conditions. ***The Committee requests the Government to provide an indication of the frequency of the inspections carried out in enterprises that use benzene. It also requests the Government to provide copies of the statistics collected during inspections, to enable the Committee to assess the extent to which this provision of the Convention is applied in practice.***

Article 6, paragraphs 2 and 3. With regard to the concentration of benzene vapour in the air of workplaces, the Committee notes that a draft Order concerning data files on the safety of chemical substances establishes a level not exceeding 10 ppm or 32 mg/m³ over an eight-hour time-weighted average. The Committee accordingly concludes that the ceiling established in the draft Order is lower than the one established in the Convention when it was adopted in 1971. It nevertheless wishes to point out to the Government that the threshold limit value recommended by the American Conference of Government Industrial Hygienists (ACGIH) is 0.5 ppm over an eight-hour time-weighted average. ***It therefore invites the Government to take measures to bring the ceiling value established by the draft Order into line with the value recommended by the ACGIH. The Committee also requests the Government to specify the guidelines issued by the competent authority on the procedure for determining the concentration of benzene in places of employment. It also requests the Government to provide a copy of the abovementioned Order as soon as it is adopted.***

Article 8, paragraph 2. With regard to limiting the duration of exposure of workers who, for special reasons, may be exposed to concentrations of benzene in the air of places of employment which exceed the maximum established, the Committee notes that, according to the Government, a study is under way on this matter. ***It requests the Government to provide information on any progress made in this regard.***

The Committee also requests the Government to provide relevant extracts of the inspection reports and the statistics available on the number of employees covered by the legislation as well as the number and nature of violations reported, as requested under Part IV of the report form.

In its previous comments, the Committee noted the Government's statement that a draft Order on occupational cancer giving full effect to the provisions of the Convention had been formulated with ILO technical assistance. ***The Committee requests the Government to indicate whether this Order is still under consideration for enactment.***

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

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1982)

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

Article 1, paragraph 1, of the Convention. The Committee notes that the draft conditions of service of the public service, which is being discussed within the Government, should contain the necessary measures to give full effect to the provisions of this Article of the Convention through their application in practice in all branches of economic activity. ***The Committee requests the Government to keep the International Labour Office informed of developments relating to these conditions of service and to provide a copy of them when they have been adopted.***

Articles 4, 8 and 10. The Committee notes the information concerning a draft Order, prepared by the Government, which was due to be examined by the Advisory Committee on Labour and Social Legislation. This draft text would cover cesspits, drinking water, noise, vibration, air pollution, etc. ***The Committee requests the Government to indicate whether this text is issued under section 171(1) of the Labour Code.*** It reminds the Government that, under the terms of *Article 4*, the provisions adopted must prescribe the specific measures to be taken both for the prevention of occupational hazards due to air pollution, noise and vibration, and to control and protect workers against these hazards. The Committee also reminds the Government that, under the terms of *Article 8* of the Convention, the above draft text should provide for the establishment of criteria for determining the hazards of exposure to air pollution, noise and vibration and should specify exposure limits. The Committee notes that the Government's report does not indicate whether the above draft text provides, as required by *Article 10*, for the provision of personal protective equipment where the measures taken to eliminate hazards do not bring air pollution, noise and vibration within the limits specified by the competent authority. ***The Committee requests the Government to keep the Office informed of the adoption of this draft text, to provide a copy when it has been adopted and to inform it of any other specific measures taken for the application of the provisions of Articles 4, 8 and 10 of the Convention.***

Article 9. ***The Committee requests the Government to indicate the technical measures and supplementary work organizational measures intended to eliminate the above hazards.***

Article 14. The Committee notes that the National Occupational Medicine Service is equipped with a laboratory which is inadequately provided with appropriate instruments for its needs, but that the Government plans within a relatively short period to provide the above Service with modern and appropriate equipment. ***It requests the Government to keep the Office informed of the progress made in equipping the National Occupational Medicine Service and to inform it of any other measures taken to promote such research.***

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

Kazakhstan

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1996)

The Committee notes that the Government's report does not provide further information on the 1998 observations by the Air Crew Trade Union of Alma Ata regarding the situation of the 80 Kazakh civil aviation staff members that allegedly suffered occupational illness, and became disabled, as a result of excessive exposure to noise and vibration in their work. ***The Committee urges the Government to respond to the Committee's longstanding request for information and, with reference to paragraph 4 of Article 11 of the Convention, to also provide information on measures undertaken or envisaged to ensure that the rights of workers under social security or social insurance legislation are not adversely affected by the implementation of this Convention.***

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

Kuwait

Benzene Convention, 1971 (No. 136) (ratification: 1974)

Article 6, paragraph 3, of the Convention. Measurement of the concentration of benzene. Part IV of the report form. Application in practice. The Committee notes that it has, on several occasions in previous comments, requested the Government to provide concrete information on how the Order No. 210 of 2 October 2001 on executive regulations of Act No. 21/1995 is applied in practice and how compliance with the required limit for exposure to benzene of 0.5 mg/l is maintained in practice. The Committee notes that the Government, in its most recent report, yet again refers to the activities of the labour inspection services, without any supporting information on actual labour inspections carried out. ***Recalling that Article 6, paragraph 3, of the Convention requires the competent authority to issue directions on carrying out the measurement of the concentration of benzene in the workplace, the Committee requests the Government to indicate the measures taken or envisaged in this regard. The Committee also requests the Government to provide information on the application of the Convention in practice including extracts from the reports of inspection services, information on the number of employed persons covered by the measures adopted to give effect to the Convention, and on the number and nature of the contraventions reported.***

Kyrgyzstan

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)

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

Article 5, paragraph 3, of the Convention. The Committee asks the Government to provide a copy of collective and other agreements containing mutual obligations designed to ensure safe and healthy working conditions.

Article 6, paragraph 2. The Committee asks the Government to provide information on the general procedures prescribed for the collaboration of employers where two or more of them undertake activities simultaneously at one workplace. It also asks the Government to provide a copy of the Standards and Regulations for Health and Safety in Construction Work (No. III-4-80) and of the Order of the Ministry of Industry and Energy governing work done jointly by several enterprises at the same workplace in coalmining.

Article 12. The Committee asks the Government to provide a copy of the Regulations on state medical supervision referred to in its report.

Article 14. The Committee asks the Government to describe the measures taken to promote research, in accordance with this Article.

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

Lao People's Democratic Republic

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1964)

The Committee notes the Government's latest report and the information supplied in response to its previous comments. The Committee notes the amended Law on Labour, No. 06/NY, dated 27 December 2006, and the agreement by the Minister of Labour and Social Welfare on the establishment of a National Committee on Occupational Safety and Health, composed of ten representative agencies, meeting regularly to review and plan occupational safety and health activities. However, the Committee notes that no information has been provided regarding its previous comment requesting information on the manner in which the Ministry of Labour and Social Welfare cooperates with the Ministry of Industry and Handicraft in matters related to occupational safety and health. *The Committee reiterates its request to the Government to explain the roles of the abovementioned ministries, and how they cooperate with each other in the application of occupational safety and health.*

The Committee notes the Government's response in its previous reports indicating the intention to draw up a safety and health decree which would include regulations concerning the use of white lead. *The Committee reiterates its firm hope that the safety and health decree will be drafted in the very near future and that it will contain such provisions to ensure that effect is given to the following provisions of the Convention: Article 1 (prohibition of the use of white lead and sulphate of lead in the internal painting of buildings); Article 2 (regulation of the use of white lead in artistic painting); Article 3 (prohibition of the employment of young persons under 18 years of age and all females in any painting work involving the use of white lead); Article 5 (regulation of the use of white lead in painting operations for which its use is not prohibited); and Article 7 (establishment of statistics of morbidity and mortality due to lead poisoning).*

Latvia

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1993)

The Committee notes the information provided by the Government in its latest report, and the attached documentation, indicating recent legislative amendments, which give further effect to the provisions of the Convention, including changes to the 1998 Law on Technical Supervision of Dangerous Equipment prescribing that the implementation of control in the field of technical supervision of dangerous equipment shall be performed by the State Construction Inspectorate, rather than the State Labour Inspectorate. With reference to observations made previously by the Free Trade Union Federation of Latvia regarding the use of obsolete machines and the high risk of accidents, which employees are exposed to in using such machines, the Committee notes the response provided by the Government indicating that safety requirements apply to both new and used machinery. The Committee also notes the responses provided regarding effect given to *Articles 2, 4 and 11 of the Convention. The Committee asks the Government to continue to provide information on legislative measures undertaken with regards to the Convention.*

Part V of the report form. Application in practice. The Committee notes the statistical information provided by the Government concerning the number of suspended equipment and machinery; the number of accidents and occupational diseases reported concerning operators of equipment and machinery; and the number of penalties and violations. The Committee also notes that there has been an increase in the number of reported accidents and occupational

diseases since 2004. *The Committee asks the Government to provide information on measures undertaken or envisaged to address this increase; and to continue to provide information on the application of the Convention in practice.*

Lithuania

Maximum Weight Convention, 1967 (No. 127) (ratification: 1994)

The Committee notes the Government's latest detailed report indicating recent legislative changes giving further effect to the Convention, including Health and Safety at Work Regulations for Manual Handling of Loads (*Official Gazette*, 2006, No. 116-4417) and Methodological Guidance on the Investigation of Ergonomic Risks (*Official Gazette*, 2005, No. 95-3536).

Part V of the report form. Application in practice. The Committee notes the Government's response to its previous comment concerning observations of the Federation of Workers of Lithuania (LDF) received in September 2004, regarding the application of the Convention in practice. The Committee notes that, according to information available to the State Labour Inspectorate, there were five accidents related to the manual lifting of loads in 2005, increasing to 26 accidents in 2008, and that, according to the information collected in the Public Register of Occupational Diseases, there were 103 cases of occupational diseases caused by load lifting and carrying in 2005 again, increasing to 164 cases in 2008. *The Committee asks the Government to provide further information on the causes for this increase and, as appropriate, on measures undertaken or envisaged to reduce the number of cases of workplace accidents related to manual lifting of loads and the number of cases of occupational diseases caused by load lifting and to continue to provide information on the application of the Convention in practice.*

Madagascar

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

The Committee notes the brief information in the Government's latest report, indicating the adoption of a new Labour Code Law (No. 2003-044), which includes provisions requiring systems, equipment and construction materials to be subjected to compulsory safety standards, including monitoring, maintenance and systematic checks. The Committee further notes the Government's intention to revise the safety and health provisions of Order No. 889 of 20 May 1960 to take into account the new Labour Code. *The Committee reiterates, as it has done on previous occasions, its sincere hope that the Government will finally adopt the implementing texts which have been announced for a number of years in order to give effect to the provisions of Articles 2 and 4 of the Convention. It hopes that these legislative texts will contain provisions giving effect to Articles 2 and 4 of the Convention, which prohibit the sale, hire, transfer in any other manner or exhibition of machinery of which the dangerous parts specified in Article 2, paragraphs 3 and 4, are without appropriate guards, the obligation to ensure compliance with these prohibitions resting on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor or manufacturer who sells, lets out on hire, transfers in any other manner, or exhibits machinery.*

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1966)

The Committee notes the brief information in the Government's latest report, indicating that the revision of current law has been suspended due to the political instability in the country. *The Committee requests the Government to indicate when the review of the draft Decree establishing "general prescriptions for occupational health, hygiene and safety and the working environment", referred to by the Government in its previous report, will be resumed in the Consultative Technical Committee and to indicate progress made in this respect. In view of the time that has elapsed since it drew the Government's attention to the need to adopt legislation giving effect to the provisions of the Convention, particularly those of Articles 14 and 18, the Committee expresses the firm hope that the Government will do its utmost to see that such legislation is adopted in the near future.*

The Committee also asks the Government to indicate whether the Digest regarding matters of principle pertaining to the application of the Convention, referred to in a previous report, is still to be published, and reiterates its request that the Government provide a copy of it as soon as it is published.

Maximum Weight Convention, 1967 (No. 127) (ratification: 1971)

Article 3 of the Convention. Establishment of maximum weight for manual transport. The Committee notes with interest the information in the Government's latest report, indicating the unanimous decision by the relevant ministries to set the maximum weight for the manual transport of any load by a single male adult worker at 50 kg. The Committee hopes that the inter-ministerial order giving full effect to the provisions of the Convention, including its *Article 3*, will come into effect without any further delay.

Mexico

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

The Committee notes with *satisfaction* the adoption on 23 December 2008 of Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines. Noting that, according to the Government, this standard reflects provisions laid down in the Safety and Health in Mines Convention, 1995 (No. 176), the Committee hopes that this would pave the way for a ratification of that Convention. ***The Committee invites the Government to provide information on any developments in these respects.***

Follow-up of measures taken pursuant to the recommendations adopted by the Governing Body in document GB.304/14/8. Representation concerning an accident in the Pasta de Conchos Mine in 2006. The Committee notes that in March 2009 the Governing Body adopted a report on a representation alleging non-observance by the Government of certain Articles of this Convention, of the Labour Administration Convention, 1978 (No. 150), and of the Chemicals Convention, 1990 (No. 170). It notes that in paragraph 99 of the abovementioned report, the Governing Body made recommendations and entrusted the Committee with the task of following up the issues raised in the report. The Committee notes the report sent by the Government containing information on the measures taken to follow up on these recommendations, which is examined below.

I. Measures to be adopted in consultation with the social partners

Articles 4 and 7 of the Convention. National policy and reviews, either overall or in respect of particular areas. The Committee notes that in paragraph 99(b) of its report, the Governing Body invited the Government, in consultation with the social partners, to continue to take the necessary measures in order to:

- (i) *ensure full compliance with Convention No. 155, and, in particular, to review and periodically examine the situation as regards the safety and health of workers, in the manner provided for in Articles 4 and 7 of Convention No. 155, with particular attention given to hazardous work activities such as coalmining.* The Committee notes that according to the Government's report, the National Advisory Committee on Occupational Safety and Health (COCONASHT) and the 32 state advisory committees on occupational safety and health (COCOESHT) have held many meetings since 2007. From the web site of the advisory committees (COCOSHT), referred to by the Government, the Committee notes the 2009 work programme, which includes legislative and training activities to be carried out. It notes that the programme provides for activities in the following areas: (1) establishment of a national OSH system; (2) modernization of the regulatory framework for OSH; (3) enhancing the OSH self-management system; (4) development of the national system of information on occupational accidents and diseases; (5) strengthening the machinery for consultation and risk prevention; (6) promoting specialized technical training on OSH; and (7) promoting a review of compliance with safety and health obligations. ***The Committee requests the Government to continue to provide information on any developments concerning the review and periodical examination of the situation as regards the safety and health of workers as provided in Articles 4 and 7 of the Convention, with particular attention given to hazardous work activities such as coalmining.***
- (ii) *Concluding and adopting a new regulatory framework for OSH in the coalmining industry, taking into account the Safety and Health in Mines Convention, 1995 (No. 176), and the ILO code of practice on safety and health in underground coalmines, 2006.* The Committee notes that, according to the Government, the newly adopted NOM-032-STPS-2008 lays down limits and specifications that are even stricter than some of the existing regulations governing the mining industry in other countries and that it was drafted with ILO cooperation. ***The Committee requests the Government to provide detailed information on how NOM-032-STPS-2008 is applied in practice.***

Article 9. An adequate and appropriate system of inspection. The Committee notes paragraph 99(b)(iii) and (iv), and (d) of the Governing Body's report in which the Government is invited, in consultation with the social partners, to take the necessary measures in order to:

- (iii) *ensure, by all necessary means, the effective monitoring of the application in practice of laws and regulations on occupational safety and health and the working environment, through an adequate and appropriate system of labour inspection, in compliance of Article 9 of Convention No. 155, in order to reduce the risk that accidents such as the accident in Pasta de Conchos occur in the future;*
- (iv) *monitor closely the organization and effective operation of its system of labour inspection taking due account of the Labour Administration Recommendation, 1978 (No. 158), including its Paragraph 26(1).*
- ...
- (d) *review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures the Government is taking in order to strengthen the application of its laws and regulations in the area of occupational safety and health in mines.*

The Committee notes that according to the Government, the Federal Labour Inspectorate has carried out special labour inspection operations, and in January 2007 a programme was devised and a total of 52 inspections were conducted in 26 workplaces showing a rate of compliance with standards of safety and health and general conditions of work of

86.08 per cent. It also notes that since the entry into force of NOM-032-STPS-2008 on 23 March 2009, a special operation has been started up for underground coalmines and by 30 June 2009, 11 such mines had been inspected and 1,113 safety and health measures had been ordered. In order to improve the functioning of the labour inspectorates, a training course was held and inspectors have been provided with personal protection equipment. The Government also indicates that in line with the provisions of the Labour Administration Recommendation, 1978, (No. 158), the General Directorate of Federal Labour Inspection carried out visits to every one of the federal delegations in order to ascertain that inspection policies, guidelines and criteria are being properly applied. The Committee points out that the Governing Body's recommendations on the labour inspection system stem from the findings in paragraphs 75–85 of the Governing Body's report on the accident in the Pasta de Conchos mine which cost 65 miners their lives, where the Governing Body found that the labour inspectorate had failed to satisfy itself that the defects noted had been set right (lighting, dusting, risk plans, etc.). The Committee notes that paragraph 99(b)(iii) and (iv), the application of which it is examining, and 99(d), refers to measures the Government should adopt in consultation with the social partners, and observes that the Government's report contains no indication of any such consultation. ***It accordingly asks the Government to continue to provide information on the measures taken – in consultation with the social partners – pursuant to paragraph 99(b)(iii), (iv) and (d) of the abovementioned recommendations, and also on the following matters, likewise in consultation with the social partners:***

- *its strategy for ensuring that the labour inspectorate improves the monitoring of effective compliance with the recommendations it makes where defects are noted, particularly in the coalmining industry;*
- *statistical information showing the extent to which the labour inspectorate's recommendations are observed;*
- *main areas in which NOM-032-STPS-2008 improves on the former standard (NOM-023-STPS-2003) in terms of monitoring and verification with a view to ensuring greater safety for mineworkers;*
- *extent to which the conformity assessment procedure set forth in paragraph 18 of NOM-032-STPS-2008 is applied, and details of its application in practice;*
- *an appreciation of the real impact of the measures indicated in terms of improving the situation in the coalmining industry.*

Furthermore, the Committee asks the Government to provide information on the measures taken in application of the recommendation formulated in paragraph 99(b)(iv) of the Governing Body's report on labour inspection in its next report on the application of the Labour Administration Convention, 1978 (No. 150), to be examined at the Committee's next session.

II. Other measures

Compensation. The Committee notes that in paragraph 99(c) of its report, the Governing Body invited the Government to:

- (c) *ensure, considering the time that has lapsed since the accident, that adequate and effective compensation is paid without further delay, to all the 65 families concerned and that adequate sanctions are imposed on those responsible for this accident.*

The Committee notes that the information supplied by the Government is largely a repetition of the information it sent in reply to the assertions made in the representation which is set out in paragraph 51 of the Governing Body's report. The Committee also refers to the report's conclusions, paragraph 93, according to which:

Concerning the assistance and compensation due and paid to the families of the deceased miners, the Committee notes that there appears to be a significant discrepancy between the compensation allegedly offered by IMMSA immediately after the accident (750,000 pesos per family) and the compensation agreed upon between IMMSA and the STPS. The Government stated that a total amount of 5,250,000 pesos, corresponding to the benefits due, was deposited by IMMSA with the JFCA on 18 February 2008 to be distributed among the beneficiaries according to their individual entitlement and that PROFEDET would make the necessary arrangements for the corresponding payments to be made immediately. The Committee notes that, according to the Government, 51 families of the dead miners were to receive a total compensation of 5,250,000 pesos without prejudice to their pursuit of legal action. This amount was extended to include all 65 families. The Government did not, however, provide specific information concerning the basis for, or the elements taken into account in, arriving at that sum. The Committee requests further information to be provided by the Government to the Committee of Experts on the Application of Standards on the modalities for determining the compensation provided to the 65 families of the deceased miners and expects the Government to ensure that all the 65 families receive adequate and effective compensation in accordance with national law.

The Committee accordingly asks the Government to provide detailed information on:

(1) Compensation to be paid by the Industrial Minera Mexico SA (IMMSA):

- *the manner in which compensation was determined (for example whether wage supplements were counted and, if so, which);*
- *the criteria for changing the amount between IMMSA's first offer, which was equivalent to 10 years' pay according to paragraph 26 of the report, and the later sum, which was lower;*

- *the manner in which compensation was provided for the 14 families concerning which the Government provides no information and the status of the claims under way regarding compensation to the 65 families.*
- (2) *State support and assistance. Information on any support and assistance by the State for the 65 families of the miners who lost their lives, such as that referred to in paragraph 26 of the report (accommodation, grants for education up to degree level for children and monthly allowance).*

Mongolia

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1998)

The Committee notes the observations by the Confederation of Mongolian Trade Unions (CMTU), received by the ILO on 5 November 2008 and transmitted to the Government on 12 December 2008, which raise problems with regard to the application of Convention No. 155. The Committee notes that the CMTU considers that several railroad accidents, resulting in injured workers, have occurred due to a number of shortcomings regarding the application of the provisions of the Convention, including inadequate training of workers; lack of enforcement of safety measures in relation to chemical hazards; failure to notify the competent authority in cases of occupational accidents; and omitting to take into account the importance of mental elements affecting health, which is directly related to safety and health at work. ***The Committee asks the Government to respond to the observations made by the CMTU in its next report.***

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

[The Government is asked to reply in detail to the present comments in 2010.]

Montenegro

Occupational Health Services Convention, 1985 (No. 161) (ratification: 2006)

The Committee notes the detailed information provided by the Government in its first report, and the observations received by the Union of Free Trade Unions of Montenegro (UFTUM) concerning tripartite representation in the social council and the supervision of national legislation giving effect to the Convention. The Committee notes with *interest* the information indicating the development of regulations to further develop and determine the tasks related to occupational health services. ***The Committee asks the Government to keep it informed of any progress in laws and regulations to give full effect to the provisions of this Convention.***

Article 1, subparagraphs (a) and (b), and Article 5, subparagraph (g), of the Convention. Role of occupational health services to advise on the adaptation of work to the capabilities of workers; and the definition of workers' representatives. The Committee notes the information indicating that under section 36 of the Law on Safety at Work, the professional services, or professional person for performing safety at work tasks, are responsible for advising employers on such matters. ***The Committee asks the Government to provide further information specifying whether the role of the occupational health services is to also advise workers and their representatives on safety and health at work; and whether they are required to provide advice on the adaptation of work to the capabilities of workers. The Committee also asks the Government to indicate how effect is given to Article 1(b).***

Articles 2 and 4. Formulate, implement and periodically review a national policy. The Committee notes the UFTUM's statement that it, having not been included in the social council, is deprived of the possibility to follow and influence the national policy regarding occupational health services. The Committee recalls that it has raised the issue of tripartite representation in the social council under its comments on the application by Montenegro on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). ***The Committee hopes that the Government will ensure that the formulation, implementation and periodical review of its national policy on occupational health services will be developed in consultation with the most representative organizations of employers and workers.***

Article 3, paragraph 1. Progressive development of occupational health services for all workers. The Committee notes the information provided by the Government indicating that according to section 34 of the Law on Safety at Work, the employer may engage a professional service, or professional person, to organize and perform professional tasks on safety at work, depending on the organization, nature and scope of work processes, the number of employees who participate in the work process, the number of shifts, assessed risks and the number of units separated in terms of their locations. ***The Committee asks the Government to provide further information on the progressive development of occupational health services for all workers.***

Article 5. Functions of the occupational health services. The Committee notes the UFTUM's indication that many employers have not carried out the risk assessments called for in section 51 of the Law on Safety at Work, which came into effect three years ago. The UFTUM observes that this is a result of the absence of appropriate supervision with regard to implementation of the national legislation. ***The Committee asks the Government to provide information on measures taken to address the issues identified above by UFTUM.***

Articles 8 and 9. Organization and conditions of operation for occupational health services. The Committee notes the information provided by the Government indicating that, according to section 39(13) of the Law on Safety at Work, accredited health-care institutions must directly cooperate and coordinate safety at work matters with the professional person responsible for safety at work. ***The Committee asks the Government to provide specific measures to address the requirements under Article 8 and Article 9 of the Convention, with particular reference to the cooperation between occupational health services and the employers, workers, and their representatives, and other services in the undertaking.***

Article 12. Surveillance of workers' health shall take place as far as possible during working hours. The Committee notes the information that, according to section 4 of the Law on Safety at Work, the measures that relate to safety at work may not result in any costs to the workers. ***The Committee asks the Government to provide information on measures to ensure that surveillance of workers' health takes place as far as possible during working hours.***

Articles 14 and 15. Occupational health services to be informed of any known factors which may affect the workers' health; and of ill health among workers and absence from work for health reasons. The Committee notes the information provided by the Government indicating that laws and regulations to give effect to these Articles are currently being developed. ***The Committee asks the Government to provide further information on the development of these laws and regulations, and hopes that they will ensure that occupational health services are informed by the employer and workers of any known factors, and any suspected factors, in the working environment which may affect the workers' health; and of ill health among workers and absence from work for health reasons.***

Part VI of the report form. Application in practice. ***The Committee requests the Government to give a general appreciation of the manner in which the Convention is applied in the country, attaching extracts from inspection reports and, where such statistics exist, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, etc.***

Netherlands

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1950)

The Committee notes the observations submitted by the Netherlands Trade Union Confederation (FNV) on the Government's brief report. These observations were transmitted to the Government on 16 September 2009.

Article 1 of the Convention. Update on new legislation and administrative regulations. The Committee notes the observations by the FNV that the Government's latest report does not have content apart from remarking that there are no new developments. The FNV has indicated that this content is insufficient considering that, during the reporting period, occupational safety and health legislation in the Netherlands has changed dramatically. These changes imply a possibility for the social partners to develop so-called "Health and Safety catalogues" at the level of sectors and branches, with the aim of establishing the means by which the goals of the Working Conditions Act can be reached. The FNV notes that, in the building sector, such catalogues have been developed. ***The Committee asks the Government to include, in its next report, information on any further legislative measures adopted in respect of the Convention and to update the Committee on the success of the "Health and Safety catalogues".***

Article 4 and Part V of the report form. Maintain an adequate system of inspection to ensure the effective enforcement of its laws and regulations relating to safety precautions in the building industry. The Committee notes that the Government included comprehensive information on the application of the Convention in practice in their report for the period 1 June 1996 to 1 June 2001, but that no such information was provided in this year's report. The Committee notes the observations by the FNV which indicate that during the reporting period there were several incidents in the building sector with regard to chemical substances, illegal work, the risk of falling from heights and several other dangerous aspects that have been indicated in reports made by the labour inspectorate, and that this information is not included in the Government's latest report. ***The Committee asks the Government to include information in its next report on the application of the Convention in practice, including data on the number of enterprises involved in the building sector, the number of work accidents and the number of inspections undertaken and any measures taken to reduce the number of accidents in this sector.***

The Committee draws the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises this Convention and which may be better suited to the current situation in the building industry. It reminds the Government that the ILO Governing Body invited States parties to this Convention to examine the possibility of ratifying the Safety and Health in Construction Convention, 1988 (No. 167), the ratification of which implies ipso jure immediate denunciation of Convention No. 62 (document GB.268/8/2). ***The Committee requests the Government to keep it informed of any developments in this regard.***

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1991)

The Committee notes the Government's latest report indicating recent legislative amendments to the Working Conditions Act, which introduce a new distinction of responsibility between the Government and the social partners. The Committee also notes the observations, attached to the Government's report, from the National Federation of Christian

Trade Unions (CNV) and the Confederation of Netherlands Industry and Employers (VNO–NCW), and observations received from the Netherlands Trade Union Confederation (FNV), transmitted to the Government on 16 September 2009. The Committee notes the attached summary of the National Centre of Occupational Diseases' annual report which provides an interesting insight into occupational diseases, including trends and dissemination of information within branches and occupations. The evidence of fewer health problems as a result of the smoking ban in bars and restaurants is particularly interesting.

Article 5, subparagraph (d), and Article 11, subparagraph (e), of the Convention. Communication and cooperation at the levels of the working group and the undertaking, and the publication of information. The Committee notes the observations by the FNV indicating that workers do not have a legislated right to request documents on risk assessment and measures taken in the enterprise to address these risks. ***The Committee asks the Government to provide further information on the legislative measures in place that give effect to Article 5(d) and Article 11(e) with regard to workers' access to information on risk assessment and measures taken in the enterprise to address these risks.***

Article 9, paragraph 1. Labour inspectorate. The Committee notes the information provided indicating that of the approximately 350,000 enterprises in the Netherlands with at least one employee, the labour inspectorate proactively inspects 20,000 enterprises every year. With regard to the observations by the FNV stating that complaints from workers regarding non-compliance with the laws are not always investigated, the Committee notes that the Government has indicated that all complaints are investigated, and that the anonymity of the complainant is always kept. The Committee notes, however, that the Government has not transmitted a copy of the relevant internal instruction of 17 June 2008 of the labour inspectorate, as requested. The Committee also notes that in response to observations made by the FNV, the Government has indicated that it is standard procedure and part of the training and instruction of inspectors to allow the works council the opportunity to accompany the inspector and to discuss problems privately, and that after an inspection the works council is entitled to a copy of the letter(s) sent to the employer. ***The Committee requests the Government to transmit a copy of the internal instruction of 17 June 2008 of the labour inspectorate, which protects anonymity of complainants.***

Article 10. Safety and health covenants. The Committee notes that the final evaluation report on the use of covenants has shown that enterprises in non-covenant sectors showed fewer improvements on OSH risks. ***The Committee hopes that the new measures undertaken by the Government, with regard to the rearrangement of employer, worker and government responsibilities in the private and public domain, will contribute to increased compliance with legal obligations across enterprises. The Committee asks the Government to keep it informed in this respect.***

Article 11, subparagraph (c). Notification of occupational diseases. The Committee notes the observations by the FNV with regard to under-reporting of occupational diseases. The Committee notes the Government's response on measures taken to improve the reporting of occupational diseases in the national registration system of the National Committee on Occupational Diseases, including improved communication and rapport with the experts responsible for submitting the reports by providing tailor-made information to these experts, offering feedback and refresher courses, as well as developing guidelines to empower experts to report occupational diseases. ***The Committee asks the Government to provide further information, in its next report, on the impact of these measures.***

Article 17. Two or more undertakings engaged in activities simultaneously at one workplace. The Committee notes the observations by the VNO–NCW, with reference to this Article, indicating that while the responsibilities of cooperating employers at one worksite is regulated clearly in the Working Conditions Act and the Working Conditions Decree, in practice there are many obstacles to the implementation of the legal obligations in the distribution of responsibilities. The VNO–NCW also states that compliance in this area is not always duly examined during inspections. ***The Committee asks the Government to provide information on the practical application of Article 17.***

Part V of the report form. Application in practice. The Committee notes with *interest* the recent revision to the Working Conditions Act which affects the distribution of responsibilities between the Government and social partners in terms of the development of regulations on occupational safety and health. It notes the Government's statement that within the so-called "public domain" the prime responsibility of the Government is still to lay down general rules and targets to be met as far as the level of protection of workers is concerned and formulated, but that the so-called "private domain" is now to be the prime responsibility of the social partners, whereby they are to agree on ways and methods of working in order to achieve and implement those targets. The Committee notes that such agreements between employers and workers can be formulated in so-called "OSH catalogues" ("Arbocatalogues"), which can be submitted to the labour inspectorate for approval. After approval these measures will be considered as legally binding and inspectors will take them into account during their inspections. The Committee notes that the FNV has indicated that these "OSH catalogues" can only be approved at the branch or sectoral level, as opposed to the company level. The Committee also notes the observations by the FNV on the lack of clear prescribed targets and exposure limits in legislation; a lack of follow-up on a number of projects undertaken by the Government to promote a better culture of occupational safety and health in enterprises; and the availability and independence of company doctors or experts. The Committee also notes the information regarding the establishment of a "support group on risk assessment" which aims to actively promote the development and application of risk assessments, especially in small and medium-sized enterprises. Finally, the Committee notes the information regarding the uneven but overall downward trend related to fatal accidents and that the Government has indicated it is currently developing an action plan specifically to address fatal accidents. ***The Committee asks the Government to***

continue to provide information on the application of the Convention in practice, including information on the progress related to the “OSH catalogues”; the development and impact of measures taken to address fatalities; and measures undertaken or envisaged to ensure there is appropriate follow-up on the completion of projects aimed at promoting occupational safety and health in enterprises.

Asbestos Convention, 1986 (No. 162) (ratification: 1999)

The Committee notes the response provided by the Government in its latest report, including information on the effect given to *Article 2(b)–(e), Article 3(2), Article 4, Article 12(1), and Article 22(1), of the Convention*. The Committee also notes the information indicating that the total ban against asbestos of 1993 remains in force without exceptions and that recent amendments to legislation reflect the provisions in the European Community Regulation on chemicals and their safe use (EC 1907/2006), which does not allow for derogations from the prohibition of the use of asbestos.

Article 21, paragraph 4. Compensation for workers suffering from asbestos-related diseases. The Committee notes the observations by the Federation of Netherlands Trade Unions (FNV), received on 25 November 2004 and transmitted to the Government on 6 December 2004. In its observations, the FNV particularly refers to possible entitlements to compensation of workers who suffer from asbestos-related occupational diseases, and to the issue currently under investigation as to whether or not the employer must pay a further amount in addition to the standard amount of compensation. ***The Committee requests the Government to provide further information on entitlements to compensation and compensation effectively paid to workers suffering from asbestos-related diseases.***

Article 22, paragraph 1. Dissemination of information with regard to hazards due to exposure to asbestos. With reference to its previous comments on the observations by the Trade Union of Middle Categories and Senior Staff Unions, the Committee notes the information that the National Institute for Asbestos Victims is involved in the dissemination of information on the actual use of asbestos at workplaces. ***The Committee requests the Government to provide further information on the work of the National Institute for Asbestos Victims and how they are associated in the work related to the dissemination of information with regard to hazards due to exposure to asbestos.***

Part V of the report form. Application in practice. The Committee notes the information provided in the Government's report, including information on the records of all victims of mesothelioma, as records on occurrences caused only by work-related factors are not available. The Committee notes the observations by the FNV, submitted on 28 August 2009 and transmitted to the Government on 16 September 2009, indicating that, in their view, it should be possible to specify the number of victims of mesothelioma attributed to work-related factors, with reference, inter alia, to information made available by the National Institute for Asbestos Victims. The FNV further indicates that it has asked the Government to take action and set up a national asbestos register. The Committee also notes the observations by the FNV indicating that they concluded in 2007, that in the field of removing asbestos from building sites and other places, the situation in the Netherlands is poor and a lot of demolition work is done in a way where workers are not well protected. ***The Committee requests the Government to respond to these comments; to provide further information on the recording and notification procedures regarding victims of asbestos-related diseases; to provide relevant statistical information; and to indicate measures taken to ensure that workers involved in demolition are adequately protected from hazards related to exposure to asbestos.***

[The Government is asked to reply in detail to the present comments in 2010.]

New Zealand

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2007)

The Committee notes with interest the comprehensive and detailed information provided by the Government in its first report, and notes that the Health and Safety in Employment Act 1992 (HSE Act), and its accompanying regulations, the Hazardous Substances and New Organisms Act 1996, and the Employment Relations Act 2000, ensure legislative conformity with a majority of the provisions of the Convention. The Committee also notes the observations by the New Zealand Council of Trade Unions (NZCTU) and Business New Zealand, and the responses provided thereto by the Government.

Article 1, paragraph 3; and Article 2, paragraph 3, of the Convention. Scope and definitions. The Committee notes the information provided by the Government indicating that the New Zealand Defence Forces are excluded from the HSE Act's provisions relating to accident investigation and inspection of high defence areas; and that occupiers of a home do not have duties to people who perform residential work. ***The Committee asks the Government to indicate the reasons for such exclusions and the measures taken to give adequate protection to workers in excluded branches and towards a wider application of the Convention.***

Articles 5 and 11. Main spheres of action under the national policy and functions progressive to give effect to the national policy. The Committee notes the NZCTU's comment indicating that the National Occupational Health and Safety Advisory Committee (NOHSAC), established to provide independent advice directly to the Minister of Labour on major occupational health and safety issues, identified significant gaps in guidance materials intended to encourage compliance with the performance-based framework of the HSE Act; a lack of resources; and a need for more support for

the occupational safety and health (OSH) regulatory framework. The Committee notes the Government's response indicating that increased resource was provided in 2007 for a range of health and safety initiatives including proactive support for businesses through standard setting and specialist support; and that a project has been established to review all standard and guidance material either produced or endorsed by the Government since 1992, with a view to developing a framework to inform the development of future material. The NZCTU further states that NOSHAC was disestablished in June 2009 due to funding cuts, and that its roles have not been taken up by another government agency. The Committee notes the information provided by the Government indicating that the decision to disestablish NOSHAC was made in order to redirect resources to address the issues identified by NOSHAC, and that the Government will continue to have the ability to commission research and academic input to help identify and address emerging workplace health and safety issues on an "as needed" basis. ***The Committee asks the Government to provide further information on the outcome of measures undertaken to address the issues identified by NOSHAC, and information on the research and academic input undertaken to identify and address emerging workplace health and safety issues.***

Articles 7 and 9. Enforcement of laws and regulations. The Committee notes the NZCTU's statement indicating that while one of the roles of the health and safety inspectorate is to provide training and information for employers and employees, there must also be a strong focus on monitoring and enforcement, which requires continued recruiting and employing of an appropriate number and range of skilled field staff to carry out proactive and reactive site inspections across all industry groups. The Committee notes the Government's response indicating that the tripartite Workplace Health and Safety Council has raised issues at meetings on monitoring and enforcement issues and will continue to do so, and that while the enforcement role of the inspectorate is primarily aimed at promoting excellent health and safety practices in the workplace, monitoring, investigation, and enforcement of health and safety legislation are key components of the Government's response to any failures of compliance with the HSE Act, especially where non-compliance is of a serious nature. The Committee further refers to its 2007 comments to the Government on the Labour Inspection Convention, 1947 (No. 81), asking the Government to ensure that the prevention and advising activities performed by labour inspectors, and directed at workers and employers, particularly in the field of occupational safety and health, are supplemented, in all cases where this is necessary in order to obtain compliance with the applicable legal provisions and the measures ordered by the labour inspector, by the imposition of penalties or the institution of legal proceedings. ***The Committee hopes that the Government takes all appropriate measures to ensure a proper balance between preventive and advisory functions on the one hand, and enforcement functions on the other, of the labour inspectorate as discussed in paragraphs 96–102 of the 2009 General Survey concerning occupational safety and health.***

Article 12, subparagraph (c). Responsibilities of those who design, manufacture, import, provide or transfer machinery, equipment and substances for occupational use. The Committee notes the information provided by the Government indicating that the Department of Labour undertakes research to keep abreast of scientific and technical knowledge, and is required to provide policy research and advice to the Government on issues of OSH. ***The Committee asks the Government to provide further information on measures taken with a view to ensuring that those who design, manufacture, import, provide or transfer machinery, equipment and substances for occupational use undertake studies and research or otherwise keep abreast of the scientific and technical knowledge necessary to comply with subparagraphs (a) and (b) of Article 12.***

Article 13. Protection of workers from undue consequences. The Committee notes that the NZCTU is aware that workers in some industries are discouraged by their employers from reporting accidents and incidents relating to occupational harm, and that there are instances where workers are pressured to continue working even where safety guards and other protections are missing. The NZCTU states that while the Government prosecutes severe incidents where accidents have occurred resulting in loss of life or severe impairment, it seldom takes proactive steps to inspect for safety breaches, and that the NZCTU has made submissions regarding the need to lower the threshold of serious harm in health and safety legislation. The Committee notes the Government's response indicating that the inspectorate's approach toward small and medium enterprises is focused on increased provision of information and sector engagement, together with stronger enforcement actions, where required, enabling more effective compliance overall; and that revision of the definition of serious harm is under active consideration by the Government. ***The Committee asks the Government to provide further information on measures taken to address the abovementioned issues identified by the NZCTU, and on changes to the definition of serious harm.***

Article 14. Measures to promote the inclusion of occupational safety and health at all levels of education and training. The Committee notes the NZCTU's statement that the 2009 government budget reduced funding for a number of areas of tertiary education, including regulatory compliance and health and safety qualifications, and that there have also been substantial cuts in training of workplace health and safety representatives. The Committee notes the Government's indication that conformity with this Convention is not affected, as the rights and obligations of employers and workers remain unaffected by these shifts, and that the Government will look at future options for the resourcing of health and safety representative training. ***The Committee asks the Government to provide further information on the effect reduced funding has had on the promotion of OSH at all levels of education and training, and to indicate measures taken to continue to give effect to Article 14.***

Article 17. Two or more undertakings engaged in activities simultaneously at one workplace. The Committee notes the information provided by the Government indicating that, being a performance-based piece of legislation, the

HSE Act addresses coordination and collaboration on health and safety in workplaces with two or more undertakings through a combination of duties on various parties, as well as the express requirement for employers to take all practicable steps to ensure the safety of employees at work. The Committee also notes with *interest* the information indicating that the Government is in the process of amending legislation to create a specific duty to collaborate where business undertakings share a workplace at the same time. ***The Committee asks the Government to provide a copy of the amended legislation once it has been adopted.***

Article 19. Arrangements at the level of the undertaking. The Committee notes the NZCTU's statement that there is no specific provision for health and safety representatives to have adequate work time or resources to carry out their duties under the HSE Act, and that in practice many representatives carry out their health and safety duties in addition to their regular work duties and in their own time. The Committee notes the Government's response indicating that paid leave for adequate health and safety training is provided for under section 19E of the HSE Act, and that implicit in the employer's duty is that health and safety representatives should be provided with reasonable opportunities to carry out their health and safety responsibilities. ***The Committee asks the Government to indicate measures taken to address the issues identified above by the NZCTU, and to provide further information on the application in practice of section 19E of the HSE Act.***

Article 20. Cooperation between management and workers. The Committee notes Business New Zealand's concern that the HSE Act's requirement to have a health and safety representative, or committee, constitutes a disincentive for workers in general to involve themselves in health and safety matters. The Committee notes the Government's response indicating that Part 2A of the HSE Act creates a duty for employers to provide reasonable opportunities for workers to participate effectively in ongoing processes for the improvement of health and safety in their place of work. ***The Committee asks the Government to provide further information on the application of this Article in practice, with reference to Business New Zealand's concerns regarding the cooperation between management and workers.***

Article 21. Expenditure for workers. The Committee notes the information provided by the Government indicating that under section 10(2)(b) of the HSE Act, employers are required to take all practical steps to provide, make accessible to, and ensure the use by the workers, of suitable clothing and equipment to protect them from any harm that may be caused by, or may arise out of, the hazard. The Committee also notes that the NZCTU is aware that many contracted workers are not provided with protective clothing or equipment, and if they supply such items, they are expected to pay for them. The Committee notes the Government's response indicating that the duty under section 10(2)(b) does not apply to a principal in relation to contracted workers, and that while a principal is still responsible for the safety of contracted workers, this does not include the provision of such clothing and equipment. ***The Committee asks the Government to provide further information on the cost-free nature of all occupational safety and health measures, not just protective clothing and equipment; and to provide further information on the application of this Article in practice, with particular reference to contracted workers.***

Part III and Part V of the report form. Decisions of courts of law; and application in practice. The Committee notes that the Government has not provided information on these Parts of the report form. ***The Committee asks the Government to include information on whether courts of law, or other tribunals, have given decisions involving questions of principle relating to the application of the Convention; to give a general appreciation of the manner in which the Convention is applied in the country; and to attach extracts from inspection reports and, where such exists, information on the number of workers covered by the legislation; the number and nature of the contraventions reported; and the number, nature and cause of accidents reported.***

Nicaragua

Radiation Protection Convention, 1960 (No. 115) (ratification: 1981)

Article 13. Protection against accidents and in emergencies. The Committee notes that the Government's report does not contain the information requested in its 2004 direct request. In that direct request, the Committee noted the Government's indication that under section 166, relating to the preparation of emergency plans, of the 1998 Regulations respecting technical protection against ionizing radiations, the recommendations used are those contained in the October 2003 document "Method for developing arrangements for response to a nuclear or radiological emergency: Emergency preparedness and response". It noted that the definition of "emergency" contained in this document justifies the exceptional exposure of workers in the event of occurrences which require, inter alia, interventions to reduce the adverse effects on property. The Committee observed that this definition appears incompatible with section 189 of the 1998 Regulations respecting technical protection against ionizing radiations, which provides that workers participating in an intervention may undergo exposure resulting in the maximum permissible dose for occupational exposure in a single year being exceeded solely for the purpose of saving lives or preventing serious injury, avoiding a high collective dose or preventing the development of catastrophic situations. In this respect, the Committee drew the Government's attention to the information contained in paragraphs V.27 to V.32 of the 1994 Basic Standards of Radiation Protection and paragraph 35(c)(iii) of its 1992 general observation under the Convention, namely that exceptional exposure of workers is not justified for the purpose of rescuing "items of high material value". Consequently, the Committee invited the Government to take the necessary measures to correct the apparent contradictions between the legislation and the recommendations of

the October 2003 document entitled “Method for developing arrangements for response to a nuclear or radiological emergency: Emergency preparedness and response”, with a view to limiting the exposure of workers to what is strictly necessary for the purpose of limiting acute danger to life and health. ***The Committee once again requests the Government to indicate the manner in which it is ensured that the workers participating in an intervention cannot be exposed to such an extent that the maximum permissible dose for occupational exposure in a single year is exceeded for the purpose of rescuing items of high material value, but only in order to save lives or prevent serious injury, avoid a high collective dose or prevent the development of catastrophic situations.***

Part V of the report form. Application in practice. In its previous comments, the Committee noted the Government’s indication that, under section 206 of the 1998 Regulations respecting technical protection against ionizing radiations, all inspections and audits are documented and, emphasizing that inspectors’ reports constitute an important component in assessing the application of the Convention, it requested the Government to provide extracts from the reports drawn by the Directorate-General for Occupational Safety and Health, which is the competent authority to monitor the application of the provisions of the Convention. ***Noting that the Government has not provided the requested information, the Committee once again requests it to provide this information and to indicate the number of workers engaged in activities involving exposure to ionizing radiations and who are accordingly covered by the Convention.***

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1981)

Legislation. The Committee notes with *interest* Act No. 618, the General Occupational Safety and Health Act, published in *La Gaceta, Diario Oficial*, No. 133, of 13 July 2007, and Decree No. 96-2007 issued under the Act. It welcomes the fact that section 5 of the Act provides that “the standards, decisions, and instructions prepared and published by the Ministry of Labour shall comply with the principles of preventive policies set out in the present Act, and in the international Conventions of the International Labour Organization (ILO) and the Labour Code”. Observing that these instruments appear to facilitate the ratification of the Occupational Safety and Health Convention, 1981 (No. 155), its Protocol of 2002, and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), the Committee draws the Government’s attention to paragraphs 295 and 296 of its General Survey on Convention No. 155. ***The Committee invites the Government to provide information on any developments in this respect.***

Articles 2 and 4 of the Convention. Prohibition of the sale, hire, transfer in any other manner and exhibition of machinery of which the dangerous parts are without appropriate guards. With reference to its previous comments, the Committee notes that the Government refers to the Ministerial Standard on minimum health and safety provisions for equipment used at work, published on 9 April 1996, section 3(a)(2) of which provides that the equipment used for work that is placed at the disposal of workers shall comply with the safety requirements established by the competent administrative authority for work equipment to be freely commercially available. The Committee notes that this provision refers to “the safety requirements established by the competent administrative authority”, but that the Government’s report does not indicate these requirements. As a result, the Committee is not able to ascertain whether the safety requirements established by the competent authority give effect to *Articles 2 and 4* of the Convention. ***The Committee therefore requests the Government to provide copies of any provisions that specify the “safety requirements” mentioned by the Government in its report and information on the competent authorities which monitor their application. The committee also requests the Government to provide detailed information on the measures taken to give effect to each paragraph under Article 2 of the Convention and Article 4, including information regarding the obligations of the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor; and the prohibition contained in Article 2(1) of the Convention. The Committee also asks the Government to provide information on the application of Articles 2 and 4 of the Convention in practice.***

Articles 6, 7 and 11. Use of machinery any dangerous part of which is without appropriate guards. Prohibition of the use of machinery without guards. The Committee notes the information provided by the Government indicating that Annex 1 to the Ministerial Standard referred to above, in paragraphs 6–11 respecting “Protection measures and safety guards on equipment used for work” and Annex 2 of the Ministerial Standard set out in law these Articles of the Convention.

Article 15, paragraph 1. Measures of application and penalties. In its previous comments, the Committee requested the Government to indicate the measures taken to ensure the effective application of the provisions of the Convention. The Committee notes that the Government refers to sections 322 and 326 of the General Occupational Safety and Health Act and observes that these provisions refer to the obligations of the employer, as subsection 1 refers to the obligations and penalties deriving from the provisions of the Convention. The Committee wishes to point out that certain provisions of the Convention, such as *Articles 2 and 4*, establish obligations for other persons, such as the vendor, the person letting out on hire or transferring the machinery in any other manner, the exhibitor and their respective agents. ***The Committee therefore reiterates its request to the Government to provide information on the application of Article 15, paragraph 1, of the Convention, particularly in conjunction with Articles 2 and 4 of the Convention.***

Article 15, paragraph 2. The Committee requests the Government to provide information on the activities of the labour inspection services in relation to Articles 6 and 7 of the Convention.

Norway

Chemicals Convention, 1990 (No. 170) (ratification: 1993)

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

The Committee takes note of the last report received from the Government referring to the observations made by the Confederation of Norwegian Business and Industry (NHO). It would draw the Government's attention to the following points.

Articles 3 and 4 of the Convention. Consultation with employers' and workers' organizations on national policy related to chemicals. With regard to the comments of the NHO on the current development of a strategic legislation on chemicals in the EU, the Government acknowledges that the competent authorities are not always able to monitor the development of the new European chemicals rules "REACH" (Registration, Evaluation and Authorization of Chemicals) in detail as would be desirable due to lack of resources. **The Committee requests the Government to explain the implications the above-indicated lack of monitoring it has with regard to consultations to be held with the most representative organizations of employers and workers with a view to the formulation, implementation and periodical review of a coherent national policy designed to give effect to the provisions of this Convention.**

Article 5. Prohibition and restriction of hazardous chemicals. As concerns the competent authority having the power to prohibit or restrict the use of certain hazardous chemicals, the Government indicates that the Norwegian Pollution Control Authority governs the implementation of the European Restrictions Directive (76/769/EEC) through the Regulations on restrictions in the use of health – and environmentally – hazardous chemicals and other products. The Committee however notes that the provisions of the above Norwegian Regulation do not include provisions regarding the prohibition or restriction of certain hazardous chemicals. **It therefore requests the Government to indicate the legal provision or text, which enables the Norwegian Pollution Control Authority to prohibit or restrict the use of certain hazardous chemicals.**

Article 6. Classification system of chemicals. With regard to systems and specific criteria appropriate for the classification of chemicals according to their type and degree of their inherent health and physical hazards and for assessing the relevance of information required to determine whether a chemical is hazardous, the Committee notes the Government's indication that, following the comments of the NHO Regulation No. 1139 of 2002 on classification, labelling, etc., of dangerous chemicals, adopted to implement the European Directives on dangerous substances and preparations, have not been revised since. Hence, Regulation No. 1139 of 2002 still contains certain exceptions from the corresponding European Directives as regards the requirements set for the classification and labelling of 12 individual substances containing organic solvents. However, these exceptions will apply until 1 July 2005. Hence, given the deadline of 1 July 2005, the Committee requests the Government to indicate whether it intends to adopt regulations which do not provide for any exceptions regarding the classification requirements of dangerous chemicals, in order to give full effect to *Article 6* of the Convention. As to the competent authority responsible for the classification of chemicals as hazardous, the Committee notes the Government's indication that, following changes of names, the bodies competent for supervising compliance with Regulation No. 1139 of 2002, on classification, labelling, etc., of dangerous chemicals are the Norwegian Control Authority, the Directorate of Labour Inspection, the Directorate for Civil Protection and Emergency Planning and the Petroleum Safety Authority. **The Committee requests the Government to explain whether the above authorities may act independently or whether they have to coordinate their activities.**

Part III of the report form. Tribunal decisions and investigations on cases involving questions related to the application of the Convention. The Committee notes the compilation of cases which are under investigation or where fines have been imposed. It notes that the fines have been mostly imposed for violations of provisions of the Working Environment Act. The Committee further notes that in some cases the fines have not been accepted. It therefore requests the Government to indicate the legal consequences to be faced by enterprises which do not accept the fine imposed on them due to the violation of legislation. As to the cases which are still under investigation, the Committee asks the Government to keep it informed about their results. With regard to the case against "Jotun", the Committee notes the Government's indication that this case first was not pursued further in 2000 and that the National Authority for Investigation and Prosecution of Economic and Environmental Crime, after having considered reopening the case, had decided in December 2001 not to do so. **The Committee therefore requests the Government to indicate the subject of this case and to specify the grounds for not having reopened the case.**

Part V of the report form. Practical application. The Committee notes the Government's indication that no systematic study has been made regarding the effects of the Convention on employment and occupation. However, the Labour Inspection Authority has taken steps to enhance the scope and quality of its supervision related to chemical health hazards. To this effect, the inspection officers have been trained and the Labour Inspection Authority is currently conducting a major campaign in four different industries, the objective of which is to raise the knowledge on chemical health hazards and to reduce the probability that workers develop solvent-related disorders as well as skin and respiratory diseases. A further result of this campaign will be a better implementation of this Convention in enterprises. **The Committee requests the Government to supply, with its next report, information on the outcome of this campaign.** With regard to statistics showing the manner in which the Convention is applied in the country, the Government indicates that, while no statistics are available on the number of violations of the chemicals legislation, statistics on the number of sanctions applied are available for the years 2002 and 2003. **The Committee, while noting the statistical data on the number of sanctions applied, invites the Government to proceed to the establishment of statistics containing both the number of violations recorded and the number of sanctions imposed. The Committee would draw the Government's attention to the fact that information on the number of sanctions imposed could only serve as indicator for the application of a Convention in practice, if it is linked with information on the number of violations recorded.**

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

Paraguay

Hygiene (Commerce and Offices) Convention, 1964 (No. 120) (ratification: 1967)

The Committee notes the Government's detailed report. It takes note of a CD, which, according to the report, is the first digital publication of the labour legislation and includes the Occupational Safety, Health and Medicine Technical Regulations, as well as the Recommendation to the Convention. The CD was produced with support from the ILO HIV/AIDS Programme in Paraguay. The report indicates that to have further ILO support in this area would be most important since it has become clear that workers are not familiar with the labour legislation, particularly the parts relating to the prevention of occupational accidents and diseases.

Article 3 of the Convention. Cases where it is doubtful whether an establishment, institution, or administrative service is one to which the Convention applies. The Government states that problems have been detected in the case of subcontracting enterprises, which hire the services of outside personnel, and that the responsibility for workers' rights becomes blurred in the process. In this connection the Ministry of Justice and Labour signed an agreement in September 2008 with the Public Procurement Unit to make compliance with the labour legislation and occupational health and safety standards an express requirement, and to establish that the cost structure include social benefits and the purchase of individual protective equipment, and that contracts lay down penalties for non-compliance. **The Committee requests the Government to continue to provide information in this regard and hopes that the Office can continue to provide the Government with the necessary technical assistance.**

Article 6, paragraph 1, and Part IV of the report form. Appropriate measures taken by the inspectorate and application of the Convention in practice. The Committee notes with **interest** the Government's unflagging efforts to improve safety and health inspection and to provide information. The Government indicates that in the previous administration, for the period 2007–08, inspections were carried out in response to complaints and sometimes ex officio. The Government further indicates that in the period 2008–09, in view of the number of reports of corruption in the inspection process, the following measures have been taken: inspection forms have been produced in order to standardize and systematize the information obtained; procedures have been analysed in order to optimize deadlines; emphasis has been placed on dissemination of information; operations have been carried out under the programme "Decent work in rural areas, the construction sector, cattle raising and other establishments"; ex officio inspections have been carried out, there being too few inspectors to respond to complaints. **The Committee requests the Government to continue to provide information on the application of the Convention in practice, on the work of the inspection service in this area and on its impact and its results.**

Poland

Chemicals Convention, 1990 (No. 170) (ratification: 2005)

The Committee notes with **interest** the comprehensive information provided in the Government's report, and the attached legislation, which give effect to virtually all provisions of the Convention. The Committee notes particularly the detailed statistical data and the analysis thereof submitted by the Government on the application of, in particular, *Articles 10–15 of the Convention*. This information enables the Committee to have a more detailed appreciation of how the Convention is applied in practice. **The Committee invites the Government to pursue its efforts to collect and analyse relevant statistical data in this manner.**

Article 6, paragraph 4 of the Convention. Progressive extension of classification systems and their application. The Committee notes that the Government's report did not contain any information on the application of this provision. **The Committee asks the Government to indicate measures undertaken or envisaged to progressively extend the classification systems and their application.**

Article 10, paragraph 4. Employers shall maintain a record of hazardous chemicals. The Committee notes the information on the application in practice of this Article, which indicates that the lack of valid safety data sheets for chemical substances and preparations at workplaces was identified more frequently in 2008 than in the previous year, with 49 per cent of inspected employers not possessing a valid register of hazardous substances used in the workplace. **The Committee asks the Government to provide further information on measures taken to address the lack of valid safety data sheets in workplaces.**

Article 11. Transfer of chemicals. The Committee notes the information provided by the Government indicating that in more than half of the inspected workplaces, the process for transferring chemical substances and preparations into smaller containers did not allow for the identification of them and their associated hazards. The irregularities in this regard related to 18 per cent of containers and equipment in the workplace, which were inspected in 2008. Inappropriately labelled gas pipelines for transferring hazardous chemicals were found in 55 per cent of the inspected workplaces. **The Committee asks the Government to provide further information on the measures taken to address the inconsistency in workplaces with regard to the transfer of chemicals into other containers or equipment.**

Article 12. Exposure. The Committee notes the information indicating that in 2008, 34 per cent of inspected employers, whose workers were exposed to hazardous chemicals, and who measured these chemicals, did not possess the required documentation (a register and measurement sheets), whereas in 4 per cent of workplaces the threshold limit value was exceeded. ***The Committee asks the Government to provide further information on measures taken to address the high number of employers who omit to identify hazardous agents present in workplaces, which require testing or measurement.***

Article 13. Operational control. The Committee notes the information that in 2008, as in the previous year, a lack of documented risk assessment was found in every fifth inspected workplace using chemicals, and that in one third of inspected workplaces the employers did not provide workers with personal protective equipment in workstations where such protection is required. Furthermore, there was a significant rise in the cases of inspected employers not ensuring the washing of protective or work clothes soiled by chemicals. ***The Committee asks the Government to provide further information on measures taken to address the abovementioned issues on employer obligations with regard to risk management on the use of chemicals at work.***

Article 14. Disposal of waste. The Committee notes the information indicating that inspections carried out in 2007–08, in over 200 workplaces, revealed irregularities related to, among other things, the storage and disposal of waste containers after using hazardous chemical substances and preparations. ***The Committee asks the Government to provide further information on measures taken to address the irregularities with regard to disposal of wastes of hazardous chemicals.***

Article 15. Information and training. The Committee notes the information indicating that almost half of the controlled employers in 2008 did not provide workers with necessary information about the hazards associated with dangerous chemicals. In particular, people from outside the workplace, for example companies offering renovation and maintenance services at the workplace, suppliers, receivers, etc. were insufficiently informed about chemical hazards. Moreover, employees were not instructed on how to behave in emergency situations. The Committee notes the information by the Government indicating measures taken to eliminate the abovementioned irregularities, including the issuing, by labour inspectors, of appropriate decisions and recommendations, provided for in the legal provisions. ***The Committee asks the Government to continue to provide information on measures taken to address the irregularities with regard to information and training on hazards associated with chemicals at the workplace.***

Portugal

Radiation Protection Convention, 1960 (No. 115) (ratification: 1994)

Legislation. The Committee notes with *satisfaction* that Legislative Decree No. 222/2008 of 17 November 2008 gives effect to *Articles 7(1) and (2) and 8 of the Convention* and which establishes the maximum permissible doses of ionizing radiations which are in conformity with the exposure limits recommended by the International Commission on Radiological Protection (ICRP) to which the Committee referred in its 1992 general observation on the Convention; that this Decree repeals section 31 of Regulatory Decree No. 9-90 as requested by the Committee for several years, and that Legislative Decree No. 227/2008 of 25 November 2008 regulates the training of future specialists in the protection against ionizing radiations. The Committee also notes that the Government has included observations by the General Workers' Union (UGT) which state that the abovementioned Decree No. 227/2008 is essential to fill gaps in training of specialists in the protection against ionizing radiations.

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

Rwanda

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1962)

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

The Committee notes the adoption of Act No. 51/2001 of 30 December 2001 issuing the Labour Code. It notes in particular that section 198 of the Code repeals the orders implementing the Act of 28 February 1987 issuing the Labour Code. Ordinance No. 21/94 of 23 July 1953, referred to in the Government's report as the text regulating occupational safety in the building industry, has been repealed. The Centre of Workers' Unions of Rwanda (CESTRAR) likewise mentions in its comments that the abovementioned Ordinance appears to have been repealed, which leaves a legal void since it was the only text governing health and safety at work in the building industry. The Government states in this connection that the provisions that are not inconsistent with the 2001 Labour Code remain in force. It indicates, however, that it is in the process of drafting orders to implement section 135 of the new Labour Code. The Committee therefore hopes that in order to fill the legal vacuum and avoid any ambiguity, the Government will promptly take the necessary steps to draft and enact a regulatory text to apply the provisions of this Convention. ***It requests the Government to provide a copy of it as soon as it is adopted.***

Articles 4 and 6 of the Convention, in conjunction with Part V of the report form. The Committee notes the labour inspectorate's report for 2003 on public buildings and works. It notes the information supplied by the Government, and confirmed by CESTRAR, that most workers in the building sector are day labourers and casual workers, but do not appear in the files of the labour inspectorate which contain the names only of permanent workers. This is because employers have no obligations to day labourers or casual workers other than a daily remuneration. The Committee therefore observes that the data in the report of the

labour inspectorate do not reflect the real situation of the safety and health of workers employed in this sector. The Government indicates that in view of these circumstances inspection visits will be increased. *The Committee accordingly requests the Government to indicate the measures taken or envisaged to ensure that the activities of the inspectorate cover all workers employed in the building industry and that, as a result, inspection reports cover not only permanent workers, but also day labourers and casual workers, who appear to make up the majority of the workers in this sector.* The Committee recalls in this connection that it can assess the manner in which practical effect is given to the Convention in Rwanda only on the basis of information that covers all workers, regardless of the type of contracts they hold. The Committee notes that according to CESTRAR, the labour inspectorate lacks the capacity and means to carry out its work effectively because in Rwanda there is currently a boom in building and the construction sector in general. The Government indicates that efforts are under way to strengthen the capacity of the labour inspectorate. *The Committee accordingly asks the Government to provide details of the measures taken or envisaged in this regard.*

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

San Marino

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1988)

The Committee notes with *interest* the detailed information provided by the Government in its report. It notes, in particular, the information regarding the adoption of a national “Social Plan of the Republic of San Marino 2006–2008” taking an innovative approach to occupational safety and health including closer collaboration with universities and research centres with the objective of participating in international research projects and increasing awareness among professionals and citizens. It also notes the information regarding the adoption of numerous pieces of legislation in the area of occupational safety and health including Decree No. 25 of 26 February 2006, amending Decrees No. 74 of 17 May 2005 and No. 139 of 30 October 2003, which prescribe collaboration between several employers at temporary or mobile work sites and give effect to *Article 6(2) of the Convention*. The Committee also notes the information regarding effect given to *Articles 12–15*.

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

Senegal

White Lead (Painting) Convention, 1921 (No. 13) (ratification: 1960)

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

Article 7 of the Convention. Statistical information. With reference to its previous comments, the Committee notes the information contained in the Government’s brief report to the effect that statistics on cases of morbidity and mortality due to lead poisoning among working painters are not available at the Social Security Office, the body responsible for dealing with occupational diseases. The Government indicates that this situation is due, firstly, to the fact that occupational diseases are not declared by the employers or workers concerned and, secondly, to the lack of studies in this very complex sector of activity, in which workers do not make the connection between their work and the disease, which, if necessary, may be declared several years after they have stopped working. However, the Government refers to just one case of work-related asthma developed by a working painter as a result of his employment recorded by the Social Security Office. The Committee would like to remind the Government once again that it has been asking it to supply statistical information since 1981. *The Committee requests the Government to take all appropriate steps to develop a system for the collection of statistical information enabling, among other things, the identification of cases of morbidity and mortality due to lead poisoning among working painters in order to give full effect to Article 7 of the Convention.*

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

Serbia

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2000)

The Committee notes the information provided in the Government’s reports, the attached documentation, and the observations submitted by the Confederation of Autonomous Trade Unions of Serbia concerning the application of this Convention in practice. *The Committee asks the Government to supply a copy of the Occupational Safety and Health Law (O.G. 101/05) with its next report.*

Article 3 of the Convention. Definitions. The Committee notes the information indicating that the terms defined in the national legislation have the same meaning and definitions as those in the Convention. *The Committee asks the Government to provide reference to specific provisions in national legislation which provide for the definitions of the terms listed in Article 3.*

Article 4, paragraph 1, and Article 5, subparagraphs (a) to (f). National policy and main spheres of action. The Committee notes the information provided by the Government on the adoption of a national occupational safety and health

policy. **The Committee asks the Government to supply a copy of the National Occupational Safety and Health Policy; and to indicate the specific measures taken to address each of the main spheres of action under Article 5, subparagraphs (a) to (f).**

Article 7. Review, at appropriate intervals, of the situation regarding occupational safety and health. The Committee notes the information provided by the Government indicating the preparation, by the Ministry of Labour and Social Policy, of an annual report on the state of affairs and issues in the field of occupational safety and health in Serbia. **The Committee requests the Government to provide information on the outcome of this review process and how this review affects the development of the national policy in the country.**

Article 11, subparagraphs (a) to (f). Functions to give progressive effect to the national policy. The Committee notes the information provided by the Government indicating that the Ministry of Labour and Social Policy has, through its legislative activities, and inspection and monitoring, secured the implementation of the national policy. **The Committee asks the Government to provide further information on the specific measures undertaken by the competent authority to ensure that the functions of the individual subsections of Article 11 are progressively carried out.**

Article 12, subparagraphs (a) to (c). Responsibilities on those who design, manufacture, import, provide or transfer machinery, equipment and substances for occupational use. The Committee notes the information provided by the Government indicating general product safety and criteria for assessing a product's conformity with general safety requirements. **The Committee asks the Government to provide further information on measures undertaken with regard to the assessment of safety, and the making available of information, by those who design, manufacture, import, provide or transfer substances for occupational use (subparagraphs (a) and (b)); and the undertaking of studies and research or otherwise keeping abreast of the scientific and technical knowledge (subparagraph (c)).**

Article 13. Protection of workers from undue consequences. The Committee notes the information indicating that section 33 of the Occupational Safety and Health Law prescribes the right of workers to refuse to work where there is an immediate threat to their life or health. **The Committee asks the Government to provide further information on measures undertaken, in law and in practice, to ensure that workers who refuse to work under section 33, are protected from undue consequences.**

Article 15, paragraph 1. Coordination between various authorities and bodies called upon to give effect to Parts II and III of the Convention. The Committee notes the information provided by the Government indicating that a permanent working body in charge of occupational safety and health issues has been set up. **The Committee asks the Government to provide further information on the specific measures undertaken to ensure the coordination required under paragraph 1 of Article 15.**

Article 19, subparagraph (e). Right of workers, or their representatives, to inquire into all aspects of occupational safety and health. The Committee notes the information indicating that under section 45 of the Occupational Safety and Health Law the employer is required to allow the workers' representative, namely the Board, to participate in the review of all issues related to implementation of safety and health at work. **The Committee asks the Government to provide further information on measures undertaken to allow workers, or their representatives, to inquire into all aspects of occupational safety and health, and whether for this purpose, technical advisers may, by mutual agreement, be brought in from outside the undertaking.**

Part V of the report form. Application in practice. The Committee notes the Confederation of Autonomous Trade Unions of Serbia's statement indicating that in practice there are considerable problems in connection with the application of provisions related to occupational safety and health, health care and working conditions, and that environmentally harmful incidents which have occurred recently in the chemical industry can be attributed, amongst other things, to inadequate measures related to safety and health at work. The Confederation of Autonomous Trade Unions of Serbia further observes that there are a high number of cases of occupational accidents in the construction sector. **The Committee requests the Government to provide information on measures taken to address the issues identified above by the Confederation of Autonomous Trade Unions of Serbia; and to attach extracts from inspection reports and, where such exist, information on the number of workers covered by the legislation, the number and nature of the contraventions reported, and the number, nature and cause of accidents reported.**

Sierra Leone

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1964)

The Committee notes that the Government's summary report submitted in June 2004 indicated that the Government had no new developments to report and notes with *regret* that the Government's report for this year has not been received. It must therefore repeat its previous observation which read as follows:

For a number of years, the Committee has drawn the attention of the Government to the fact that the national legislation does not contain provisions to give effect to Part II of the Convention (prohibition of the sale, hire, transfer in any other manner and exhibition of unguarded machinery) and that it does not provide for the full application of *Article 17 of the Convention* (which applies to all sectors of economic activity), as it is not applicable to certain branches of activity, inter alia, sea, air or land transport and mining.

Since 1979, in reply to the Committee's comments, the Government has indicated in its reports that a Bill to revise the 1974 Factories Act was being drafted and would contain provisions consistent with those of the Convention, and would apply to all the branches of economic activity. In its latest report (received in 1986), the Government indicates that the draft Factories Bill, 1985, has been examined by the competent parliamentary committee and is to be submitted to Parliament for adoption.

With its report for the period ending 30 June 1991, the Government supplied a copy of extracts of the Factories Bill containing provisions which should give effect to Part II of the Convention. In this connection, the Government was requested to indicate the stage of the legislative procedure reached by the Bill and the body which was in the process of examination of the Bill. *Since no information has been provided by the Government in this respect, the Committee once again expresses the hope that the abovementioned Bill will be adopted in the near future and requests the Government to provide a copy of this text, once it has been adopted.*

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

Slovenia

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1992)

The Committee notes with *satisfaction* the information provided by the Government indicating the adoption of Rules on the protection of workers from risks related to exposure to vibration at work (No. 94/2005); recent legislative amendments to the Rules on the protection of workers from risks related to exposure to chemical substances at work (No. 53/2007), and the Rules on the protection of workers from risk related to exposure to noise at work (No. 18/2006) which indicate effect given to *Article 3, Article 4, Article 8(1) and (3), Article 9, Article 12 and Article 15 of the Convention*.

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

Occupational Health Services Convention, 1985 (No. 161) (ratification: 1992)

The Committee notes the information provided by the Government in its latest report, and the observations received by the Confederation of New Trade Unions of Slovenia—"Neodvisnost". The Committee also notes recent amendments to the General Practitioner Services Act and the Health Services Act, and the responses provided by the Government indicating further effect given to *Article 1(a); Article 3; Article 5(b); Article 6(a); and Article 10 of the Convention*. *The Committee requests the Government to continue to provide information on relevant legislative and other measures taken to give effect to the Convention.*

Article 8. Cooperation between employers, workers and their representatives in the undertaking, and the occupational health services. The Committee notes the Confederation of New Trade Unions of Slovenia "Neodvisnost"'s indication that workers' representatives in manufacturing companies are usually not familiar with risk assessments prepared by authorized medical practitioners, and their opinion is also not taken into consideration in the preparation of such assessments. *The Committee asks the Government to provide information on the measures taken to address the abovementioned issue, and to indicate measures to ensure that there is cooperation between employers, workers, and their representatives, in an undertaking, and the occupational health services engaged to provide health services.*

Article 15. Occupational health services shall be informed of ill health among workers and absence from work for health reasons. The Committee notes the information provided by the Government indicating that, according to section 13 of the rules concerning preventive medical examinations of workers, a medical practitioner shall obtain the worker's medical file prior to the medical examination, in order to assess the worker's compliance with specific health requirements for specific work. *The Committee reiterates its request that the Government provide further information on the specific measures undertaken to ensure that occupational health services are informed of occurrences of ill health among workers, and absence from work for health reasons, particularly in situations where such information is not apparent in the workers' medical files.*

Part IV of the report form. Application in practice. The Committee notes the information provided by the Government indicating the high number of deficiencies regarding provision of preventive medical examinations, particularly in the construction sector, which has been identified during labour inspections. The Committee also notes the Confederation of New Trade Unions of Slovenia—"Neodvisnost"'s statement which indicates that a private medical practitioner allegedly carried out 70 preventive health examinations in one day; that employers order safety statements from the cheapest provider and keep them only to comply with regulations; that these statements are often of low quality; and are not revised or amended when new technological processes are introduced. *The Committee asks the Government to provide information on measures taken or envisaged to address the issues identified above, both by the labour inspectorate and the Confederation of New Trade Unions of Slovenia—"Neodvisnost"; and to continue to provide information on the application of the Convention in practice.*

Sweden

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 1991)

The Committee notes the information provided in the Government's report including reference to the 2009 amendments to the Work Environment Act, which give further effect to the Convention. The Committee notes with **satisfaction** that Chapter 3 of the Work Environment Act now requires a building environment coordinator for the conduct of building and civil engineering work to be specially appointed and tasked with coordinating the conduct of the work with regard to the work environment, including an added duty of supervising the work of subcontractors in compliance with *Article 8 of the Convention*, that this legislative amendment also applies to foreign self-employed workers, and that in the course of supervision, the provision of instructions in the foreign workers' own language, when needed, has been promoted. The Committee also notes the amendments to improve the safety and health requirements at temporary or mobile construction sites which also constitute compliance with European Directive No. 92/57/EEC on this subject. **The Committee asks the Government to continue to provide information on legislative measures taken with regard to the Convention.**

Part VI of the report form. Application in practice. Based on statistical information provided by the Government, the Committee notes, as in its previous comments, that the number of accidents in the construction industry remains high. The Committee notes the information that the regular supervision within the construction sector is mainly aimed at reducing accidents, for example fall accidents, and that a number of prohibitions are directed towards companies conducting roof work with unsatisfactory safety devices. The Committee also notes that 159 injunctions or prohibitions were issued by the authority responsible for the provisions on building and civil engineering work. **The Committee asks the Government to continue to provide information on the application of the Convention in practice, with particular reference to whether any special measures have been taken or are envisaged to bring down the number of accidents in the construction industry, and to provide information on the outcome of the aforementioned injunctions.**

Syrian Arab Republic

Radiation Protection Convention, 1960 (No. 115) (ratification: 1964)

The Committee notes with **interest** the information provided in the Government's latest report, including the adoption of the legislative Decree No. 64 of 2005, and the Prime Minister's Decree No. 134 of 2007 on Radiation Protection and Safety and Security of Radiation Sources in Syria, which appears to give further effect to the provisions of the Convention. The Committee also notes the response provided regarding effect given to *Article 3, paragraph 1, and Article 6 paragraph 2, of the Convention* on the exposure limits for pregnant workers; and *Article 7, paragraph 2, on the prohibition of work involving ionising radiations for workers under the age of 16. The Committee asks the Government to continue to provide information on legislative measures undertaken with regards to the Convention, and to submit a copy of Decree No. 64 of 2005 and Decree No. 134 of 2007.*

Article 8. Exposure limits for workers not directly engaged in radiation work. The Committee notes the information that section 59 of Decree No. 134 of 2007 stipulates that employers shall ensure, in the same manner as for the general public, the protection of workers who may be exposed to radiation sources which have no relation to their work. The Committee also notes the Government's response indicating that medical exposure, pursuant to section 1 of Decree No. 134 of 2007, is defined as the exposure of sick persons as part of their medical or dental diagnosis or treatment; exposures (other than occupational) incurred knowingly and willingly by individuals helping in the support and comfort of patients undergoing treatment; and exposure incurred by volunteers as part of medical research. The Committee notes the information that section 15 of the abovementioned Decree deals with dose limits for workers and the non-applicability of permissible dose limits in cases of authorized medical exposure, and that Annex II of the Decree specifies dose limits for persons accompanying patients and for volunteers in the field of medical research as 5 mSv during the diagnosis or treatment of any patient and less than 1 mSv for child visitors. **The Committee asks the Government to indicate, in the light of paragraph 14 of its 1992 general observation on the Convention, the measures undertaken or envisaged to revise the dose limits currently in force for medical exposure concerning individuals helping in the support and comfort of patients undergoing treatment; and exposure incurred by medical research volunteers.**

Occupational exposure limits during emergency situations. The Committee notes the Government's statement that a National Emergency Plan has been established by virtue of Decree No. 1427 of 2002 in order to respond to emergency cases, and that section 10 of Decree No. 64 of 2005 provides that the Atomic Energy Authority shall be responsible for building national capacity to respond to radioactive or nuclear emergencies. **The Committee asks the Government to provide a copy of the abovementioned National Emergency Plan and to indicate, with reference to paragraphs 16 to 27 and 35(c) of the Committee's 1992 general observation on the Convention, and paragraphs V.27 and V.30 of the Basic Safety Standards on Radiation Protection issued in 1994, the circumstances in which exceptional exposure of workers, exceeding the normally tolerated dose limit, is to be allowed for immediate and urgent remedial work.**

Part IV of the report form. Application in practice. The Committee notes the information that section 15 of Decree No. 64 of 2005 stipulates that the responsibility of the Atomic Energy Authority is to conduct inspections of facilities and sites in which radiation sources are used and to appoint inspectors to conduct these inspections, and that section 16 provides that the inspectors have the capacity of judicial police. **The Committee asks the Government to continue to provide information on the application in practice of the Convention, including the number and nature of contraventions reported and the measures taken to remedy them.**

Occupational Cancer Convention, 1974 (No. 139) (ratification: 1979)

Article 1, paragraph 1, of the Convention. Periodic determination of the carcinogenic substances and agents to which occupational exposure shall be prohibited. The Committee notes with **satisfaction** that Ministerial Order No. 504 of 1989 has been amended by Ministerial Order No. 1510 of 2005 for the purpose of amending the table of occupational diseases in accordance with scientific data and developments on the influence of carcinogenic substances or agents.

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

Tunisia

Safety Provisions (Building) Convention, 1937 (No. 62) (ratification: 1959)

Article 6 of the Convention. Statistical information relating to the number and classification of accidents occurring to persons occupied on work within the scope of the Convention. The Committee notes with **interest** the detailed statistical information, covering the evolution of occupational accidents and diseases in the construction sector for the period 1995–2008, including the detailed analysis of the principal causes of accidents and diseases in this sector in 2008. The Committee notes the relative downward trend in the number of accidents recorded, but that the trend regarding occupational diseases is very irregular. The Committee also notes the detailed information regarding measures taken by the National Health Insurance Institution (CNAM) to address these problems, including the undertaking in 2007 of 1,234 technical assistance missions in affiliated enterprises and, in 2008, 1,307 such missions. The Committee notes with particular interest the information that the number of occupational accidents decreased by 10.8 per cent in 2007 and by 19.3 per cent in 2008 and that the CNAM would undertake similar technical assistance missions in 1,397 enterprises during 2009. The Committee also notes the financial incentives instituted by the Government including financial assistance for prevention programmes covering up to 70 per cent of the cost of the investment; a *bonus/malus* system concerning insurance fees including reduced premiums for enterprises willing to invest in preventive strategies and increased premiums for those refusing to do so; the imposition of increased insurance premiums as a sanction for breaches of occupational safety and health provisions; the conduct of 14 information seminars (including a seminar specifically concerning occupational safety and health in the construction sector) with the participation of technical specialists from CNAM. The Committee also notes that the Government has adopted a national programme for the management of occupational risks for the period 2009–11 with three main objectives: the promotion of health at work; the promotion of safety at work and a reduction of occupational accidents, in particular fatal and serious accidents. **The Committee welcomes this information and invites the Government to continue to provide information on its continuing efforts to improve occupational safety and health conditions, in particular in the construction sector.**

Revision of this Convention. The Committee would also like to draw the Government's attention to the Safety and Health in Construction Convention, 1988 (No. 167), which revises Convention No. 62 of 1937 and could well be better adapted to the current situation in the building sector. It again points out that the ILO Governing Body invited States parties to Convention No. 62 to envisage the ratification of Convention No. 167, which entails, ipso jure, immediate denunciation of Convention No. 62 (GB.268/8/2). **The Committee requests the Government to provide information on all possible developments in this respect.**

Turkey

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1967)

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

Article 17 of the Convention. Applicability of the Convention to all branches of economic activity. With reference to its previous comments, the Committee notes the Government's statement that the scope of the acts and regulations that came into force in recent years is broader than that of the regulation on the guarding of machinery and that the criteria set forth in Law No. 4703 on reliable products are applicable not only to machinery used in the industrial and commercial sectors but also to machinery used in all sectors of the economy. The Committee also notes the observation by the Turkish Confederation of Employers' Associations (TISK) submitted in 2004 alleging that, in their view, national legislation complies with the requirements of the Convention. **The Committee requests the Government to indicate, with reference to relevant legislative provisions, how effect is given to this Article.**

Part V of the report form and Article 15. Application in practice and appropriate inspection services for the purpose of supervising the application of the provisions of the Convention. The Committee notes the information in the Government's latest report that the Board of Labour Inspection of the Ministry of Labour and Social Security carried out,

in 2003 and 2004, a number of projects for the effective inspection of hazardous economic sectors in terms of occupational safety and health. It notes that inspections to ensure effective control of all the sectors of the economy, including the informal economy, will continue to be carried out in the coming years. Against this background, the Committee notes the observations by the Confederation of Progressive Trade Unions of Turkey (DISK) alleging that *Articles 2, 6 and 10 of the Convention are not applied in practice and that the inspection services required in Article 15 are “extremely sporadic and ineffective,”* and that 8,771 of the 72,367 industrial accidents registered in 2001 (i.e. 12 per cent) were caused directly by machinery. The Turkish Confederation of Public Workers’ Associations (TÜRKİYE KAMU-SEN) also observed that workplace fatalities and accidents that occur are frequently related to machinery, but that TÜRKİYE KAMU-SEN did not dispose of any specific statistics. ***The Committee requests the Government to respond to the observations by the DISK and the TÜRKİYE KAMU-SEN regarding the application of the Convention, the availability of appropriate inspection services and to provide detailed information regarding the application of the Convention in practice including, for instance, extracts from official reports.***

[The Government is asked to reply in detail to the present comments in 2010.]

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2005)

The Committee notes the observations submitted on 2 September 2009 by the International Trade Union Confederation (ITUC) on behalf of the Confederation of Turkish Trade Unions (TÜRK-İŞ) concerning the application of the Convention transmitted to the Government on 2 October 2009. ***The Committee hopes that the next report that will be supplied by the Government for examination by the Committee will contain a response to these observations.***

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

Occupational Health Services Convention, 1985 (No. 161) (ratification: 2005)

The Committee notes the observations submitted on 2 September 2009 by the International Trade Union Confederation (ITUC) on behalf of the Confederation of Turkish Trade Unions (TÜRK-İŞ) concerning the application of *Articles 5, 6, 8, 11, 12, 14 and 15 of the Convention*, transmitted to the Government on 2 October 2009. ***The Committee hopes that the next report that will be supplied by the Government for examination by the Committee will contain any comments the Government may wish to provide to these observations.***

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

Ukraine

Guarding of Machinery Convention, 1963 (No. 119) (ratification: 1970)

Articles 2–4 of the Convention. Sale, hire, transfer in any other manner and exhibition of power-driven machinery. The Committee notes that the information provided in the latest reports submitted by the Government does not include the requested information regarding national legislation prescribing the responsibilities related to the sale, hire, transfer in any other manner and exhibition of power-driven machinery detailed in these Articles. ***The Committee reiterates its request to the Government to take all relevant measures to ensure that effect is given, in law and in practice to Articles 2–4 of the Convention.***

Articles 6–14. Prohibition against the use of power-driven machinery with unguarded hazardous parts. The Committee notes that the information provided in the latest reports submitted by the Government includes, inter alia, information regarding numerous technical occupational safety and health standards and rules adopted in 2007–08 which, according to the Government, require that machinery is fitted with guards. Based on this information, the Committee concludes that effect appears to be given to *Articles 6 and 8 of the Convention* and that use has not been made of *Article 9*, but that further information is required as regards the effect given to the remaining Articles in Part III of the Convention. ***The Committee requests the Government to provide further information regarding specific legislative provisions which give effect to Articles 7 and 10–14 of the Convention.***

Part V of the report form. Application in practice. With reference to its previous comments, the Committee notes that the Government’s two latest reports do not include any response to the observations made by the Federation of Trade Unions in Ukraine in 2002 regarding the application in practice of the Convention. ***The Committee therefore requests the Government to give a general appreciation of the manner in which the Convention is applied in the country, including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.***

[The Government is asked to reply in detail to the present comments in 2010.]

United Kingdom

Radiation Protection Convention, 1960 (No. 115) (ratification: 1962)

Article 7, paragraph 2, of the Convention. Young workers under the age of 16. The Committee notes the response provided by the Government indicating that section 19 of the Management of the Health and Safety at Work Regulations, 1999, and the corresponding Management of the Health and Safety at Work Regulations (Northern Ireland), 2000, prohibit an employer from employing a young person (a person who has not attained the age of 18) for work involving harmful exposure to radiation, unless: it is necessary for that person's training; the young person is supervised by a competent person; and the risk is reduced to the lowest reasonably practicable level. The Committee further notes the Government's intention to review the need for a general prohibition to engage workers under the age of 16 in radiation work. ***The Committee, having on a number of previous occasions urged the Government to take appropriate action to ensure a full application of this Article, reiterates its hope that this will be undertaken in the very near future and requests the Government to provide precise information in this respect in its next report.***

Article 13. Emergency work. The Committee notes the information provided by the Government indicating that "without delay" in respect of medical examinations and notification to the competent authority under regulation 14(1)(d) of the Radiation (Emergency Preparedness and Public Information) Regulations, 2001 (REPPPIR), is to be interpreted as meaning "as soon as it is reasonably practicable to do so". With regards to exposure in emergency situations, the Committee notes that according to regulation 11(b) of the Ionising Radiations Regulations, 1999, where an employer is able to demonstrate that the dose limit specified in paragraph 1 of Part I of Schedule 4 is impracticable having regard to the nature of the work undertaken, the employer may apply the dose limits set out in paragraphs 9 to 11 of that Schedule. The Committee further notes that where an emergency plan, prepared pursuant to the REPPPIR, provides for the possibility of any employee receiving an emergency exposure, an employer must notify to the Executive the dose levels which they have determined are appropriate to be applied in respect of such an employee; and that no employee will be exposed to a dose of radiation in excess of this dose level unless they agree, for the purpose of saving human life. ***The Committee asks the Government to confirm that the maximum dose limits in an emergency exposure situation, regulating exposure of individuals implementing the necessary rapid action to bring help to endangered individuals, prevent exposure of a large number of people or save a valuable installation or goods, are those specified in Part II of Schedule 4, and that these maximum dose limits can only be exceeded for the purpose of saving human life.***

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

Anguilla

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

The Committee notes that in reply to its previous comments, the Government has again indicated that regulations have not yet been issued to ensure the protection of workers against hazards due to air pollution, but that pursuant to the Public Health Act, Chapter P 125, the Minister of Health is empowered to take all necessary action to remove and correct any nuisance that may be injurious to public health and that the environmental health officers have the power to enter into any workplace and make any inspection or examination as may be deemed necessary for the purpose of the Act, and that the Minister also has the power to make regulations for the protection of the health of persons exposed to conditions, substances or processes, which occur in any industry or occupation that may be injurious to health. It also notes that although no such regulations have yet been adopted, the Government indicates that it will give consideration to developing such regulations.

The Committee recalls that the obligations under this Convention in respect of air pollution were accepted and made applicable to Anguilla by declaration without modification on 11 July 1980, and that the Committee has in several previous comments since 1991 drawn the attention of the Government to *Article 4 of the Convention* which provides that national laws or regulations shall prescribe that measures be taken for the prevention and control of, and protection against occupational hazards in the working environment due to air pollution and that provisions concerning the practical implementation of these measures may be adopted through technical standards, codes of practice or other appropriate methods. ***The Committee urges the Government to take the necessary measures either by means of adopting regulations under section 20(1) of Labour Ordinance No. 8 of 1996 or by adopting other appropriate methods to ensure the protection of workers against hazards due to air pollution and invites the Government to report on progress in this respect.***

Uruguay

Occupational Cancer Convention, 1974 (No. 139) (ratification: 1980)

Legislation. The Committee notes with *interest* Decree No. 306/005 of 14 September 2005 concerning the chemical industry, which lays down compulsory minimum provisions for the management of risk prevention and protection against risks arising, or potentially arising, from productive activities in that industry. The Decree was drawn up

with tripartite participation and establishes rights, principles and obligations for workers and employers, a tripartite national commission in the sector and participatory bodies at the enterprise level. The Committee also notes Ordinance No. 145/09 of 13 March 2009 establishing the basic regime covering various chemical and physical risk factors and determining medical controls for public and private industrial, commercial or service undertakings. The Committee also notes other standards for combating cancer in general terms, such as Decree No. 202/005 of 2005 establishing the National Programme to Combat Cancer (PRONACAN).

Article 1 of the Convention. Periodic determination of the carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control. The Committee notes the statement in the Government's report that there is specific legislation covering radiation and asbestos. The Committee will refer to that legislation in its examination of the application of the specific Conventions in these areas. In its previous comments the Committee urged the Government to take steps to give effect to this Article of the Convention by establishing a mechanism for determining the carcinogenic substances and agents to which occupational exposure should be prohibited or made subject to authorization or control. The Committee notes that the Government has not replied to this question. The Committee notes, however, that Decree No. 306/005 contains an appendix on safety and health measures relating to exposure to chemical risks which lists a series of substances which constitute a risk factor. Section 3 of the Decree states that the reference values for the list will be updated annually by the Directorate-General of Health, in line with the latest information published of the American Conference of Government Industrial Hygienists (ACGIH). Although the Committee welcomes the reference to the ACGIH, it is not clear whether the updating referred to in section 3 applies solely to the reference factors or also includes the listed carcinogenic substances and agents. The Committee reminds the Government that the key aspect of *Article 1* of the Convention is to determine a list of carcinogenic substances and agents to which occupational exposure shall be prohibited or made subject to authorization or control and to establish a mechanism for periodic revision. ***The Committee requests the Government to indicate the manner in which the list of carcinogenic substances and agents covered by the provisions of Article 1(1) of the Convention is determined and periodically updated.***

Article 3. Protective measures. The Committee notes the statement in the Government's report that efforts are made to have carcinogenic substances and agents replaced and, in cases where this is not possible, controls are carried out by the Environmental Health Division and protocols are drawn up with regard to the protection of workers. ***The Committee requests the Government to supply further information on the application of this Article in law and in practice.***

Article 5. Medical examinations of workers during and after the period of employment. The Committee notes that Ordinance No. 145/09 referred to previously establishes a basic regime covering various chemical and physical risk factors, the respective medical tests and analyses which workers must undergo and the time at which such tests and analyses must be carried out. With reference to its previous comments, the Committee reminds the Government that, under the terms of this Article, these examinations must also be carried out after the period of employment. ***The Committee requests the Government to make provision in law and in practice for medical examinations following the period of employment and requests it to provide information in this respect.***

Article 6, paragraph (c). Measures to ensure appropriate inspection. The Committee notes that, according to Decree No. 306/005, the General Labour and Social Security Inspectorate (IGTSS) will chair the tripartite sectoral commission (section 7), and the tripartite sectoral commission has been assigned other functions related to labour inspection (section 9). ***The Committee requests the Government once again to supply information on the organization, functions and powers of the inspection services responsible for enforcing the provisions of the Convention, indicating whether it has taken steps to ensure that inspections are carried out as a matter of routine and not only following complaints, and requests it to supply information on the activity of the tripartite sectoral commission aimed at improving the effectiveness of the IGTSS in relation to the Convention.***

Part IV of the report form. The Committee requests the Government once again to provide statistical information on the number of workers covered by the legislation, the number and nature of infringements reported, and the number of occupational diseases reported in relation to the Convention.

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) (ratification: 1988)

Article 8 of the Convention. Criteria for determining the hazards of exposure to air pollution, noise and vibration in the working environment and exposure limits. For several years the Committee has been asking the Government to take the necessary steps to give effect to this Article of the Convention. It notes from the report that no such measures have been taken. The Committee expresses its **concern** since this Article is fundamental to the application of the Convention. According to this provision, the competent authority must establish criteria for determining hazards of exposure to air pollution, noise and vibration in the workplace, and specify exposure limits on the basis of these criteria. ***The Committee urges the Government to adopt measures to establish such criteria and limits and to provide information in this regard. It asks the Government to indicate the criteria currently applied to determine the hazards of exposure referred to in the Convention.***

Article 10. Suitable personal protective equipment. The Committee notes from the report that no measures have been taken to give effect to this Article. It points out to the Government that this provision is closely related to *Article 8* of the Convention since it establishes that when the measures taken fail to bring air pollution, noise and vibration within the limits specified in pursuance of *Article 8*, the employer shall provide suitable personal protective equipment. In other words, application of this provision implies prior determination of the criteria and limits referred to in *Article 8*, and the measures indicated in *Article 9*. **The Committee requests the Government to take the necessary steps to apply this Article of the Convention, both in law and in practice, and to provide information in this regard.**

Article 11, paragraph 3. Alternative employment and other measures taken for the maintenance of workers' income; Article 12. Processes, substances, machinery and equipment the use of which must be notified to the competent authority and prohibition by the competent authority; Article 13. Information on hazards and adequate and suitable instructions for preventing and controlling them. The Committee notes the Government's statement that no relevant measures have been taken. **It requests the Government to take all necessary measures to give effect in law and in practice to these Articles of the Convention and to provide detailed information in this regard.**

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

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

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1988)

The Committee notes with *satisfaction* the adoption of Decree No. 291/2007 of 13 August 2007 issuing regulations to Act No. 15965 of 28 June 1988 adopting this Convention, and Decree No. 307/009 of 3 July 2009 laying down compulsory minimum standards for the protection of safety and health of workers against hazards arising out of chemical agents, which gives effect in law to *Articles 5, 11, 19 and 21 of the Convention*, referred to by the Committee in its previous comments. **Noting that Decree No. 307/009 facilitates application of the Chemicals Convention, 1990 (No. 170), the Committee invites the Government to consider the possibility of ratifying the latter, and to provide information in this regard.**

Articles 1 and 2 of the Convention. Scope. The Committee welcomes the fact that section 1 of Decree No. 291/007 lays down compulsory minimum provisions for managing prevention of and protection against hazards that arise or may arise out of any activity, be it commercial, industrial, rural or a service, whether or not carried out for profit and whether in the public or the private sphere.

Article 4. Formulation, implementation and periodical review of a coherent national policy. Sectoral tripartite committees. The Committee notes that section 12 of Decree No. 291/2007 establishes that for the purpose of applying the Convention, in every sector or branch of activity a sectoral tripartite committee shall be established for the formulation, implementation, and periodical assessment of a national policy on occupational safety and health and the working environment and of the means by which it is applied. The sectoral tripartite committees shall be composed of the Ministry of Labour and Social Security through the General Labour Inspectorate, which shall chair it, and representatives of employers and workers. While taking note of this important step towards the formulation of a national policy, the Committee notes that the law does not provide for mechanisms and bodies with which the tripartite committees are to work in order to formulate, implement and periodically review a coherent national policy. The Committee notes that according to section 16 of Decree No. 291/2007, the sectoral tripartite committees have recourse to the National Council on Occupational Safety and Health; however it appears that this in itself is not sufficient to ensure that the sectoral tripartite committees cooperate in the formulation, implementation and periodical review of a comprehensive national policy as provided for by this Article of the Convention. The Committee refers the Government to paragraphs 54–63 of its General Survey of 2009 on the Convention. **The Committee requests the Government: (1) to provide information on sectoral tripartite committees that have been set up and on their operation in practice; (2) to specify the existing bodies and mechanisms that allow these sectoral tripartite committees to coordinate their work in order to formulate, implement and periodically review a coherent national policy on occupational safety and occupational health and the working environment, as required by the Convention; and (3) to supply information on the process for formulating, implementing and reviewing the national policy, together with relevant documentation.**

Article 20. Cooperation between management and workers at enterprise level. The Committee notes that section 5 of Decree No. 291/2007 establishes that in every enterprise, a body shall be set up for cooperation between employers and workers, and that whatever the form of cooperation agreed on, the body shall gear its work to planning prevention, promotion of ergonomic systems, evaluation of new hazards, promotion and cooperation for training, keeping a register of incidents, defects, occupational accidents and diseases, study and analysis of statistics and promotion of cooperation in occupational health, occupational safety and the working environment. **The Committee requests the Government to provide information on the application of this provision in practice. It also asks the Government to specify how the provision is applied in small and medium-sized enterprises.**

Article 7. Periodical reviews. Article 11, paragraph (d). Inquiries into occupational accidents. Article 11, paragraph (e). Annual publication of reports. Article 13. Protection of workers from undue consequences. Article 17. Two or more undertakings engaged in activities simultaneously at one workplace. Article 18. Measures to deal with emergencies. The Committee notes that the Government has not provided any information in response to the

issues raised in its previous direct request, but that many of these issues have been resolved by Decree No. 291/2007. The Committee nonetheless observes that this Decree, which forms the basis of the law on occupational safety and health since it regulates the application of the Convention for all branches of activity, does not seem to give full effect of the provisions referred to in the first part of this paragraph. ***The Committee accordingly once again asks the Government to indicate measures taken to give effect to Articles 7, 11(d) and (e), 13, 17 and 18, of the Convention.***

Part V of the report form. Application in practice. The Committee requests the Government to provide general information on the manner in which the Convention is applied in practice including, for example, extracts of labour inspection reports and statistics of the number of workers covered by the legislation, the number and nature of contraventions reported, the number, nature and causes of accidents notified, etc.

Action taken on the recommendation set out in the report on a representation (document GB.270/15/6). The Committee notes that the Government has not sent the information requested by the Committee in its previous comments on the follow-up to the recommendations set forth in the Governing Body's report of November 1997 (GB.270/15/6), regarding a representation by the Latin American Central of Workers (CLAT). ***The Committee requests the Government to provide information on any actions taken on the recommendations set out in paragraph 32 of the report on the abovementioned representation, specifying the points of the recommendations which it deems that it has complied with and the manner in which it has done so, and the points that have yet to be complied with and the measures envisaged to secure compliance.***

Action taken on recommendations set out in the report on a representation (document GB.292/16/6). The Committee notes that in March 2005, the Governing Body adopted a report on a representation made under article 24 of the ILO Constitution by the Inter-Union Assembly of Workers – Workers' National Convention (PIT–CNT) alleging non-observance by Uruguay of the Convention (document GB.292/16/6). The gist of the PIT–CNT's representation was that no measures were taken to develop and implement the mechanisms provided for in the Convention. The Committee reminds the Government that in paragraph 41(b) of its report, the Governing Body urged the Government of Uruguay:

- (i) to continue to strengthen occupational safety and health legislation and to regulate those areas where vacuums exist;
- (ii) to ensure compliance with current occupational safety and health legislation at both national and enterprise level;
- (iii) to examine periodically the situation as regards the safety and health of workers in both the public and the private sectors, in order to identify problems which exist and take effective measures to resolve them;
- (iv) to provide information on the health and safety problems which, according to the PIT–CNT, have arisen as a result of the reform of the state enterprises;
- (v) to continue to strengthen the inspection system at both national and enterprise level and increase, if appropriate, the number of labour inspectors, and to improve the imposition of the relevant sanctions;
- (vi) to provide official information both on occupational risks and accidents and on investigations carried out in this area, and to state whether the body responsible for publishing the relevant statistical information has failed to do so since 1997;
- (vii) to continue to increase training and qualification activities, especially at the enterprise level; and
- (viii) to continue to facilitate and to promote cooperation between employers and workers or their representatives at the enterprise level.

In (c) of the same paragraph, the Governing Body requested the Government to include in the reports it submits on the application of Convention No. 155, information on the application of any measures adopted in order to achieve effective compliance with the recommendations made, so that the Committee of Experts can examine progress in these matters. The Committee notes that the Government has not provided information in this regard. It notes, however, that Decree No. 291/2007 facilitates the application of some of the recommendations set out in the Governing Body's report and paves the way for progress to be made in the formulation of the national policy at sector level and in the action taken at enterprise level. ***The Committee requests the Government to provide detailed information on the action taken, both in law and in practice, on the recommendations set forth in document GB.292/16/6.***

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

Safety and Health in Construction Convention, 1988 (No. 167) (ratification: 2005)

Legislation. The Committee notes with **interest** the adoption of Act No. 18362 of 6 October 2008, sections 356–363 of which establish the Register of Construction Works and their Traceability, which is to operate within the General Inspectorate of Labour and Social Security (IGTSS). This new provision requires public sector works to be entered in the Register, and the same will apply for the private sector on the same footing as regards occupational safety requirements. It empowers the labour inspectorate to close down works that have not been registered. The report indicates that one of the many obligations of the Register is the submission of an occupational safety plan of construction works, a description of the various stages and the cost of each stage. The Committee also notes Decree No. 108/007, to replace Decree No. 392/980, which provides for across-the-board updating of the labour-related documents that enterprises are required to keep. The Committee also notes that, according to the Government, Decree No. 89/95 on safety and health in the construction industry is being revised. ***It hopes that the revised text will give effect to the provisions of this Convention and to the Safety and Health in Construction Recommendation, 1988 (No. 175), and asks the Government to provide***

detailed information, once the new text has been adopted, on the manner in which the amendments give effect in law to the provisions of the Convention.

Part VI of the report form. Application in practice. The Committee notes with *interest* the IGTSS annual management report of December 2008. It notes that, according to the report, 2008 was a very important year for the labour inspectorate, which promoted and strengthened the involvement of workers and employers in occupational safety and health. It cites as an example the creation of a Register of Works and their Traceability, which took effect from January 2009. The Register will be under the responsibility of the IGTSS and is to consist of a database which the Government considers to be of enormous importance to the construction industry and state bodies. According to the report, the Register will contain all information of importance in real time, concerning the various public and private sector construction processes and those operating them: general contractor, director of works, building company/companies, foremen, architect, prevention technicians, worker delegates, safety plans, etc. It will be a major source of the information needed to ascertain the relationship of the major players with accidents occurring in the work performed. The Committee also notes the training carried out for workers in the construction sector, including the training course for trainers organized by the Tripartite Committee on the Construction Industry under the auspices of the ILO. It further notes that, as at 28 November 2008, 96 investigations of industrial accidents were under way, 41 of which concerned the construction sector. The Committee notes that, according to the IGTSS report, of all the accidents investigated in the construction industry, 54 per cent are caused by falls from height, followed by collapses and cave-ins (15 per cent) and entrapment (12 per cent). Of the 41 accidents being investigated in the construction sector in 2008, 22 were due to falls from height. The Committee appreciates the efforts made by the IGTSS, thanks to which it is possible to supervise and identify promptly the main trends concerning the application of the legislation relating to the Convention. ***The Committee requests the Government to continue to provide copies of the IGTSS reports, which are an important source of information and, in addition, include an assessment of developments in occupational safety and health in the construction sector. Furthermore, bearing in mind that, according to the report, 54 per cent of the construction accidents investigated were caused by falls from height, the Government is asked to provide information on the measures taken or envisaged, in law and in practice, to prevent such situations.***

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

Bolivarian Republic of Venezuela

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1984)

Legislation. The Committee notes with *interest* the promulgation of the Basic Act on Prevention, Working Conditions and the Working Environment (LOPCYMAT), published in *Official Journal* No. 38236 of 26 July 2005, the Regulations to Implement in Part the Basic Act on Prevention, Working Conditions and the Working Environment, which entered into force 1 January 2007, the Technical Standard “Occupational Safety and Health Programme” (NT-01-2008) and the Technical Standard “Declaration of Occupational Diseases” (NT-02-2008).

Communication from the Confederation of Workers of Venezuela (CTV). The Committee takes note of a communication from the CTV, received on 31 August 2009 and sent to the Government on 16 September 2009. According to the CTV, LOPCYMAT is not fully enforced because the Social Security Fund has not as yet been created. The Committee will examine this communication together with any comments the Government may wish to make.

Article 4, paragraph 1, of the Convention. Measures for the implementation and review of a national policy on occupational safety and health. The Committee notes the information sent by the Government on the various occupational health programmes. It notes that according to the report, machinery exists for the framing of occupational safety and health programmes, in the form of the Technical Standard “Occupational Safety and Health Programme”, which was prepared jointly with employers and workers and subsequently reviewed by the National Institute for Occupational Prevention, Health and Safety (INPSASEL). The Committee notes that according to the report, the National Council for Prevention, Safety and Health at Work has not been established officially, but that, periodically, there are meetings of committees set up by sector and composed of employers, prevention representatives and state representatives, to agree on specific activities and programmes and to facilitate the assessment and development of technical standards. The Committee infers that these are sectoral committees with nationwide coverage. ***It requests the Government to indicate: (1) the economic sectors in which these sectoral committees operate nationwide; and (2) the bodies and machinery enabling these committees to coordinate their work in formulating, implementing and periodically reviewing a coherent national policy on occupational safety, occupational health and the working environment, as required by the Convention. Please also provide information on difficulties encountered in officially establishing the National Council on Prevention, Safety and Health at Work and the measures taken to overcome them.***

The Committee notes that the Government has provided information on the other issues raised in its previous comments, except on the manner in which the competent authority ensures that every year information is published on the measures taken pursuant to the national policy on occupational safety, occupational health and the working environment (Article 11(e)). ***The Government is asked to send information on this matter in its next report.***

Bearing in mind that since the last report, the Government has adopted a significant occupational safety and health legislation, noted in the first paragraph of this observation, the Committee considers that it is essential to gain an overall view of the impact of the legislation on the application of the Convention. Furthermore, in view of the fact that the new legislation has not as yet been fully implemented – as indicated by the Government's statement that the National Council on Prevention, Safety and Health at Work has not been officially established and the CTV's assertion that the Social Security Fund is not yet in operation – the Government needs to specify not only the changes in the legislation but also provisions that are actually reflected in practice as well as those as yet to be applied, and difficulties encountered and measures taken to overcome them. **Accordingly, the Committee requests the Government to send a detailed report showing the changes introduced by the new legislation in respect of each Article of the Convention and containing information on the effect given to them in practice.**

[The Government is asked to report in detail in 2011.]

Viet Nam

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 1994)

The Committee notes with *satisfaction* the information provided by the Government indicating numerous recent legislative changes, as well as the Directive of the Prime Minister to adopt the National Programme on Labour Protection, Occupational Safety and Health for 2006–10 (No. 233/2006/QD-TTg dated 18 October 2006) and its follow-up guiding documents on occupational safety and health; and the Directive of the Prime Minister on Strengthening Labour Protection and Work Safety (No. 10/2008/CT-TTg dated 14 March 2008), which give further effect to *Article 4 of the Convention*. The Committee also notes that the latter Directive defines the responsibility of the Ministry of Labour, Invalids and Social Affairs to take the lead and cooperate with relevant ministries and government agencies to review, amend and adopt legal documents on labour protection and work safety, and to propose the development of the Law on Occupational Safety and Health. The Committee further notes the establishment of the National Council on Occupational Safety and Health by Decision No. 40/2005/QD-TTg dated 25 February 2005, composed of members of 12 relevant ministries and government agencies, and representatives of workers' and employers' organizations; as well as the adoption of other laws giving further effect to the provisions of the Convention, including the Circular on procedures to diagnose and detect occupational diseases (No. 12/2006/TT-BYT dated 10 November 2006); Circular No. 04/2008/TT-BLDTBXH dated 27 February 2008; the Law on Chemicals, 2007; Decree No. 68/2005/ND-CP on Chemical Safety, 20 May 2005; and Circular No. 12/2006/TT-BCN guiding the implementation of Decree No. 68 on Chemical Safety.

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

Zimbabwe

Occupational Safety and Health Convention, 1981 (No. 155) (ratification: 2003)

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

Article 9, paragraph 2, of the Convention. Adequate penalties for violations of the laws and regulations. The Committee notes the observations by the Zimbabwe Congress of Trade Unions (ZCTU) that the penalties and fines for non-compliance with the law on occupational health are too low, which is why most employers do not attribute sufficient importance to issues related to occupational safety and health and that the Government in its response thereto states that it has taken note of the recommendation to increase the penal sanctions for non-observance of the national law on occupational health. **The Committee requests the Government to provide information on all measures taken to follow up on the recommendation by the ZCTU and to give full effect to this Article of the Convention.**

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

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

Chemicals Convention, 1990 (No. 170) (ratification: 1998)

The Committee notes the communication sent by the Zimbabwe Congress of Trade Unions (ZCTU) and received on 21 September 2009. The Committee will examine this communication along with the comments that the Government would wish to provide. Noting also that the Government's report has not been received the Committee must repeat its previous observation, which read as follows:

Article 6, paragraph 1, of the Convention. Classification systems. With reference to its previous comments the Committee notes the observations submitted by the International Confederation of Free Trade Unions (ICFTU) on behalf of the ZCTU in which concerns were raised regarding the absence of a chemicals register which should monitor the inflow of chemical substances into the country and, more generally, that the penalties for non-compliance with laws on occupational health are too low and ought to be such as to act as an effective deterrent against the violation of

occupational safety and health laws. The Committee notes that, in a brief response received in 2006 to these observations, the Government indicates that the issue of a chemicals register is undertaken at enterprise level in line with the Hazardous Substances and Articles Act, 1971. The Committee notes that the legislation referred to contains provisions related to the declaration and regulation of hazardous substances and articles, but that it does not appear to prescribe systems and specific criteria for the classification of all chemicals according to the type and degree of their intrinsic health and physical hazards and for assessing the relevance of the information required to determine whether a chemical is hazardous. ***Against this background, and in addition to the request for information already transmitted to the Government in its comment in 2005, the Committee requests the Government to provide additional information on how effect is given to this Article of the Convention, in law and in practice.***

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

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 13** (Bosnia and Herzegovina, Latvia, Luxembourg, Madagascar, Mali, Montenegro, Morocco, Nicaragua, Norway, Romania, Serbia, Slovenia, Spain, Suriname, Togo, Bolivarian Republic of Venezuela); **Convention No. 45** (Lebanon, Lesotho, Malawi, Malaysia: Peninsular Malaysia, Mexico, Montenegro, Morocco, Nigeria, Pakistan, Papua New Guinea, Serbia, Sierra Leone, Solomon Islands, Sri Lanka, United Republic of Tanzania: Tanganyika, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 62** (Democratic Republic of the Congo, Mauritania, Peru, Poland, Spain, Suriname); **Convention No. 115** (Iraq, Kyrgyzstan, Latvia, Mexico, Netherlands, Norway, Paraguay, Poland, Portugal, Slovakia, Spain, Sri Lanka, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, United Kingdom, United Kingdom: Guernsey, United Kingdom: Jersey, Uruguay); **Convention No. 119** (Bosnia and Herzegovina, Iraq, Kuwait, Kyrgyzstan, Malaysia, Malta, Republic of Moldova, Montenegro, Morocco, Niger, Paraguay, Poland, Serbia, Slovenia, Spain, Sweden); **Convention No. 120** (Central African Republic, Costa Rica, Iraq, Kyrgyzstan, Latvia, Norway, Poland, Portugal, Senegal, Slovakia, Tajikistan, Tunisia, Ukraine, United Kingdom, Bolivarian Republic of Venezuela, Viet Nam); **Convention No. 127** (Malta, Republic of Moldova, Nicaragua, Panama, Poland, Portugal, Romania, Thailand, Turkey, Bolivarian Republic of Venezuela); **Convention No. 136** (Bosnia and Herzegovina, Brazil, Iraq, Lebanon, Malta, Montenegro, Morocco, Nicaragua, Romania, Serbia, Slovakia, Slovenia, Uruguay, Zambia); **Convention No. 139** (Bosnia and Herzegovina, Brazil, Iraq, Lebanon, Montenegro, Nicaragua, Norway, Serbia, Slovakia, Slovenia, Sweden, Switzerland, Syrian Arab Republic, Bolivarian Republic of Venezuela); **Convention No. 148** (Bosnia and Herzegovina, Iraq, Kazakhstan, Latvia, Lebanon, Malta, Montenegro, Norway, Poland, San Marino, Serbia, Seychelles, Slovakia, Slovenia, Sweden, Tajikistan, United Republic of Tanzania, United Kingdom, Uruguay, Zambia); **Convention No. 155** (Albania, Australia, Belize, Latvia, Lesotho, Luxembourg, Mexico, Republic of Moldova, Mongolia, Montenegro, Nigeria, Seychelles, Slovakia, Slovenia, South Africa, Sweden, The former Yugoslav Republic of Macedonia, Turkey, Viet Nam, Zimbabwe); **Convention No. 161** (Chile, Poland, Serbia, Slovakia, Sweden, Turkey, Uruguay, Zimbabwe); **Convention No. 162** (Bosnia and Herzegovina, Brazil, Republic of Korea, Montenegro, Norway, Serbia, Slovenia, Sweden, Switzerland, Uganda, Uruguay, Zimbabwe); **Convention No. 167** (Iraq, Lesotho, Norway, Slovakia, Uruguay); **Convention No. 170** (Dominican Republic, Germany, Republic of Korea, Lebanon, Mexico, Sweden, Syrian Arab Republic, United Republic of Tanzania); **Convention No. 174** (Albania, Armenia, Lebanon, Netherlands, Sweden, Zimbabwe); **Convention No. 176** (Albania, Armenia, Norway, Philippines, Poland, Slovakia, South Africa, Sweden, United States, Zambia, Zimbabwe); **Convention No. 184** (Argentina, Republic of Moldova, Slovakia, Sweden).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 13** (Mexico, Sweden); **Convention No. 45** (Bahamas, Kenya, Kyrgyzstan, Nicaragua, Panama, Portugal, Russian Federation, South Africa, Swaziland, Switzerland, Syrian Arab Republic, Tunisia, Bolivarian Republic of Venezuela, Viet Nam); **Convention No. 120** (Spain, Sweden, Switzerland); **Convention No. 127** (Spain).

Social security

Antigua and Barbuda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1983)

For a number of years the Committee has been pointing out the incompatibility of the Workmen's Compensation Ordinance, No. 24 of 1956, as amended, with certain provisions of the Convention. The Government states that the Committee's comments are under careful consideration with a view to giving full effect to all the provisions of the Convention and that technical assistance is being sought to draft a modern Workmen's Compensation Act. In addition, the Government reports that the National Labour Board is presently reviewing the Antigua and Barbuda Labour Code. *The Committee would encourage the Government to approach the competent departments of the Office with the request for technical assistance in reviewing the national labour legislation and bringing it into conformity with international labour standards, including, in particular, the following provisions of the Convention:*

- *Article 5 of the Convention (Compensation in the form of a lump sum). Section 8 of the Ordinance should be amended so as to ensure that the compensation due in the event of accidents causing permanent incapacity shall be paid in the form of periodical payments, provided that it may be paid wholly or partially in a lump sum, if the competent authority is satisfied that it will be properly utilized.*
- *Article 7 (Additional compensation for assistance by a third person). Section 9 of the above Ordinance should be amended so as to grant additional compensation for victims of injuries who need the assistance of a third person in cases of permanent incapacity.*
- *Article 9 (Medical and pharmaceutical treatment). Section 6(3) of the Ordinance should be amended so as not to prescribe any limit to the expenses and costs of medical treatment undergone by a worker as a result of an occupational accident for which the employer is responsible and include an express provision for coverage of related surgical and pharmaceutical costs.*
- *Article 10 (Provision of surgical appliances and artificial limbs in general). Section 10 of the Ordinance should be amended to provide for surgical appliances and artificial limbs in all cases in which they are necessary, and not only with a view to improving the earning capacity of the person concerned.*

Barbados

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1972)

Article 65, paragraph 10. Adjustment of survivors' benefits. In reply to the Committee's previous comments, the Government states in its report that it has introduced in 2005 a new method of annual indexation of benefits and insurable earnings, the upper limit of the latter being increased in line with national average wage increases. Benefits are increased by the same percentage as the lesser of the three-year average of wage or price increases, subject to actuarial advice on the maximum which may be granted so as to maintain the target reserve ratio of five times, through to the year 2030. The 12th actuarial review of the national insurance scheme indicates in this respect that in 2005, year of introduction of indexation, pensions were increased by 4.76 per cent, while the insured earnings ceiling was increased by 2.9 per cent. The Committee notes with *satisfaction* the introduction of indexation of long-term benefits and invites the Government to supply with its next report the information requested by the report form under Title VI of Article 65.

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1972)

Article 29. Adjustment of invalidity and old-age benefits. In its previous reports, the Government had indicated that pensions were reviewed on an ad hoc basis, but that it was considering introducing a method of annual indexation as a means to increase periodical payments. The Committee notes with *satisfaction* that, as a result of the pension reform, indexation of long-term benefits has been introduced and invites the Government to supply with its next report the information requested by the report form under Article 29.

Bolivia

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1977)

Bolivia has accepted the Parts of the Social Security (Minimum Standards) Convention, 1952 (No. 102), concerning medical care, sickness benefit, old-age benefit and survivors' benefit. It has also ratified Conventions Nos 121, 128 and 130 which set higher objectives relating to social protection. Given that the problems relating to the application noted by

the Committee are essentially the same for all these Conventions and are of a systemic nature, the Committee wished to make a number of general observations concerning all the international obligations arising from these instruments for Bolivia. It referred to the information provided by the Government and to the studies carried out by the ILO concerning the Bolivian social security system (*Diagnóstico del Sistema de Seguridad Social*, April 2009).

Recognition of the right to social security by the new Political Constitution of Bolivia

Since February 2009, a new Political Constitution has guaranteed the right of citizens to benefit free of charge from social security based on the principles of universality, comprehensiveness, equity, solidarity, standardized management, economy, opportunity, inter-cultural approach and efficiency (articles 35–45). Under the new Constitution, the State shall be responsible for administering the system under the supervision and with the participation of the social partners. The Constitution extends the right to medical care to the entire population and lays down the duty of the State to protect the right to health, in particular by promoting free access by the population to health services. The State has a duty to ensure access to universal health insurance and the irrevocable obligation to guarantee, financially support and ensure the right to health. The Constitution also expressly guarantees the right to a universal, solidarity-based and fair old-age pension, as well as the principle that public social security services will not be privatized or contracted out.

Under article 256 of the new Constitution, the rights recognized by the Constitution shall be interpreted in accordance with the provisions of the international Conventions ratified by Bolivia whenever those conventions contain more favourable standards. Article 410 of the new Constitution provides that the international treaties and agreements ratified by Bolivia form part of the constitutional provisions and take precedence over laws. The Government emphasizes in this regard that, contrary to the situation which prevailed under the former Constitution, international labour Conventions are therefore placed above national laws. For that reason, the Government envisages drafting new laws and regulations to give effect to the international labour Conventions ratified by Bolivia.

The Committee notes with the greatest *interest* the adoption of the new Constitution which establishes a series of basic principles with regard to social security and the provisions of which are among the most progressive in Latin America. It also notes that the recognition under the Constitution of the principle of the supremacy of international law over national law paves the way for the use by Bolivia of international social security standards as a regulatory framework and legal lever for putting the social security system on the road to sustainable development.

The Committee would be grateful if the Government would indicate whether it intends to examine the current social security legislation in the light of the provisions of the ILO Conventions ratified by Bolivia. It hopes that any future reforms of the social security system, such as the reform currently under way of the pension system, will be based on the principles of solidarity and collective financing enshrined in the country's new Political Constitution and aimed at the gradual extension of the benefit of social protection to the entire population of Bolivia.

Extension and restructuring of the social security scheme

The level of coverage of the social security scheme currently remains one of the lowest in the region. However, a number of recent measures have resulted in progress being made, with regard to health protection, through the introduction of universal insurance for mothers and children (SUMI) and free old-age medical insurance (SMVG). However, the health system remains very fragmented between the public assistance targeting the most vulnerable, the social security scheme directed at the employed population and their beneficiaries, and the private actors focusing on the higher income brackets. A rational restructuring would allow efforts to increase membership of the system to be coordinated, a series of basic health benefits to be defined giving effect in practice to the right to health protection for all and major economies of scale to be made with regard to both administrative management costs and the financing of care facilities.

Membership of the pension scheme also remains very low despite the introduction in 1997 of the new funded pension scheme which replaced the pay-as-you-go scheme based on solidarity. In order to remedy that situation, the Government recently established a universal non-contributory pension paid to all persons over 65 years of age, which has produced tangible results. A reform of the pension system is currently under way and a bill has already been approved by the Chamber of Deputies and is to be submitted to the Senate. The bill establishes a mixed pension scheme comprising a contributory and semi-contributory scheme and a non-contributory system. It also creates an invalidity and survivors' scheme for common and occupational risks, as well as a specific invalidity and survivors' insurance scheme for self-employed workers.

According to the 2009 ILO study, the weak coverage of the social security system with regard to health protection and pensions is largely due to the structure of the labour market and the fact that the social security scheme is essentially focused on covering the employed population benefiting from a relatively stable formal employment relationship and working essentially in large urban enterprises. However, given that this workforce accounts for only 25 per cent of the total workforce, the large majority of the economically active population, which comprises self-employed, domestic and rural workers, is excluded from the compulsory social security scheme, even though they represent more than two-thirds of the country's population. This situation is compounded by considerable evasion of contributions even within the formal economy. The combination of these two factors leads to a very low overall rate of health coverage of the economically active population (13.5 per cent in 2003). Access to health services in rural areas remains very limited with only 6 per cent of the rural population being covered. Furthermore, the high number of actors and the lack of coordination constitute yet

more factors which contribute to keeping the coverage of the population at a very low level and perpetuating the lack of a comprehensive strategy in this regard. As regards old-age, invalidity and survivors' risks, the Government indicated in its report that only 38 per cent of employees of large enterprises employing over 20 persons are covered. The economically active persons affiliated to the old-age, invalidity and survivors' scheme represented only 5 per cent of the total number of residents. The problem of poor coverage is particularly pronounced with regard to self-employed workers and in agriculture, with only 4 per cent of Bolivian self-employed workers being affiliated to a pension fund administrator in 2007. In view of these factors, there is a need to adjust the Bolivian social security model in line with the economic and social reality of predominantly self-employed informal employment. The gradual compulsory membership of self-employed workers is a possible means of ensuring coverage of a large proportion of the population not yet benefiting from any social security coverage. State support in the form of social contribution subsidies would be an important component to ensure the success of such an initiative. ***The Committee would be grateful if the Government would provide information in its next report on the solutions found to increase the rates of membership and coverage and indicate the progress made with regard to reforming both the pension scheme and the health scheme.***

The separation, since 1987, of the management of the short-term benefits scheme and the basic long-term scheme has resulted in each of these schemes devoting a significant proportion of their resources to the performance of administrative and operational functions, particularly those relating to membership and the collection of social contributions. Studies show that the establishment of centralized management with regard to the collection of benefits and supervision of compliance with the obligation to join the social security scheme would allow significant results to be achieved in terms of coverage and would ensure better coordination, planning and linking of strategic activities regarded as priorities from the point of view of the entire system. The creation of an independent specialized body responsible solely for supervising and controlling the social security system, without participating in the management of the system's programmes, is another necessary component for the proper operation and viability of social security systems. ***The Committee requests the Government to provide information on the structural measures taken or envisaged with a view to optimizing the structure of the social security system.***

Creation of a national strategy for the development of social security

In 2001, the International Labour Conference (ILC) reaffirmed the central role of social security and reiterated that it was a challenge which all member States had to tackle as a matter of urgency. The resolution adopted by the ILC in 2001 recognizes that "the highest priority should be given to policies and initiatives that bring social security to those who are not covered by existing systems". To achieve that objective, the Conference urged every country to devise a national strategy closely linked to other social policies. States such as Bolivia which are party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) are also required, according to the general observations made in 2007 by the United Nations Committee on Economic, Social and Cultural Rights (CESCR), to devise a national strategy for the comprehensive implementation of the right to social security and to allocate sufficient budgetary and other resources at the national level. The Committee considers that the need to devise a national strategy arises from the general responsibility of the State, established by Convention No. 102, to ensure the continuity and proper operation of the social security system. The launch of a national strategy designed to ensure the strengthening and sustainable development of the social security scheme, taking into account the above concerns, would allow the State to exploit to the full all the potential offered by international social security standards with a view to ensuring the proper administration of schemes and enabling the gradual extension of coverage to the entire population. The Committee draws the Government's attention to the possibility of making greater use of technical assistance from the ILO with a view to devising, together with the social partners, a national strategy for the sustainable development of social security.

[The Government is asked to reply in detail to the present comments in 2010.]

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1977)

Reform of the occupational incapacity and invalidity system. Noting that the forthcoming adoption of a new Pensions Act will result in the substantial reorganization of the occupational risks scheme, the Committee requests the Government to provide a copy of this text once adopted and to explain how it gives effect to each of the provisions of the Convention No. 121, taking due note of the application problems raised by the Committee in its observation made under Convention No. 102 as well as in its previous comments relating to Convention No. 121.

Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) (ratification: 1977)

Reform of the pension system. Noting the forthcoming adoption of a new Pensions Act, the Committee would be grateful if the Government would indicate in its next report how the new legislation gives effect to Convention No. 128 taking due note of the application problems raised by the Committee in its observation under Convention No. 102 as well as in its previous comments under Convention No. 128.

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1977)

The Committee asks the Government to refer to the comments made under the Social Security (Minimum Standards) Convention, 1952 (No. 102).

Brazil

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1969)

For more than 30 years the Committee has been pointing out the need to incorporate into the Brazilian legislation a provision guaranteeing the payment abroad of long-term social security benefits foreseen in *Article 5 of the Convention*. The Government's report of 2007 once again stated that there has been no change in the situation since 2001: section 312 of the Social Security Regulations, approved by Decree No. 3048 of 6 May 1999, continues to subject the payment of benefits abroad to the existence of the corresponding bilateral agreement with the country of residence of the beneficiary in question or, in the absence of such an agreement, to the adoption of the corresponding instructions by the Ministry of Insurance and Social Assistance (MPAS). However, benefits are not paid, even to countries with which Brazil has bilateral agreements (Argentina, Cape Verde, Chile, Greece, Italy, Luxembourg, Portugal, Spain and Uruguay), except to beneficiaries resident in some of these countries, namely in Spain, Greece and Portugal. According to the report, a tender process is in progress to contract a bank to pay benefits to beneficiaries resident in countries with which Brazil has bilateral agreements, subsequently it is foreseen to extend the same system of payment to beneficiaries resident in other countries.

Judging by the fact that the tender process mentioned in the report is "in progress" since 2000 without result and that, in the meantime, no instructions foreseen by section 312 of the Social Security Regulations have been issued by the MPAS, the Committee cannot but conclude that there is no political will to institute an effective system of the transfer of social security benefits abroad, not even within the framework of bilateral social security agreements specifically establishing such mechanisms. In this regrettable situation, it is the role of the supervisory system to alert the Government, as well as other States parties to the Convention, to the fact that Brazil is in breach of its international obligation under *Article 5* of the Convention to guarantee the payment of benefits to Brazilian nationals and to the nationals of any other state which has accepted the obligations of the Convention for the same branch, as well as to refugees and stateless persons, in case of their residence abroad, irrespective of the country of residence and even in the absence of any bilateral social security agreements with the country of nationality or the country of residence of the beneficiary concerned. *In doing so, the Committee strongly urges Brazil, while further developing its network of bilateral agreements, to take unilateral measures, for example by issuing the ministerial instructions envisaged by the abovementioned section 312 of the Social Security Regulations, to guarantee in law and in practice the provision of the benefits abroad whatever the place of residence of the beneficiary concerned.*

Cape Verde

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1987)

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

With reference to its previous comments, the Committee notes the information contained in the Government's report received in October 2005 and the communication of the Cape Verde Confederation of Free Trade Unions (CCSL) forwarded by the Office to the Government in November 2004. In this communication, the CCSL indicates important changes made in the social security system for dependent workers by the adoption of Legislative Decree No. 5/2004 of 16 February 2004, which was promulgated by the Government without prior consultation with the social partners. The Committee notes that the revision of the social security system undertaken by the Government seems to have no impact on Legislative Decree No. 84/78 of 22 September 1978 establishing the compulsory insurance scheme for industrial accidents which has since been the subject of comments by the Committee.

Branch (g) (benefits for industrial accidents and occupational disease). Articles 3 and 4 of the Convention. In its previous comments, the Committee requested the Government to amend explicitly section 3(3) of Legislative Decree No. 84/78 of 22 September 1978 establishing the system of compulsory insurance against industrial accidents, which subjects equality of treatment of foreign workers working in Cape Verde to a condition of reciprocity, whereas *Articles 3 and 4* of the Convention provide for an automatic system of reciprocity for States that have ratified the instrument. In reply, the Government promises that these amendments will be the subject of consultations with the social partners and be included in the current general revision process of labour legislation with the adoption of the new Labour Code.

The Committee notes this commitment by the Government and requests it to specify to what extent the amendment of Legislative Decree No. 84/78 concerns the general revision of labour legislation, given that the Labour Code currently in force does not cover matters pertaining to insurance against industrial accidents nor the social security of workers in general. As for the Government's intention to consult the social partners, the Committee notes from the social partners' comments included in the Government's report that the National Union of Cape Verde Workers (UNTC-CS) and the Cape Verde Confederation of Free Trade Unions (CCSL) support the revision of section 3(3) of Legislative Decree No. 84/78 which is in accordance with the

provisions of the Convention. *The Committee requests the Government to indicate the employers' and workers' organizations which the Government intends to consult and in what time frame, given that it does not specify the employers' and workers' organizations to which it supplied copies of its report, in accordance with article 23, paragraph 2, of the ILO Constitution.* Finally, the Committee recalls that in 1999 the Government indicated that internal discussions had reached total consensus on the need to amend Legislative Decree No. 84/78, but that no amendment has been made. *The Committee is therefore bound to ask the Government once again to take the measures necessary, as soon as possible, to bring section 3(3) of Legislative Decree No. 84/78 into full conformity with the Convention.*

Article 5. In its previous comments, the Committee asked the Government to incorporate in Legislative Decree No. 84/78 of 22 September 1978 a specific provision providing the granting of benefits for employment injuries when the persons concerned are resident abroad in order to give full effect to *Article 5* (branch (g)) of the Convention. The Committee notes that according to section 7 of Legislative Decree No. 5/2004 of 16 February 2004, beneficiaries of compulsory social protection maintain their right to cash benefits when they transfer their residence abroad, subject to the provisions established by the law and the applicable international instruments. *Since the compulsory social protection system does not include benefits for employment injury, which are covered by separate regulations (sections 17 and 18(3) of Legislative Decree No. 5/2004), the Committee trusts that the Government will not fail to apply the same principle of maintaining rights in the event of residence abroad also in regard to the granting of benefits for employment injury in law as well as in practice.* With regard to the situation in law, the Committee considers that the application of article 11(4) of the Constitution of Cape Verde establishing the supremacy of international conventions over any national legislation requires that Legislative Decree No. 84/78 be brought specifically into conformity with *Article 5* of the Convention in order to avoid any ambiguity in legislation and its practical application. *Not having received from the Government the information requested on the internal regulations laying down procedures giving effect in practice to this constitutional principle in the light of Convention No. 118, the Committee also requests the Government to supply information showing the effective transfer by the National Social Security Institute or another relevant institute of the amounts of benefits for employment injury to beneficiaries residing abroad.*

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

Chile

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1931)

For many years, the Committee has been drawing the Government's attention to the fact that the national legislation is not in compliance with a basic principle established by Convention No. 24 (*Article 7, paragraph 1, of the Convention*) and, in general, by international social security law, in accordance with which insured persons and their employers shall share in providing the financial resources of the sickness insurance scheme. In Chile, all social contributions, with the exception of those for the employment injury compensation scheme, have been payable by workers since the adoption of Legislative Decree No. 3501 of 1980.

In its report, the Government confines itself to reporting the adoption in 2005 of DFL No. 1, which is intended to codify the legal regime governing health protection by compiling the various applicable legislative texts. The Committee notes with *regret* that the Government does not express any intention of complying with its obligation to give effect, in national laws and regulations, to the requirements of *Article 7, paragraph 1, of the Convention*, under the terms of which the financial resources of the sickness insurance system shall be constituted through joint contributions of employers and insured persons. The Committee wishes to emphasize that failure to comply with the principle of the collective financing of social security in the health insurance branch, as in the pensions branch, makes the system socially unjust for workers and therefore incompatible with the objectives of international labour standards in relation to social security. *The Committee hopes that the Government will be in a position to assess the consequences of this situation with the social partners and it requests it to keep the Committee duly informed of any measure adopted in this respect.*

Sickness Insurance (Agriculture) Convention, 1927 (No. 25) (ratification: 1931)

The Committee asks the Government to refer to the comments made under the Sickness Insurance (Industry) Convention, 1927 (No. 24).

Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35) (ratification: 1935)

1. *Follow-up to the conclusions and recommendations of the Committee set up to examine the representation made by Chilean unions of employees of pension fund administrators (AFPs) under article 24 of the ILO Constitution.* In its previous observation, the Committee requested the Government to reply to the 98th Session of the International Labour Conference and to provide a detailed report in 2009 on the implementation of the recommendations adopted by the Governing Body in March 2000 concerning the above representation (Governing Body, 277th Session, March 2000 (GB.277/17/5, March 2000)). The recommendations were as follows: (i) that the pension system established in 1980 by Legislative Decree No. 3.500, as amended, should be administered by non-profit-making organizations; (ii) that representatives of the insured should participate in the administration of the system under conditions determined by national law and practice; and (iii) that employers should contribute to the financing of the insurance system. The Committee notes that, following the discussion of the Chile case at the Conference in June 2009, the Conference Committee noted that the 2008 reform creating a pillar based on solidarity had not resulted in any major changes to the private pension system established by Legislative Decree No. 3.500 of 1980. Concerned at the gravity of the financial

situation of the private system, the Conference Committee urged the Government to provide a detailed report on the measures taken to ensure the viability of the system, if necessary with technical assistance from the ILO.

The Committee is bound to *deplore* the fact that despite the promises made by the Government representative and the express request of the Conference, no information on these issues has been provided by the Government for examination. In effect, the Government considered it appropriate to reply only to the observations made by the College of Teachers of Chile AG concerning the “historic debt” of social security. The Committee expresses *concern* at the Government’s determination to ignore, since 2000, the recommendations made to it by the international community and the numerous calls for dialogue by the Committee and urges the Government to reconsider its position.

The Committee has decided to examine the national situation based on the information provided orally by the Government representative at the Conference and on Act No. 20.255 of 2008 on the reform of the pension system.

(i) *Administration by institutions not conducted with a view to profit (Article 10, paragraph 1, of the Convention).* According to the information provided by the Government representative at the Conference, the 2008 structural reform has supplemented the individual capital accumulation social insurance system, which was established in Chile in 1981, with a new universal social insurance scheme based on solidarity which supplements the benefits insured by AFPs where these are minimal. The new scheme is designed to protect those who do not qualify for a pension. The old-age protection system has therefore been transformed into a mixed system administered by the Institute for Labour Security (ISL), the Institute for Social Provision (IPS), pension fund administrators (AFPs) and unemployment fund administrators (AFCs). The ISL and IPS are public entities, while AFPs and AFCs are, according to the statement made by the Government representative, “private non-profit-making entities”. ***The Committee would be grateful if the Government would explain how AFPs, which are established under the legal form of limited liability companies allowing profit-making activities, have been converted into “private non-profit-making entities” considering that all its previous reports have always presented these entities as private companies which, by definition, are profit-making institutions.*** The Committee notes that the general logic of the Chilean mixed pension system remains focused on individual saving capacity, since persons in a position to save are obliged by law to join an AFP. In this regard, the reform has not only maintained AFPs as the principal mechanism of old-age protection, but has also strengthened their position given that if their private management generates derisory pensions they will be supplemented by a complimentary old-age pension (APS) financed by national solidarity and paid to persons whose pensions do not reach a minimum threshold. The Committee also notes that Act No. 20.255 assigns new functions to the Superintendence of Pensions (SUPEN), which was previously responsible for supervising AFPs (private companies) and is now also responsible for supervising the IPS, which is a public body administering the solidarity system. ***The Committee would be grateful if the Government would explain the reasons for making private profit-making institutions and public non-profit-making bodies subject to the supervision of the same body – SUPEN.***

(ii) *Participation of the insured persons in the administration of the system (Article 10, paragraph 4, of the Convention).* With regard to the recommendation that the representatives of the insured persons should participate in the administration of the old-age protection system, the Committee notes the indication of the Government representative at the Conference that, since the reform of the social insurance system in 2008, users have participated in the evaluation of the system, the monitoring of its operation and the formulation of policy proposals aimed at strengthening its development. The new system includes a Board of Pension System Users responsible for evaluating the operation of the pension system and proposing strategies. However, although representatives of workers and retired workers are included on this Board, which constitutes notable progress in terms of social dialogue, the Board has only advisory functions and may not participate in the administration of the pension system. Act No. 20.255 also established a Technical Investments Council to study the investments made by AFPs for the purposes of enhanced profitability and security. Even though this Council exerts considerable influence with regard to the investment of pension funds administered by AFPs, the Committee notes that there is no participation of representatives of the insured persons. Moreover, the lack of control over investments by insured persons may lead to high-risk investments and therefore potential losses. According to the indications given by the Worker members, the financial crisis has resulted in losses of between 30 and 40 per cent of the total of individual accounts administered by AFPs, equivalent to 7–14 years’ contributions. This led the Conference to express fears concerning the viability and sustainability of the system. ***In these circumstances, the Committee is bound to observe that the exclusion of the representatives of the protected persons (active workers and retired workers) from participation in the administration of AFPs and the Technical Investments Council is contrary to the right of the insured persons to participate in the administration of insurance system financed by their contributions, in accordance with Article 10 of the Convention.***

(iii) *Contribution of employers to the financing of pensions (Article 9 of the Convention).* Following the adoption of Legislative Decree No. 3.500 in 1980, payments made into individual capital accumulation accounts were payable in full by the insured persons. The 2008 reform has not altered the method of compulsory financing of old-age benefits administered by AFPs. The Committee notes, however, that this reform has authorized the establishment of “collective pension funds” allowing employers to make *voluntary* contributions equivalent to those paid by the insured persons, a measure the implementation of which is dependent on the existence of a high level of collective bargaining. According to the Government representative’s indication at the Conference, following the 2008 reform, employers now contribute to the social insurance system by financing contributions to fund the survivors’ insurance scheme set out in section 59 of

Legislative Decree No. 3.500 of 1980. ***The Committee requests the Government to provide information on any other initiative designed to ensure the financial participation of employers in the social insurance system.***

2. *Follow-up to the conclusions and recommendations of the Committee set up to examine the representation made by the College of Teachers of Chile AG under article 24 of the ILO Constitution.* The Committee notes the information provided orally by the Government representative to the Conference Committee concerning the implementation of the recommendations adopted by the Governing Body in 2007 following the report of the Committee set up to examine the representation made by the College of Teachers of Chile AG under article 24 of the ILO Constitution (see document GB.298/15/6), alleging non-observance by Chile of Conventions Nos 35 and 37 in relation to the problem of the social security arrears arising from non-payment of the further training allowance. The Government representative indicated that the system for controlling public subsidies has been strengthened, both in terms of public municipal education and private education. Since March 2008, Chile has gradually been implementing a major reform of its labour tribunals which has significantly shortened the duration of cases and ensured access to free legal assistance. The General Inspectorate and the Labour Directorate also need to find appropriate solutions to determine the amounts of the arrears. In this regard, the Organic Municipal Act has been amended and now provides for heavier penalties including the removal from office of mayors not fulfilling their obligations, in particular the obligation to pay old-age contributions. ***The Committee would be grateful if the Government would explain in its next report, with the support of figures, how these measures have contributed to resolving the problem of contribution arrears in accordance with the 2007 recommendations of the Governing Body.***

3. *Historic debt.* With regard to the issue of the “historic debt” of social security resulting from the failure to take into account part of the remuneration of nearly 80,000 teachers for the purposes of calculating the right to a pension, the Committee notes the statement made by the Government representative to the Conference Committee that this was a political demand without legal basis made by workers in the education sector for a special allowance that they had been granted on a non-taxable basis to be taken into account for the purposes of pension rights. This position has been confirmed by the Government in its reply of 5 November 2009 to the allegations made by the College of Teachers. Recognizing the efforts made by democratic Governments to improve the social security system and ensure old-age protection for the most vulnerable categories of society, the worker members indicated that they continued to hope that the Government would give effect to the recommendations made by the Governing Body to reform the structural problems in the administration of the private pension system, resolve the problem of arrears in the payment of social security contributions and solve the issue of “historic debt”. In its conclusions, the Conference Committee recalled that the problems relating to the application of the Convention date back several years without effective solutions being found by the Government. It therefore urged the Government to transmit legal and technical information to allow the Committee of Experts to examine together with the detailed report requested from the Government on the application of the Convention.

The Committee also notes the communications of the College of Teachers of Chile AG, received in July, September and October 2009, concerning the developments relating to the issue of “historic debt”. It notes, in particular, the unanimous adoption, in August 2009, by the Special Commission established to that end by the Chamber of Deputies of financial proposals designed to resolve the situation. In November 2009, the Government’s refusal to acknowledge the “historic debt” prompted a national strike by teachers and internal political conflict. The situation is complicated further by the fact that the report of the Parliamentary Committee considers not only the legal aspects of the problem, but also mentions the State’s moral obligation towards teachers. The Committee was informed that, on 9 November 2009, the College of Teachers of Chile AG submitted to the International Labour Office a representation under article 24 of the Constitution alleging non-observance by Chile of the obligations arising under Conventions Nos 35 and 37. In view of this situation, the Committee is bound to postpone consideration of this matter to its next session pending the examination of the representation concerned by the Governing Body.

[The Government is asked to report in detail in 2010.]

Colombia

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1933)

The Committee notes the Government’s report received in 2008 replying to its 2007 observation, as well as the Government’s report received in 2009 replying to its 2008 observation and to the comments made by the General Confederation of Labour (CGT).

Article 2, paragraph 1, of the Convention. Coverage. The Government informs that in 2007, 5,945,653 workers were affiliated to the general employment injury scheme. ***The Committee recalls that in 1998 the number of affiliates was 6,185,191 and asks the Government to explain the reasons behind this decreasing number of affiliates.***

Coverage in the construction sector. The CGT draws attention to the lack of protection against employment accidents in the construction sector and the practical difficulties concerning the compensation of industrial accidents affecting the high incidence of workers in that sector who do not have an employment contract. In reply, the Government reports that the National Committee of Occupational Health in the Construction Sector has undertaken activities to

promote health and prevent occupational accidents and diseases in the construction sector. The Committee further notes the information supplied by the Government regarding the implementation of section 4(e) of Decree No. 1295, under which employers who do not affiliate their workers to the general system of employment injury shall be responsible for the benefits guaranteed by the Decree in cases of occupational accidents, noting in particular judgements Nos 14038 and 21496 of the Supreme Court which upheld this obligation. ***The Committee asks the Government to indicate how the abovementioned Decree is applied to informal workers in the construction sector.***

Article 5. Measures to ensure that lump-sum compensation will be properly utilized. In Colombia a worker suffering a permanent decrease in his or her capacity for work of between 5 and 50 per cent is accorded a payment of compensation in the form of a lump sum and his or her employment is protected for the remaining working capacity. ***Recalling that lump-sum compensation in such cases may be payable only if the competent authority is satisfied that it will be properly utilized, the Committee again expresses the hope that the Government will be able to introduce appropriate procedures which will strengthen the protection of the victims of employment injury against misuse of lump-sum payments.***

Article 11. Payment of compensation in the event of insolvency of the employer or insurer. Law No. 712 of 2001 reformed the Labour and Social Security Procedural Code and provides for injunctive measures to be taken by the labour judge in case of employer insolvency. In addition, Law No. 1149 of 2007 establishes a system of oral proceedings which allows for a fast and efficient adjudication in cases in which employers do not pay workers' compensation due to insolvency. ***The Committee notes this information with interest and would be grateful if the Government would keep it informed on the application in practice of these guarantees. Please specify how the Guarantee Fund for Financial Institutions (FOGAFIN) guarantees the provision of medical benefits to the victims of employment injuries in the event of insolvency of insurance companies authorized to operate in the employment injury insurance branch.***

Democratic Republic of the Congo

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)

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

In reply to the Committee's previous comments, the Government had stated previously that it is not in a position to provide information that would enable the Committee to assess the application of *Articles 13, 14 and 18* (in relation with *Articles 19 and 20*), as well as *Articles 21, 23 and 24(2) of the Convention*, in view of the difficult political and economic situation experienced by the country. With regard to the draft text to add to the schedule of occupational diseases, in accordance with *Article 8* of the Convention, diseases caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series and diseases caused by benzene or its toxic homologues, the Government had undertaken to transmit the extended schedule of occupational diseases as soon as it has been adopted by the National Labour Council. ***The Committee hopes that, despite the difficulties to which the Government is confronted, the extended schedule of occupational diseases will be adopted in the near future in order to give full effect to Article 8 of the Convention and that the Government will make every effort to provide information concerning the application of the other provisions of the Convention referred to above, as requested in its 1995 observation. The Committee would also be grateful if the Government would indicate any progress achieved in the formulation and adoption of the new Social Security Code.***

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

Egypt

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1993)

The Committee notes the information provided by the Government in 2007 in its reports on Conventions Nos 19 and 118, as well as the replies to the Committee's previous direct requests concerning these Conventions. It observes with ***regret*** that, since the ratification of Convention No. 118 by Egypt in 1993, there has been no change in the social security law and practice in Egypt as regards the application of this instrument, the main provisions of which continue not to be fulfilled.

Article 3 of the Convention. Equality of treatment. According to section 2(2) of the Social Insurance Act (No. 79 of 1979), the provisions of this Act apply to foreign nationals on condition that the duration of their contract is not less than one year, and that there is a reciprocity agreement between their country of origin and Egypt, subject to non violating the provisions of conventions ratified by Egypt. The Government states nevertheless that the nationals of countries which have ratified Convention No. 118, enjoy insurance benefits provided under the Social Insurance Act regardless of the duration of their contracts or the existence of the reciprocity agreement. The same statement is made by the Government in its report of 2007 on Convention No. 19. The Committee takes due note of these statements and understands that the Convention has a higher rank in the national legal system than the law. The Committee notes that the Government has not supplied any documentary evidence requested by the Committee proving that the above interpretation given by the

Government is applied in practice by the social security institutions. The Committee also recalls that in its previous reports on the application of Conventions Nos 19 and 118 the Government has been consistently making the opposite statement that foreign nationals could enjoy social insurance benefits subject to the duration of their contract being not less than one year. ***In this situation and in order to dissipate any doubts as to the fact that the requirements of the Convention overrule the abovementioned limitations contained in the Social Insurance Act, the Committee would like the Government to instruct the responsible social security institutions in the country to disregard the duration of contract and reciprocity agreement requirements under section 2(2) of the Social Insurance Act with respect to the nationals of 37 countries which have also ratified Convention No. 118, and for the accident compensation benefits, with respect to the nationals of 120 countries which have also ratified Convention No. 19.***

Article 5. Payment of benefits abroad. The Committee ***regrets*** to note that, since the ratification of the Convention, the Government has taken no measures to comply with its ***Article 5***, which obliges Egypt to establish financial mechanisms for the transfer of invalidity, old-age, survivors' benefits and death grants, and employment injury pensions in case of residence of the beneficiary abroad. The Government repeats that there are no effective ways to transfer pensions outside of Egypt, if there is no reciprocity agreement, but has never mentioned the existence of any such agreement or its intention to conclude one. The Committee wishes to point out in this respect that ***Article 5*** obliges the ratifying States to export benefits abroad ***even in the absence of any bilateral social security agreements*** with the country of nationality or the country of residence of the beneficiary concerned and to take ***unilateral*** measures to this effect.

The Government further repeats that the insured persons themselves may transfer their entitlements to any bank which has branches outside Egypt and which may therefore forward them to the country where the beneficiary resides. The Committee wishes to point out in this respect that by placing the obligation to transfer benefits abroad on the State, ***Article 5*** of the Convention specifically intended to prevent situations where beneficiaries would have to make their own individual arrangements for the transfer of their entitlements abroad at their own expense. By ratifying the Convention, the Government has undertaken to ensure that the responsible social insurance institutions shall deliver the abovementioned benefits to the new place of residence of the beneficiary outside Egypt and shall bear the cost of such transfer. For this purpose appropriate banking arrangements shall be put in place with the help of the National Bank, if need be, and the administrative assistance of the countries concerned, which they have to afford to Egypt free of charge under ***Article 11*** of the Convention.

Finally, the Government reiterates that the beneficiary residing abroad has to submit evidence as to his entitlement to a pension each year in January. ***The Committee would like the Government to explain how, in the absence of reciprocity agreements and administrative assistance between Egypt and other countries, the beneficiaries residing abroad can effectively submit evidence of their entitlement to the social security institution inside Egypt. Please also explain how the survivors' benefit and the death grant could be claimed by the dependants of the deceased insured person who are not nationals of Egypt, reside abroad and have never been to Egypt.***

The Committee observes that the absence of the practical methods for pensions transfer outside of Egypt compels the beneficiaries leaving the country to abdicate their right to a pension by applying for a lump sum in its place, in accordance with sections 27 and 28 of the Social Insurance Act. The conversion of a pension or an annuity into a lump sum, even when this is done at the request of the beneficiary, and particularly under the threat of losing such pension in case of moving outside of Egypt, is contrary to the letter and the very purpose of the Convention. In such a regrettable situation, it is the role of the supervisory system to alert the Government, as well as other States parties to the Convention, to the fact that Egypt is in breach of its international obligation under ***Article 5*** of the Convention to guarantee the payment of respective benefits to the nationals of States which have accepted the obligations of the Convention for the same branch, as well as to refugees and stateless persons, in case of their residence abroad, irrespective of the country of residence. ***In doing so, the Committee strongly urges the Government to demonstrate the political will to institute an effective system of the transfer of the Egyptian social security benefits abroad by taking appropriate measures either unilaterally or within the framework of bilateral and multilateral social security agreements, including schemes for the maintenance of the acquired rights and rights in course of acquisition mentioned in Articles 7 and 8 of the Convention.***

Articles 7 and 8. The Committee observes that the information supplied by the Government in reply to the Committee's request has nothing to do with the content of these Articles of the Convention and the questions raised by the Committee. To clarify the meaning of the obligations laid down by these Articles, the Government may wish to seek technical assistance from the Office concerning existing international legal framework for the schemes for the maintenance of the acquired rights and rights in course of acquisition.

Article 10. Coverage of refugees and stateless persons. The Government states that the Social Insurance Act does not include any provision concerning refugees and stateless persons, as such a provision, as laid down in the Convention, does not include the condition of reciprocal treatment. The Committee wishes to refer the Government to its statement under ***Article 3*** of the Convention, which declares that according to section 2(2) of the Social Insurance Act, precedence is given to the provisions of international Conventions ratified by Egypt. This provision overrules the condition of reciprocal treatment required by this same Act. ***The Committee would therefore like the Government to formally confirm in its next report that, by virtue of Article 10 of Convention No. 118 ratified by Egypt, refugees and stateless persons are granted equality of treatment with Egyptian nationals in all aspects of social security covered by the Convention.***

Guinea

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1967)

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

Article 5 of the Convention. Payment of benefits in case of residence abroad. The Committee recalls that the Government, in its earlier reports, indicated that the new Social Security Code, when adopted, would give full effect to *Article 5* of the Convention under which the provision of old-age benefits, survivors benefits and death grants, and employment injury pensions must be guaranteed in the case of residence abroad, irrespective of the country of residence and even in the absence of agreements with such country, both to nationals of Guinea and to nationals of any other State which has accepted the obligations of the Convention for the corresponding branch. However, in its last report, the Government indicates that the new Social Security Code does not entirely fulfil the requirements of the provisions of *Article 5* of the Convention, in that it does not provide for maintenance of payment of the various benefits in case of change of residence, and that this restriction is a constant feature of the legislation governing the field in the States in the subregion. However, the Government hopes that further negotiation of bilateral agreements with other States will make good this weakness in the Social Security Code.

In this connection, the Committee notes that under section 91, paragraphs 1 and 2, of the new Code, benefits are cancelled when the beneficiary definitively leaves the territory of the Republic of Guinea, or are suspended while she or he is not resident on national territory. It notes however that, under the last paragraph of that section, these provisions "are not applicable in the case of nationals of countries which have subscribed to the obligations of the international Conventions of the International Labour Office regarding social security ratified by the Republic of Guinea, or where there are reciprocal agreements or multilateral or bilateral social security agreements on the provision of benefits abroad". *Since, by virtue of this exception, the nationals of any State which has accepted the obligations of Convention No. 118 for the corresponding branch, may in principle now claim benefits in case of residence abroad, the Committee requests the Government to indicate whether this is in fact the case and, if so, whether a procedure for the transfer of benefits abroad has been established by the national social security fund, to meet the possible demands for such foreign transfer. In addition, the Committee requests the Government to state whether the exception provided in the last paragraph of section 91 is also applicable to Guinean nationals in the event of their transferring their residence abroad, in accordance with the principle of equal treatment established under Article 5 of the Convention as regards the payment of benefits abroad.*

Article 6. Payment of family allowances. With reference to the comments it has been formulating for many years regarding the provision of family allowances in respect of children residing abroad, the Committee notes that, under section 94, paragraph 2, of the new Code, to obtain the right to family allowances, dependent children "must reside in the Republic of Guinea, subject to the special provisions of the international Conventions on social security of the International Labour Office, reciprocal agreements or bilateral or multilateral agreements". With respect to reciprocal agreements or bilateral or multilateral agreements, the Committee recalls that to date Guinea has concluded no agreement of this sort for the payment of family allowances in respect of children residing abroad. Regarding the special provisions of the ILO Conventions, it recalls that under *Article 6* of Convention No. 118 any State which has accepted the obligations of the Convention for *branch (i)* (family benefit) must guarantee payment of family allowances both to its own nationals and to the nationals of any other member which has accepted the obligations of this Convention for that branch, as well as for refugees and stateless persons, in respect of children who reside on the territory of any such State, under conditions and within limits to be agreed upon by the States concerned. In this connection, the Government states in its report that the payment of family benefits is guaranteed to families of whom the breadwinner has been regularly insured by the social security system, and is in order regarding the payment of his own contributions, and those of his successive employers. *The Committee therefore hopes that the Government will be able to confirm formally in its next report that the payment of family allowances will also be extended to cover insured persons up to date with their contributions, whether they are nationals, refugees, stateless persons or nationals of any other States which have accepted the obligations of the Convention for branch (i), whose children reside on the territory of one of these States and not in Guinea. The Committee would also like to know in these cases how the condition of residence is dispensed with for the application of section 99, paragraph 2, of the new Code, which only recognizes as dependent those children "that live with the insured person", and also for section 101, which makes payment of family allowances subject to an annual medical examination of the child, up to the age where she or he comes under the school medical service, and the regular medical care for beneficiaries of school age attending courses in educational or vocational training establishments.*

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

Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) (ratification: 1967)

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

Article 8 of the Convention. Occupational diseases. *The Committee asks the Government to provide a copy of the list of occupational diseases revised in 1992, indicating whether it is now in force.*

Article 15, paragraph 1 Conversion of periodical payments into a lump sum. In accordance with the provisions of section 111 of the Social Security Code, periodical payments for employment injury are converted into a lump sum when the permanent incapacity is at most equal to 10 per cent. The Committee recalls, however, that its comments concerned the possibility of converting the benefit granted in the event of employment injury in the circumstances provided for in sections 114 (conversion after expiry of a five-year period) and 115 of the Social Security Code (conversion into a lump sum of part of the periodical payment at the request of the person concerned). *The Committee again expresses the hope that the necessary measures will be taken to ensure that in all these cases periodical payments may be converted into a lump sum only in exceptional cases and with the consent of the victim where the competent authority has reason to believe that the lump sum will be utilized in a manner which is particularly advantageous for the injured person.*

Articles 19 and 20. *Amount of benefits.* In the absence of the statistical information requested which the Committee needs so that it can determine whether the amount of benefits paid in the event of temporary incapacity, permanent incapacity and death of the breadwinner, reaches the level prescribed by the Convention, the Committee once again asks the Government to indicate whether it avails itself of Article 19 or of Article 20 of the Convention in establishing that the percentages required by Schedule II of this instrument have been reached, and to provide the statistical information required by the report form adopted by the Governing Body under Article 19 or 20, depending on the Government's choice.

Article 21. *Review of employment injury benefit rates.* In view of the importance it attaches to this provision of the Convention which establishes that the rates of employment injury benefits must be reviewed to take account of trends in the cost of living and the general level of earnings, the Committee hopes that the Government's next report will contain information on the amount of the increases already established and that it will not fail to provide all the statistics required by the report form under this Article of the Convention.

Article 22, paragraph 2. *Payment of employment injury benefits to dependants.* The Committee once again expresses the hope that the Government will be able to take the necessary measures to ensure that, in all cases where employment injury benefits are suspended and particularly in the cases provided for in sections 121 and 129 of the Social Security Code, part of these benefits will be paid to the dependants of the person concerned in accordance with the provisions of this Article of the Convention.

The Committee notes the Government's statement that the provisions of the Conditions of Service of the Public Service give public servants and their families full satisfaction as regards social coverage. *It once again asks the Government to provide the text of the provisions of the above Conditions of Service dealing with compensation for employment injury with its next report.*

Lastly, the Committee asks the Government in its future reports to provide information on any progress made in the revision of the Social Security Code, to which the Government referred previously.

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

Guinea-Bissau

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18) (ratification: 1977)

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

In reply to the Committee's previous comments, the Government states in its last report that the National Social Insurance Institute, which has competence for workers' compensation for occupational accidents and diseases, is having difficulty in identifying occupational diseases. The situation therefore remains unchanged in that, having been unable to determine occupational diseases, the Ministry of Public Health has not been able to adopt a list of such diseases.

The Committee takes note of this information. It can only note once again with regret the lack of progress in amending the national legislation to include a list of occupational diseases. *In view of the importance of this matter, the Committee again expresses the hope that the Government will take all necessary steps in the very near future to ensure the adoption of a list of occupational diseases including at least those set out in the Schedule to Article 2 of the Convention.* The diseases in question can then be recognized as occupational where contracted in the conditions prescribed in the Schedule. The Committee reminds the Government that it may seek technical assistance from the Office.

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

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1977)

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

Article 1, paragraph 1, of the Convention. *Equality of treatment.* In its previous comments, the Committee drew the Government's attention to section 3(1) of Decree No. 4/80 of 1981, concerning compulsory insurance against industrial accidents and occupational diseases. It pointed out that the abovementioned provision is inconsistent with the Convention in that it lays down reciprocity as a requirement for equal treatment between foreign workers employed in Guinea-Bissau and Guinean workers. In response, the Government states that the matter is still receiving its attention but that, as yet, no text has been adopted regarding the reciprocity required by section 3(1) of the abovementioned Decree. The Committee recalls in this connection that the Convention lays down a system of *automatic reciprocity* between member States which have ratified it. *In these circumstances, it hopes that the Government will very shortly take all necessary steps to bring the abovementioned provision of its legislation into line with Article 1(1), of the Convention by ensuring that all nationals of States which have ratified this Convention are automatically afforded the same treatment as nationals of Guinea-Bissau with regard to accident compensation.*

Article 1, paragraph 2. *Transfer of benefits abroad.* The Committee asks the Government to provide information on any compensation paid for injured persons or their dependants residing outside the country.

Article 2. *Temporary or intermittent work.* In its previous comments the Committee noted that section 3(3) of Decree No. 4/80 which excludes from the scope of the Decree foreign workers temporarily employed in Guinea-Bissau by foreign undertakings or international bodies is not fully consistent with this provision of the Convention. Article 2 of the Convention allows the exclusion of workers employed temporarily or intermittently in the territory of one Member on behalf of an undertaking located in the territory of another Member only under a special agreement concluded between the Members concerned. The Government indicated that, in practice, such workers have labour contracts under which they are protected by the

legislation of their country of origin or the country of the undertaking or international body. The Government further stated that a bill had been drafted to regulate the conditions of foreign workers employed temporarily in Guinea-Bissau on behalf of a foreign undertaking. The Committee notes that the Government's last report provides no information on the bill – to which the Government has been referring since 1987. *It asks the Government to keep it informed of progress made in ensuring better application of this provision of the Convention.*

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

Guyana

Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42) (ratification: 1966)

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

The Committee recalls that it has been drawing the Government's attention since 1971 to the need to amend the list of occupational diseases attached to Regulation No. 34 of 1969, implementing Act No. 15 of 1969 on national insurance and social security. It notes with regret, from the information communicated by the Government in its last report, that this list has still not been amended but that the competent authorities have been requested to accelerate the review procedure of the relevant regulation. It further notes that the Government no longer refers to the legislative reform regarding occupational safety and health. *The Committee trusts that the Government will be able to take the measures necessary as soon as possible to amend the list of occupational diseases to ensure full application of the Convention on the following points:*

- (a) *No. 1(x), (xi), (xii) and (xiv) on this list are to be replaced by a heading containing in general terms all halogen derivatives of hydrocarbons of the aliphatic series;*
- (b) *No. 7, which refers to certain disorders due to radiation should include all pathological manifestations due to radium and other radioactive substances or X-rays and the list of processes likely to induce these should be completed;*
- (c) *No. 1(i) and (v) relating to poisoning by lead and its compounds and mercury and its compounds should include lead alloys and mercury amalgams respectively;*
- (d) *No. 1(iii), which refers to poisoning by phosphorus and its compounds, should include the inorganic compounds of phosphorus;*
- (e) *No. 2 should include, among the processes likely to induce anthrax infection, all loading and unloading or transport of merchandise of any kind;*
- (f) *silicosis with or without pulmonary tuberculosis and the industries or processes involving the risk of this infection should also be added to the list.*

The Committee wishes to remind the Government that it may request technical assistance from the ILO in this domain.

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

Hungary

Sickness Insurance (Industry) Convention, 1927 (No. 24) (ratification: 1928)

The Committee notes 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. Participation of representatives of the insured persons in the management of insurance institutions. Referring to its previous comments, the Committee notes the information provided by the Government in its report as well as the comments on the application of the Convention put forward by the employees' representatives in the National ILO Council. The Committee recalls that the supervision and management of the National Health Insurance Fund was transferred to fall under the Government's competency by Act No. XXXIX of 1998 following a decision of the Constitutional Court. The Court concluded that, given the level of unionization, the employees' national representative organizations lack the democratic legitimacy required to be entrusted with representative functions of the insured. Subsequent to this ruling, the role of the social partners became limited to participation in the supervision of the health insurance fund within the tripartite Control Board of Health Insurance. In 2006, however, Act No. CXVI on the Supervision of Health replaced the above Control Board by the Health Insurance Supervisory Authority, the management of which is appointed by the Government. The social partners retained only the right to nominate two out of the seven independent members of the Surveillance Council appointed by the Government in their individual capacity to assist the Health Insurance Supervisory Authority.

According to the employees' representatives in the National ILO Council, the Act No. CXVI of 2006 on the Supervision of Health Insurance is not in conformity with Article 6 of the Convention in so far as it does not allow the participation of insured persons in the administration of the national health insurance institution. While the Health Insurance Supervisory Authority is assisted by the Surveillance Council, this body is not involved in the management, but in the control and monitoring of the health insurance institutions. There can be no reason to exclude national level social partners and the insured represented by them from the management of health insurance. All the parties concerned should therefore seek a method in line with Hungarian constitutional requirements which would allow the involvement of employers' and employees' organizations actually representing the insured in the management of the health insurance institutions, in compliance with the provisions of the Convention.

In its response, the Government states that the overall reorganization of the health insurance system has started with the submission of Bill T/4221 on the health insurance administration offices, which seeks to replace the National Health Insurance Fund (OEP) by funds that would give substantial decision rights to private investors, even though the State would still retain the

majority participation. The Bill establishes the Tariff Committee and the Quota Committee which are responsible for submitting proposals regarding the modification of the content of the health insurance package and on the extent of the quota per person due. Each Committee will be composed of five members, three of which are appointed by the Government and two by the health insurance funds. To make recommendations to these Committees, the Government considers it essential to, after the adoption of the Bill, establish separate consultative bodies composed of persons delegated by all trade unions concerned. The Tariff and the Quota Committees might thus become major players in the field of health insurance, because they would have the right to make proposals affecting the operation of the health insurance system in consultation with the social partners.

While the reform of the national health insurance system is far from complete, the Committee observes that at present social partners have been moved away from the management of the insurance institutions and have no real role to play in representing the interests of the persons protected. No representation of the insured persons is foreseen in the management of the health insurance funds to be set up under Bill T/4221. The Committee warns that splitting the single National Health Insurance Fund administered by the public authority into a multitude of semi-privatized funds where private investors are given substantial decision rights, whereas the representatives of the insured are excluded from management, raises governance concerns for the health insurance system. In the current period of transformation of the national health insurance system, the Government states that it is unable to declare along which principles the new system will be elaborated and is now examining the roles that the employer and the employee sides could play in the operation of the new system. In this situation, the Committee would like to once again draw the Government's attention to those principles of the participatory management of sickness insurance, which were laid down in *Article 6* of the Convention as early as 1927 and upheld since in many subsequent international and European social security instruments. These principles require the Government to conserve its overall primary responsibility for the proper administration and functioning of the institutions and services involved, to assign and promote a strong role for the social partners, to guarantee an effective representation of the insured persons as well as to ensure close supervision of private investors. *In view of the importance of these principles for the good governance of social insurance, the Committee would like the Government to explain to what extent they are being followed in the current reform of the health insurance in Hungary.*

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

Libyan Arab Jamahiriya

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1975)

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

Part IV of the Convention. Unemployment benefit. With reference to its previous comments, the Committee notes the adoption of Decision No. 109 of 2006 (1374 H) on the establishment of an employment fund aimed at contributing to economic and social development through the provision of decent and productive job opportunities to specific categories of jobseekers. It also notes that section 15 of the Decision lays down the granting of a monetary benefit worth 60 dinars a month for jobseekers of specific categories. *The Committee would like the Government to indicate whether these categories cover all persons protected, both from private and public sectors, who have lost employment involuntarily and who are unable to obtain suitable employment and are capable of, and available for, work. It would also like the Government to indicate the net and gross wage of the ordinary adult male labourer determined in accordance with Article 66 of the Convention, and to indicate whether the 60 dinars are net or gross benefit, its duration, the qualifying conditions (length of employment, etc.), if any. It would also like the Government to communicate the text of Decision No. 109.*

The Committee wishes again to draw the Government's attention to the fact that the Convention is intended to afford effective protection against unemployment by means of a system of social security which makes it possible to finance unemployment benefit through collective contributions from all those concerned, thereby avoiding the situation in which they are payable directly by employers, which may become too burdensome if the level of unemployment in the country rises. *The Committee therefore hopes that the Government would endeavour, with the help of the ILO, to adopt the necessary rules to permit the Social Security Fund to receive contributions and to pay unemployment benefit, thereby giving effect to Part IV of the Convention through a system of social security and taking into account more fully the principles of organization and financing set out in Articles 71 and 72.*

Part VII. Family benefit. In its previous comments, the Committee noted that section 24 of Act No. 13 of 1980 only provided for the granting of family allowances to pensioners under the social security system, whereas *Article 41* of the Convention covers other categories of employees or residents. In its report, the Government indicates that section 18 of the Order taken by the Council of Ministers, which relates to the regulations of employees with contracts, promulgated on 14 December 1971 specifies that the provisions of the Civil Service Act No. 55 of 1976 and the regulations issued thereof, shall apply to employees hired with contracts. The provisions of other laws and regulations also apply to them, in accordance with section 18 of the regulations on employees who have contracts as non-nationals, who become entitled to family benefits such as their national counterparts. The Committee notes this information. *It would like the Government to communicate in its next report information on the application in practice of the above legislation, providing detailed statistics on the different categories of workers protected and the benefits provided, covering both the public and the private sectors, in accordance with Article 44 of the Convention.*

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

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (ratification: 1975)

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

Article 3, paragraph 1, of the Convention (in conjunction with Article 19). Equality of treatment. (a) The Committee noted in its previous observations that section 38(b) of Social Security Act, No. 13 of 1980, and Regulations 28-33 of the Pension Regulations of 1981 provide that non-Libyan residents receive only a lump sum in the event of premature termination of work, whereas nationals are guaranteed, under section 38(a) of the Act, the maintenance of their wages or remuneration. ***The Committee points out again the importance of abolishing the difference between Libyan workers and foreign workers in the event of premature termination of employment. It hopes that the Government will take all necessary steps to this end in the near future.***

(b) In its previous comments, the Committee pointed out that, according to the information sent by the Government and pursuant to the national legislation (sections 5(c) and 8(b) of the Social Security Act), foreign workers engaged in the public administration and non-Libyan self-employed workers may be affiliated only on a voluntary basis to the social security scheme unless, in the case of the latter, an agreement exists with their country of origin. The Committee reiterated its view that, where affiliation of nationals to the social security scheme is compulsory, as it is in the Libyan Arab Jamahiriya, to make affiliation voluntary for some categories of foreign workers is contrary to the principle of equal treatment laid down in the Convention (except where arrangements exist between the members concerned under *Article 9*). Foreigners are often unaware of their own rights and of the administrative steps that they need to take to be protected and therefore cannot benefit from the advantages mentioned by the Government. The Committee takes note of the draft regulation communicated during the mission carried out by the Office in July 2007. The draft regulation provides for compulsory affiliation of foreign self-employed workers, thus guaranteeing equal treatment with regard to nationals. ***It hopes that the draft will soon be adopted and requests the Government to keep the Committee informed on the progress made in this regard. The Committee also requests the Government to indicate the number of foreign workers employed in the public sector.***

(c) In its previous comments, the Committee pointed out that, under the terms of Regulation 16, paragraphs 2 and 3, and Regulation 95, paragraph 3, of the Pensions Regulations of 1981, and without prejudice to special social security agreements, non-nationals who have not completed a period of ten years' contributions to the social security scheme (years that may be supplemented, where appropriate, by years of contributions paid to the social insurance scheme) are entitled neither to an old-age pension nor to a pension for total incapacity due to an injury of non-occupational origin. Furthermore, Regulation 174, paragraph 2, of the above Regulations seems to imply *a contrario* that this qualifying period is also required for pensions and allowances due to survivors of the deceased person by virtue of Title IV of the Regulations, when death is due to a disease or an accident of non-occupational origin. Since such a qualifying period is not required for insured nationals, the Committee pointed out that the above provisions of the Pension Regulations of 1981 are incompatible with *Article 3(1)* of the Convention. The Committee noted the indication by the Government, according to which there is an amendment to the regulations by virtue of Decision No. 328 of 1986 that specifies the entitlement of non-nationals to old-age benefits, who spent 20 years in service for which they pay contributions. Section 29 of the Order sets down the condition of five years of minimum service and contributions of insured persons who are non-nationals for the payment of the overall allowance for them. It also notes that, according to the Government, Libyan citizens do not enjoy this advantage. The Committee takes note of the text of the above Order. ***It would like the Government to provide information on the measures taken to give full effect to this provision of the Convention as regards the other points mentioned above.***

Article 5. Payment of benefits abroad. In its previous comments, the Committee pointed out that Regulation 161 of the Pension Regulations of 1981 provides that pensions or other cash benefits may be transferred to beneficiaries resident abroad subject, where appropriate, to the agreements to which the Libyan Arab Jamahiriya is a party. The Committee recalled that, in accordance with *Article 5* of the Convention (read in conjunction with *Article 10*), each Member which has ratified the Convention must guarantee both to its own nationals and to the nationals of any other Member that has accepted the obligations of the Convention in respect of the branch in question, as well as to refugees and stateless persons, when they are resident abroad, the provision of invalidity benefits, old-age benefits, survivors' benefits, death grants and employment injury pensions. ***The Committee notes that, according to the Government, this matter will be examined when amending the Regulations, so as to bring them into conformity with the Convention. It hopes that the Government will adopt the necessary measures in the near future so as to give effect to this provision of the Convention.***

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

Medical Care and Sickness Benefits Convention, 1969 (No. 130) (ratification: 1975)

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

The Committee hopes that the Government will take the necessary measures to give full effect in law and practice to the provisions of the Convention mentioned in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Panama

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1958)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

The Committee noted previously that, according to the information provided by the Government in its last report, the necessary measures to bring the provisions of the national legislation fully into conformity with the Convention had not yet been adopted. The Government indicates in this respect that it has not been in a position to adopt the necessary amendments in view of the lack of consensus between the social partners concerning an amendment to the national legislation. The Committee recalls that for many years it has been drawing the Government's attention to the need to amend certain provisions of the Labour Code

and the social security legislation in relation to compensation for employment injury. When ratifying the Convention in 1958, the Government made a commitment to adopt all the necessary measures to give effect to its provisions. ***In these circumstances, the Committee deplors the lack of progress achieved in bringing the national legislation into conformity with the Convention and is bound to draw the Government's attention once again to the following points.***

Article 5 of the Convention (in conjunction with Article 2, paragraph 1). Payment of compensation in the form of periodical payments without limit of time. In its previous comments, the Committee emphasized the need to amend sections 306 and 311 of the Labour Code in order to provide for the payment of compensation in the form of periodical payments without limit of time in the event of an occupational accident resulting in permanent incapacity or death. Indeed, workers who are not covered by the compulsory social security scheme are governed by the provisions of the Labour Code respecting compensation for employment injury, which in such cases only guarantee them the provision of benefit for a period of 12 months at the expense of the employer.

Under the terms of *Article 2, paragraph 1*, of the Convention, all workers, employees and apprentices employed by any enterprise, undertaking or establishment of whatsoever nature, whether public or private, have to be guaranteed the protection afforded by the Convention, with the second paragraph of this Article enumerating limitatively the exceptions authorized by the Convention. Accordingly, workers covered by the Convention but who are not covered by the social security scheme also have to benefit from the protection afforded by the Convention. The Committee notes from the statistical data provided by the Government that the number of workers paying contributions to the social security scheme was around 730,000 in 2005. However, the Government does not specify the total number of employees in the country, as it was requested to do, so that the Committee could compare the number of persons covered by the social security scheme with the *total number of workers*. ***The Committee therefore once again requests the Government to provide this information with its next report and trusts that the Government will be in a position to align sections 306 and 311 of the Labour Code with the relevant provisions of the social security legislation respecting compensation for employment injury so as to guarantee the protection afforded by the Convention for all workers to whom it is applicable.***

Article 7. Provision of additional compensation to workers suffering employment injury when their condition requires the constant help of another person. In its previous comments, the Committee emphasized that neither the Labour Code nor the social security legislation concerning compensation for employment injury (Decree No. 68 of 31 March 1970) provides for the granting of additional compensation to injured workers whose condition requires the constant help of another person. In its report, the Government refers to the adoption, during the period covered by the report, of Act No. 51 of 27 December 2005 reforming the Constituent Act of the Social Security Fund. However, this new text has not taken into account the Committee's comments with regard to the need to bring the national legislation into conformity with this provision of the Convention in view of the lack of consensus on the subject between the social partners and the economic difficulties faced by the country. ***While taking due note of this information, the Committee once again hopes that the Government will be able to re-examine this matter and take the necessary measures to give effect to this provision of the Convention, which is intended to guarantee the provision of additional compensation to injured workers whose condition requires the constant help of another person.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Peru

Social Security (Minimum Standards) Convention, 1952 (No. 102) (ratification: 1961)

Peru is bound by the obligations under the Social Security (Minimum Standards) Convention, 1952 (No. 102), in respect of five of the nine branches of social security (medical care, sickness, old-age benefits, maternity and invalidity), as well as by a number of other social security Conventions (Nos 12, 19, 24, 25, 35 to 40 and 44). Given that the problems of application identified by the Committee in its many comments are essentially the same for all these Conventions, the Committee considers it appropriate to make a general comment for all social security Conventions ratified by Peru. For this purpose, the Committee had recourse to a 2009 ILO study on the social security system of Peru, and also to a 2009 International Monetary Fund (IMF) working paper on the effect of the financial crisis on pension insurance systems worldwide.

Non-compliance with the basic principles of the international social security Conventions

For many years, the Committee has highlighted the fact that the different components of the social security system in Peru do not give effect to certain principles common to the social security Conventions ratified by the country, namely: (i) the collective financing of benefits; (ii) the democratic and transparent management of social security institutions; (iii) providing benefits throughout the contingency; and (iv) ensuring a minimum level of benefits.

The principle of collective financing of social security laid down by the ILO instruments provides that the cost of benefits and the cost of administering these benefits must be borne collectively by way of contributions and taxes (*Article 71(1) of the Convention*) and that the total of the insurance contributions borne by the employees protected shall not exceed 50 per cent of the total of the financial resources allocated to the protection of the employees (*Article 71(2)*). However, both in the private and in the public pension system of Peru, except in the case of voluntary contributions which the law allows employers to pay optionally, the insured are the only ones to contribute to individual capitalization accounts and to the financing of contributions for invalidity and survivors' insurance. The contributions and administrative costs are also borne solely by workers affiliated to the administrators of private pension funds (AFP) and the Office of Standards for Welfare (ONP), which is contrary to the principle of joint financing of benefits established by the ILO Conventions. ***The Committee points out that by not respecting the principles of solidarity and collective financing, the individual capitalization accounts system is not compatible with Article 72(2) of Convention No. 102.***

Convention No. 102 also requires that when the administration is not entrusted to an institution regulated by the public authorities or by a governmental department accountable to Parliament, representatives of persons protected shall participate in the administration or be associated and have advisory powers (*Article 72(1)*). This participation must be effective and allow the latter to influence the choices made in the investment and the management of the concerned bodies. In its latest reports, the Government agrees that the current national law does not enable affiliated members to participate in the management of the AFP. It nevertheless indicates that a discussion on this issue took place in Congress but that no conclusion was reached. The Government intends to examine the possibility of establishing a supervisory board, in which representatives of the insured would be able to participate and be empowered to collect information from the AFP on the administration of pension funds. With regard to health-care protection, while recognizing that the participation of insured persons in the administration of institutions of health providers (EPS) is not provided by law, the Government indicates that a public body – the *Superintendencia de Entidades Prestadoras de Salud* (SEPS) – supervises both the economic and financial activities, as well as the payment of benefits of the EPS.

The Committee notes the growing recognition by the Government of the need to strengthen the monitoring and surveillance activities as regards private social security entities. ***It requests the Government to provide in its next report information on the progress achieved with a view to supervising the activities of private operators by monitoring and surveillance bodies in which representatives of the insured participate. Along the same lines, given the low rate of affiliation to the social security system, the Committee requests the Government to ensure the participation of representatives of insured persons in the work of the national body responsible for collecting tax and social contributions – the Superintendencia de Administracion Nacional Tributaria (SUNAT) – and provide information in this regard.***

Under the private system, old-age benefits are calculated on the basis of the capital that each insured person holds in his/her individual savings account (CIC). When the capital accumulated on this account is exhausted, entitlement to pension may disappear and the insured person who exceeds the average life expectancy could be without his/her only source of income. This is contrary to the principle of the international conventions according to which benefits must be provided throughout the contingency at the guaranteed minimum rate. It is therefore not possible to guarantee that the minimum rate set by the Convention is respected, because the level of pension paid under the private system cannot, for reasons inherent in this type of pension, be known until the time of retirement. The economic and financial crisis highlighted moreover the shortcomings of this system, as will be shown under item 3.

In addition, the Committee notes that in 2005 the Constitutional Tribunal of Peru recognized that the right to social security is a “fundamental right of legal configuration” which has an “essential core”, the violation of which by the legislature may be the subject of a constitutional complaint (Decision No. 1417-2005 PATC of 8 July 2005). The Committee nevertheless notes that while Peru has been a party to Convention No. 102 since 1961 and that the Constitution recognizes that international treaties on human rights are part of the “block of constitutionality” (norms having constitutional value), the Constitutional Tribunal does not seem to include the principles and the minima guaranteed by Convention No. 102 into the “essential core” of the right to social security. This decision, thus, while upholding the right to social security as such, seems to devoid it of the concrete contents contained in Convention No. 102. ***In view of the international obligations undertaken by Peru, the Committee believes that recognition of the basic principles guaranteed by the social security Conventions of the ILO would effectively contribute to the implementation of the Peruvian rule of law based on the solidarity, participatory governance and social minima.***

Malfunctioning of the public pension system

The Committee notes that the public pension system managed by the ONP seems to suffer serious shortcomings as a result of which numerous delays occur in the determination of the right to pension, causing in turn considerable judicial litigation. According to a report of July 2008 of the *Defensoria del Pueblo del Perú*, which is the independent public institution established by the Constitution in order to ensure respect for fundamental rights and the proper functioning of the rule of law, about 100,000 applications for determining entitlements to pension were awaiting a decision and an equally large number of cases challenging the decisions of the ONP were being considered by the courts. As per this report, the ONP is the institution against which the greatest numbers of complaints have been lodged by the *Defensoria*. This number is of significant importance considering that approximately 500,000 pensions are managed by the ONP and it has as many active contributors in the public pension system. The report of the *Defensoria* further notes that no up to date record of the contributions by members exists, that the burden of proof as regards the contributory period is not placed on the ONP, but on the insured and that procedures for granting pensions are excessively complex. The report indicates a series of recommendations to both the executive and legislative powers in order to correct the serious deficiencies mentioned above. ***Given these allegations, the Committee asks the Government to demonstrate in its next report how the Peruvian State assumes the full and general responsibility concerning the provision of benefits and the proper administration of social security institutions, in accordance with Articles 71 and 72 of the Convention.***

Effects of the economic and financial crisis on the social security system of Peru

The Committee notes that the Government has not responded to the 2008 general observation on the impact of the global economic and financial crisis on the social security system. It notes however that, according to 2009 statistics (IMF), the financial crisis has affected most severely the Peruvian private pension funds, which have lost an average of

32 per cent of their capitalization. The consequences are proving to be very significant, especially for insured people close to the age of retirement, because the value of the capitalization accounts has fallen sharply, driving down the level of pensions paid. The crisis has been more devastating in cases where financial investments of private pension schemes were not sufficiently regulated and where there was not a supplementary pay-as-you-go component based on the principle of solidarity providing defined benefits. ***The Committee considers that the Peruvian Government must be aware of the fragility inherent in the system of private management and should now consider the possibility of establishing financial mechanisms to protect funds accumulated for pension, such as insurances, funds to safeguard the amount of pensions, or the automatic transfer of individual accounts to funds where the investment risk is very low for insured persons near retirement.***

The Committee notes that in order to overcome the deficiencies inherent in the private administration of the pension system, the Government established in March 2007 minimum pensions for those insured by private pension funds under certain conditions (Act No. 28991 on *la libre desafiliación informada, pensión mínima y complementaria, y régimen especial de jubilación anticipada*). Under this law, any person affiliated to the private pension system (SPP) who at the time of the creation of this system belonged to the public pension system (NPS), is entitled to a minimum benefit equal to that provided by the SNP or a supplementary pension if the pension from their private pension system is less than the minimum pension. The Committee notes, however, that the Act only guarantees a minimum pension for a limited number of insured persons who meet certain age requirements at the time of the introduction of the private pension system administered by the AFPs. The Committee considers that opening up the system of guaranteed minimum pensions to the entire population over a certain age would allow the Peruvian State to ensure a minimum old-age pension to all those whose level of pension risks being too low, in particular as a result of the current economic and financial crisis. ***The Committee invites the Government to further explore the advantages of extending the minimum pension to all residents with low incomes.*** The Government could, in this respect, wish to take advantage of the experiences of other countries in the region where a basic social pension of a non-contributory nature has been created, which benefits all citizens aged 65 and over who have never contributed or whose contributions are not sufficient for establishing the right to a pension.

The Committee also notes that in response to its previous comments regarding the need to reintroduce a reduced pension for all insured persons who have completed a period of at least 15 years of contribution or employment (*Article 29(2) of Convention No. 102*), the Government indicates that it has carried out the actuarial calculations necessary to calculate the cost of this measure to the pension system managed by the ONP. Currently, as a result of the retroactive effect of Decree-Law No. 19990, such a pension is, in fact, only paid to insured persons who have turned 60 before the entry into force of Decree-Law No. 25967, i.e. 19 December 1992 at the latest. The Government states that, given the size of the resources concerned (approximately 70 per cent increase in the national budget), it is for the Ministry of Economy and Finance to assess and decide on the implementation of this proposal. ***The Government is requested to draw the attention of the Ministry of Economy and Finance to Peru's international obligation to restore the right to a reduced pension for insured persons who have completed at least 15 years of contribution or employment, in accordance with Article 29(2) of Convention No. 102, and to indicate in its next report the progress made on this matter. The Committee also invites the Government to avail itself of the technical assistance of the ILO, particularly as regards the actuarial evaluation of the impact of such a measure on the pension system.***

Insufficient coverage and evasion of the obligation of membership in the social security system

According to an ILO study, 2009, in 2007 only 35 per cent of the economically active employed population benefited from coverage for old age, invalidity and survivors, which demonstrates a significant level of evasion from the obligation to affiliate to the social security system in the formal economy. In 2006, among the approximately 2.2 million people over 65 years of age, only 500,000 were receiving old-age, invalidity or survivors' benefits, representing a level of coverage of the elderly of approximately 23 per cent. As regards health-care protection, only 36 per cent of the total population was covered. Overall, these figures reveal the alarming situation of the evasion from the obligation of membership, particularly by large enterprises in the formal sector, and the need for the State to significantly strengthen the control exercised by the national body responsible for collecting tax and social contributions (SUNAT). By virtue of the international social security standards ratified by Peru, the Government has in fact the duty to ensure compliance with the requirement of compulsory affiliation to the social security system and is obliged to take concrete steps to improve coverage of the entire social security system. *Article 5* of the Convention provides in this respect that States must ensure that the minimum percentage of membership in each branch of social security is actually achieved in practice. To achieve this result requires, among other things, providing the organs responsible for collecting contributions means to carry out their mission and providing for penalties that are sufficiently deterrent for offenders. In the case of Peru, the measures to control the application of the national legislation will be greatly facilitated by the fact that the urban labour force represents 65 per cent of the total workforce. ***The Committee trusts that the Government will set itself specific goals in terms of percentages of the population to which coverage will be extended within the assigned time frame, through the strengthening of its capacity to enforce the obligation of membership to the social security system, particularly as regards the urban workforce. Please provide detailed statistics on the extension of coverage of the country's social security system for each branch of social security in both the public and private system.***

Status of micro- and small enterprises

The Committee recalls that, at the time Peru ratified Convention No. 102 in 1961, it availed itself of the possibility for States whose economies and medical facilities are insufficiently developed, to apply the provisions only to 50 per cent of all employees in industrial workplaces employing 20 persons or more, instead of 50 per cent of all employees (*Article 3* of the Convention). States that have used this derogation are required to indicate in their periodic reports the action taken to gradually expand the scope of persons covered and to specify whether the reasons for maintaining a reduced scope of application subsist, or whether they renounce to avail themselves of this exception in the future.

In 2008, with a view to providing coverage to most of the population working in small and medium-sized enterprises and to combating the significant level of evasion from membership and the payment of contributions by these companies, the Government adopted a Legislative Decree amending the legal regime for these companies as regards social security (DL No. 1086). The new Decree defines micro-enterprises as those employing not more than ten workers, and small enterprises as those employing up to 100 employees and a turnover below a certain amount. It establishes a special legal regime applicable to micro-enterprises where workers are not required to join a mandatory system of pension insurance and benefit from a special regime as regards health-care protection. Employers are required to make monthly contributions for each of their workers, supplemented by equivalent contributions paid by the State.

The Committee notes that, unlike health-care insurance which remains compulsory with certain adjustments, Legislative Decree No. 1086 renders the affiliation to the pension system voluntary. Given the large number of workers employed by these enterprises, it hopes that this measure only represents a transitional solution only applicable to newly created micro-enterprises for the maintenance of rights acquired under the previous regime. The Committee also draws the attention of the Government to the provisions of *Article 6* of the Convention, which establishes the principles to be met by voluntary insurance schemes (control by public authorities or administered by joint operation of employers and workers, coverage of a substantial part of persons with low incomes, etc.). ***In light of these considerations, the Committee expects to receive information from the Government on the impact of the reform relating to the coverage of workers in micro-enterprises.***

Introduction of a universal health-care insurance

The system of health-care protection in Peru is composed of the following schemes: *Seguro Social de Salud* (ESSALUD), *Seguro Integral de Salud* (providing significantly reduced benefits compared to the system ESSALUD and are financed by the Ministry of Health) and private insurances (EPS). Despite a considerable increase in the coverage of the contributory health-care social security system between 1999 and 2007, only about 36 per cent of the population benefited in 2007 from health-care coverage, and the remaining 64 per cent was not covered. In 2006, the percentage of employees covered was 32 per cent on average, with significant disparities between the public sector where the rate was 68 per cent and the private sector where the rate of coverage was 24 per cent. These rates determine Peru as one of the countries of the region where health-care coverage is generally the lowest and a country where regional inequalities within the country are most pronounced.

In recognition of this fact, the Government adopted in 2009 a framework law on universal health-care insurance (Law No. 29344 of 9 April 2009), the aim of which is to gradually extend to the entire population health-care benefits of a preventive, curative and rehabilitative nature on the basis of a basic plan for health-care insurance. This text is intended to give effect to the basic rights under the Peruvian Constitution, in particular the right to health-care protection, the universal and progressive right of everyone to social security which guarantees free access to health-care benefits provided by public, private and mixed entities, as well as the duty of the State to determine the national health policy. According to the framework law, the right to universal health-care insurance should be fully and progressively guaranteed to all residents at every stage of life, without any discrimination. The Ministry of Health is responsible for preparing the said basic plan and for creating a technical committee for the implementation of the universal health-care insurance. According to the latest information available in September 2009, the establishment of the universal health-care insurance had begun in some parts of the country, notably Apurímac, Huancavelica and Ayacucho.

The Committee notes that the introduction of a system of universal health-care insurance could, if implemented effectively, allow for the extension of health-care protection to an increasingly large part of the population. It notes however that in order to make the system of universal health-care insurance fully operational, the abovementioned law should be supplemented by technical regulations which ensure compliance with compulsory membership and contributions, especially for employees in the formal economy where evasion of the obligation to affiliate seems particularly high, progress can also be made in respect of employees in the informal economy, as independent workers, as well as the rural populations. ***The Committee will closely monitor the implementation of the system of universal health-care insurance and therefore requests the Government to provide information on the nature of care provided, as well as the progress made in terms of coverage of the population by economic sector and geographic region.***

Developing a national strategy for sustainable development of social security

In 2001, the International Labour Conference (ILC) reaffirmed the central role of social security and reiterated that it remained a challenge for all member States which had to be urgently addressed. The conclusions adopted by the ILC in 2001 recognize that “of highest priority are policies and initiatives which can bring social security to those who are not covered by existing systems”. To achieve this objective, the Conference urged each country to define a national strategy

closely linked to other social policies. States parties, such as Peru, to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, are required to develop a national strategy for the full implementation of the right to social security and should allocate adequate fiscal and other resources at the national level (General Comment No. 19 of the UN Committee on Economic, Social and Cultural Rights (CESCR), adopted in 2007). The Committee considers that the need for such a *national strategy* stems from the overall responsibility of the State to ensure the sustainability and proper functioning of the social security system, as established by Convention No. 102. The launch of a national strategy for the consolidation and development of a sustainable social security system would allow the State to fully exploit all of the potential offered by international social security standards to ensure the good administration of schemes and allow the gradual extension of coverage to the entire population. ***The Committee draws the attention of the Government to the possibility of making recourse to the technical assistance of the ILO in this regard.***

[The Government is asked to reply in detail to the present comments in 2010.]

Rwanda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1962)

Article 2 of the Convention. Coverage of apprentices and casual and temporary workers against the risk of employment injury. The Committee notes the information provided by the Government in its report, including the law regulating labour in Rwanda, No. 13/2009 of 27 May 2009 (Labour Law) and the National Social Security Policy document of the Ministry of Financing and Economic Planning of February 2009. Section 2 of the new Labour Law provides that this law applies to the labour relations between workers and employers as well as between the latter and the apprentices or the trainees under their authority as per contract. Casual and temporary workers are included in the scope of application by virtue of section 3, while section 47 establishes the obligation of the employer to affiliate workers to the social security scheme. On the basis of the above sections of the newly adopted Labour Law, the Committee notes with **satisfaction** the extension of the national legislation on the protection against employment injury to apprentices and casual and temporary workers.

The Committee also welcomes the National Social Security document, which provides an analysis of the current social security programme and policy orientations for its improvement with the objective of achieving social security coverage for all. As regards employment injury, the policy document indicates the Government's commitment to reinforce measures to establish 100 per cent coverage for employment injury of all workers in the formal sector. In the absence of coherent legal texts defining the basic social security framework, the policy document recommends a legal reform through an organic law, which will be guided inter alia by the provision that employment injury benefits are managed by the Rwanda Social Security Board and mandatory for all workers with a formal employment contract. ***The Committee asks the Government to continue providing information on the progress made in developing a legal framework for the social security system in Rwanda.***

Sierra Leone

Workmen's Compensation (Accidents) Convention, 1925 (No. 17) (ratification: 1961)

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 5 of the Convention. In its last report, the Government indicates, in reply to the comments made for many years by the Committee, that a Bill on Workmen's Compensation has been formulated but not adopted as yet. It further states that the abovementioned draft legislation reflects the provisions of the Convention concerning the payment of injury benefits throughout the period of contingency and that copy of the revised legislation will be communicated to the ILO as soon as it is adopted. The Committee notes this information as well as the Government's request for technical assistance from the Office in order to accelerate the implementation process of the revised legislation. ***The Committee expresses the hope that the draft legislation will soon be adopted and requests the Government to provide a copy of it. On the basis of the new legislation, the ILO would certainly be able to discuss with the Government the terms of the requested technical assistance.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Thailand

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (ratification: 1968)

In a communication dated 5 June 2009, the State Enterprise Workers' Relations Confederation (SERC) alleges that the Government of Thailand fails to grant to migrant workers who fall victims of industrial accidents, and to their dependents, the right to equal treatment with Thai nationals, in breach of domestic and international labour standards.

Since 2006, the SERC has supported research undertaken by the Human Rights and Development Foundation (HRDF) establishing that refusal to allow migrants access to work-related accident and disease compensation from the Workmen's Compensation Fund (WCF) constitutes systematic discrimination against approximately two million unskilled migrant workers from Myanmar, Cambodia and Lao People's Democratic Republic. The refusal of access to the WCF results from the inability of migrant workers to satisfy, in most cases, the conditions imposed on them by the circular of the Social Security Office (SSO) RS0711/W751 of 2001 relating to the provision of protection for migrant workers who incur work-related accidents or illnesses, which requires migrant workers to possess a passport or alien registration documents and obliges their employer to register and pay contributions to the WCF in respect of the worker concerned. Recognizing that many of these workers have entered Thailand illegally without official documents, the Government of Thailand has, since 1996, created systems for registering migrants from Myanmar to work legally once they are in Thailand and has issued work permits and identity cards with the mention "not possessing Thai nationality" to over 500,000 nationals of Myanmar (documents Thor. Ror. 38/1, issued by the Department of Provincial Administration, Ministry of Interior). The SSO, however, refuses to accept these documents to enable migrants to access the WCF as insufficient documentary evidence under the circular RS0711/W751, and prohibits employers of migrant workers holding Thai work permits and identity cards from paying contributions to the WCF. The SERC alleges that the circular RS0711/W751 and its implementation by the SSO violate the Workmen's Compensation Act of 1994 (WCA), which applies equally to national and migrant workers and obliges employers to pay contributions to the WCF irrespective of their nationality. The numerous attempts to challenge the legality of the SSO circular before the labour and administrative tribunals have failed. The Labour Court of Appeal refused to revoke the SSO circular on the basis that it did not exceed the powers of the SSO. The Supreme Administrative Court also rejected the case on the basis that administrative tribunals are not competent to review labour policies falling within the jurisdiction of labour courts. Although the decision of the Labour Court of Appeal was itself appealed to the Supreme Court and to the Central Labour Court, the SERC states that any decision of these courts revoking the SSO circular will not be binding since in the Thai legal system the only tribunals having competence to revoke administrative acts of the Ministry of Labour are the administrative courts. Having exhausted all domestic legal remedies and fearing that the SSO circular instituting unequal treatment of migrant workers might become unreviewable by the national tribunals, the SERC has decided to seek protection of migrant workers in Thailand under Convention No. 19.

In reply to these allegations, the Government states that the SSO of the Ministry of Labour realizes the suffering of migrant workers, many of whom are illegal migrants whose nationalities have not been verified. At present, the Department of Employment of the Ministry of Labour is verifying these workers' nationalities and is expected to complete this task by February 2010. Migrants will subsequently be covered by the social security system, i.e. both the Social Security Fund and the WCF. Consequently, the requirement established by the SSO circular to possess a valid passport will no longer be applied to migrant workers. As for the employers' obligation to pay contributions to the WCF in respect of migrant workers, the Government indicates that the WCA provides for equal treatment between Thai and foreign workers in this matter. Although migrant workers are not entitled to compensation from the WCF for work injuries, they receive compensation directly from their employers, the amount of which is equal to the compensation paid by the WCF.

The Committee notes with **deep concern** the situation of some 2 million workers from Myanmar, many of whom are described by the SERC as being in "a social zone of lawlessness" where they are not protected by the laws of Thailand or Myanmar. It notes, however, the stated commitment of the Thai Government to treat all workers fairly and equally without any discrimination based on nationality and to promote the human dignity of all migrant workers, documented or undocumented. The Committee considers that in a situation where equal treatment of migrant workers may be jeopardized on a mass scale leading to exploitation and suffering, the bona fide application of the Convention would require member States to deploy special and urgent efforts commensurate with the gravity of the situation, unilaterally as well as in cooperation with one another. With regard to the measures reported by the Thai Government, the Committee notes that, while it endeavours to treat all workers equally irrespective of their nationality, the SSO does not recognize the identity cards issued by the Thai authorities with the mention "not possessing Thai nationality" and the measures reported by the Government are directed exclusively at verifying nationalities of migrant workers. With regard to the situation in law, the Committee observes that, while the WCA grants foreign workers the right to equality of treatment, the SSO circular RS0711/W751 subjects the exercise of this right to fulfilment of certain conditions, which in the current situation effectively deprives migrant workers of protection by the WCF enjoyed by the Thai workers. With respect to the Government's statement that foreign workers who are thus deprived from compensation by the SSO, are entitled instead to an equal compensation from their employer, the Committee notes that the Government does not contest the fact that, in practice, as explained by the SERC, the SSO orders obliging the employer to pay compensation directly to the worker concerned are usually ignored, as migrant workers are unable to engage in costly and lengthy judicial proceedings necessary to enforce the SSO orders. With these considerations in mind, the Committee observes that the principle of equal treatment in social security would lose all meaning if access to social security benefits were made subject to such conditions, the fulfilment of which for migrant workers becomes either particularly difficult or depends on the actions of the employers or of the authorities of the receiving country. To prevent and remedy such situations, the international social security law has put in place a number of safeguards, which offer guidance to governments wishing to apply the principle of equality of treatment in good faith. In particular, eligibility for workers' compensation shall not be made conditional upon the payment of contributions by the employer in respect of the worker concerned. Governments shall assume the

general responsibility for the proper administration of the social security institutions, ensuring their close cooperation with other agencies, such as the Ministry of Interior, Department of Employment, Immigration Service, etc., with a view, inter alia, to facilitating social security coverage of migrants. *The Committee asks the Government to review the policy of the SSO concerning social security coverage and protection of migrant workers in case of occupational accidents and diseases in the light of the above guiding principles and safeguards established by international law for the promotion of equal treatment of foreign workers. Taking into account the gravity of the situation, the Committee asks the Government to instruct the SSO to take positive and urgent measures lifting restrictive conditions and facilitating access of migrant workers to the WCF irrespective of their nationality. With respect to the SSO circular RS0711/W751, the Government is asked to explain what procedures exist in the Thai legal system to supervise, review and revoke contested circulars issued by a government agency at the level of the ministry concerned, at the level of the Government or by an independent judiciary authority. Finally, noting that the legality of the SSO circular is currently pending before the Supreme Court as well as the Central Labour Court, the Committee hopes that these jurisdictions will take into account the present comments.*

[The Government is asked to reply in detail to the present comments in 2010.]

Tunisia

Equality of Treatment (Social Security) Convention, 1962 (No. 118) (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:

Articles 4 and 5 of the Convention. With reference to its previous comments, the Committee recalls that section 49 of Decree No. 74-499 of 27 April 1974 respecting the old-age, invalidity and survivors' schemes in the non-agricultural sector and section 77 of Act No. 81-6 of 12 February 1981 to organize social security schemes in the agricultural sector provide that the grant of the above benefits to *nationals of Tunisia* is subject to the applicant residing in Tunisia at the date on which the application is made, although this requirement is lifted for *foreign nationals* of countries which are bound to Tunisia by a bilateral or multilateral social security treaty. *As Tunisian nationals do not benefit from equality of treatment with foreign nationals, in accordance with Article 4(1) of the Convention, and may be refused, contrary to Article 5(1) of the Convention, the provision of old-age, invalidity and survivors' benefit in the event that they are resident abroad when applying for the benefit in a country that has not concluded a bilateral treaty with Tunisia, the Committee previously requested the Government to bring the national legislation into full conformity with the Convention by abolishing the above residence requirement for Tunisian nationals.*

Over the course of the past 25 years, the Government indicated in 1987 that, even though Tunisian nationals are obliged to be resident in Tunisia on the date of making the application for the pension, the residence requirement was subsequently lifted in relation to the provision of pension arrears. In 2002, the Government added, although without citing the relevant provisions, that the requirement of residence in Tunisia for the grant of pensions is also lifted for Tunisian nationals in the event of the assignment of a Tunisian worker to an enterprise based in a country with which Tunisia has concluded a social security agreement, or in the event of a temporary stay in the country of origin of the worker and her or his dependants. With regard to the requirement for Tunisian nationals to be resident in Tunisia at the time when the application for benefit is made, the Government undertook to take the Committee's comments into consideration in the revision of the texts in question. However, in its last report, received in September 2006, the Government no longer refers to this intention and confines itself simply to indicating that when section 49 of Decree No. 74-499 of 1974 and section 77 of Act No. 81-6 of 1981 are "read in conjunction" with the provisions of the bilateral and multilateral social security agreements concluded by Tunisia, the requirement of residence is also lifted for the nationals of the contracting countries and for Tunisians resident in those countries. The clause relating to the lifting of the residence requirement forms part of the Association Agreement with the European Union in which the principle of free remittance is fully valid in relation to all social security benefits envisaged in sections 62 to 64 of the Agreement for the nationals of both contracting parties.

The Committee observes that the outcome of reading the above provisions in conjunction, as indicated by the Government, namely the raising of the residence requirement, only concerns Tunisian nationals resident in countries to which Tunisia is bound by bilateral or multilateral agreements and does not therefore resolve the problem of inequality of treatment of Tunisian nationals who may not benefit from any system of reciprocity established by such agreements. Nor is it clear to which residence requirement the Government is referring in its report: the requirement to be resident in Tunisia at the date of applying for the benefits or the residence requirement after making the application when pension arrears are due. *Finally, with regard to a reading of the above legislation in conjunction with the provisions of Convention No. 118, the Committee would be grateful if the Government would demonstrate, by referring to decisions of the institutions administering social security, that the requirement to be resident in Tunisia at the time of making the application for benefits that is imposed under these laws is effectively raised for all Tunisian nationals, in the same way as for nationals of any other State that has ratified the Convention, wherever they are resident outside Tunisia and even in the absence of bilateral or multilateral agreements with the State in question. By way of illustration, the Committee requests the Government to explain the manner in which section 49 of Decree No. 74-499 of 1974 and section 77 of Act No. 81-6 of 1981 would apply in practice to Tunisian nationals and nationals of Egypt, Mauritania, the Syrian Arab Republic or Turkey, and their dependants, who are resident in one of these countries at the time that they make the application for their benefits in Tunisia.*

Furthermore, the Committee notes the Government's statement in its report that it has accepted the obligations of the Convention for the following branches of social security: medical care, sickness benefit, maternity benefit, employment injury benefit, and it indicates that invalidity and retirement pensions are not covered by the clause raising the residence requirement envisaged by the Convention as these benefits are not among the branches of social security accepted by Tunisia when ratifying the Convention. The Committee is bound to recall that when ratifying the Convention in 1965 Tunisia accepted its obligations in respect of the following branches: (a) medical care; (b) sickness benefit; (c) maternity benefit, (g) employment injury benefit; and

(i) family benefit. On 21 April 1976, Tunisia extended its obligations to the following branches: (d) invalidity benefit; (e) old-age benefit; and (f) survivors' benefit which, under the terms of *Article 2(5)* of the Convention, are deemed to be an integral part of the ratification and to have the force of ratification as from the above date. Under the terms of *Article 2(2)* of the Convention, Tunisia is under the obligation to apply the provisions of the Convention in respect of all the branches accepted. ***The Committee therefore hopes that the Government will ensure that institutions administering social security responsible for reading the national legislation "in conjunction" with the provisions of the Convention are correctly informed (by a circular, if necessary) of the extent and scope of Tunisia's international obligations under the Convention and ascertain that invalidity and retirement pensions are covered by the clause raising the residence requirement for nationals of Tunisia on an equal footing with the nationals of other countries which have ratified the Convention, in accordance with the specifications of Articles 4 and 5.***

Branch (g) (Employment injury benefit). In its previous comments concerning the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the Committee noted that, by virtue of section 59 of Act No. 94-28 of 21 February 1994 establishing the compensation scheme for occupational accidents and diseases, foreign beneficiaries of periodical payments who cease to reside in Tunisia receive as the whole of their compensation a lump sum equal to three times the total of the annual periodical payment which was or would have been granted to them, subject to the more favourable provisions of bilateral social security agreements or international treaties. In reply, the Government indicates that, taking into account the hierarchy of standards, the provisions of Conventions, including those of Convention No. 19, prevail over section 59 referred to above. The provisions of Conventions are imperative laws of immediate application and do not require instructions to be issued to institutions administering social security for their implementation. The Committee takes due note of these statements which, *mutatis mutandis*, would also be applicable to the provisions of Convention No. 118. *Article 5(1)* of Convention No. 118 requires the payment of periodical payments due in respect of employment injury in the event of residence abroad irrespective of the conclusion of any other bilateral or multilateral social security agreement. ***In view of the complementary obligations of Tunisia under Conventions Nos 19 and 118, the Committee requests the Government to confirm explicitly whether the nationals of all the States that have ratified Convention No. 19 and the nationals of all the States that have accepted the obligations of Convention No. 118 for branch (g) (Employment injury benefit), as well as Tunisian nationals, benefit from the provision of their periodical payments – and not a lump sum equal to three times the annual periodical payment – when they cease to be resident on the territory of Tunisia. In the absence of clear instructions to institutions administering social security, please provide examples of the application in practice of Act No. 94-28 of 21 February 1994, with particular reference to section 59, based on a specific case of the remittance of benefits consisting of the current payment of periodical payments in respect of employment injury, for example, to a national of Egypt, Mauritania, the Syrian Arab Republic or Turkey, and to their dependants resident in one of these countries.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

United Kingdom

Bermuda

Workmen's Compensation (Accidents) Convention, 1925 (No. 17)

The Committee notes the Government's response to its previous comments, according to which the Labour Advisory Council is currently in the final stages of putting recommendations together to forward to the minister to approve the Workmen's Compensation Act in the near future which will give effect to the provisions of the Convention. ***The Committee hopes that the abovementioned Act will be amended without further delay and that it will include provisions implementing Article 5 of the Convention (payment of compensation in the form of periodical payments).***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 12** (Comoros, Dominica, Guinea-Bissau, Rwanda, United Kingdom: Anguilla); **Convention No. 17** (Cape Verde, Guinea-Bissau, Iraq, United Kingdom: Anguilla, United Kingdom: St Helena); **Convention No. 18** (Denmark: Faeroe Islands); **Convention No. 19** (Cape Verde, Denmark: Faeroe Islands, Dominica, Egypt, Guyana, Iraq, Nigeria, Serbia, Sudan, United Kingdom: Anguilla); **Convention No. 24** (Algeria, Peru); **Convention No. 25** (Peru); **Convention No. 35** (Peru); **Convention No. 36** (Peru); **Convention No. 37** (Peru); **Convention No. 38** (Djibouti, Peru); **Convention No. 39** (Peru); **Convention No. 40** (Peru); **Convention No. 42** (Iraq, United Kingdom: Anguilla); **Convention No. 44** (Algeria); **Convention No. 102** (Barbados, Libyan Arab Jamahiriya); **Convention No. 118** (Cape Verde, Guinea, Iraq, Israel, Libyan Arab Jamahiriya); **Convention No. 121** (Libyan Arab Jamahiriya); **Convention No. 128** (Barbados, Libyan Arab Jamahiriya); **Convention No. 130** (Libyan Arab Jamahiriya).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 17 (Algeria).**

Maternity protection

Bolivia

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1973)

The Committee notes that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

Article 1 of the Convention. Scope. The Committee notes the adoption on 9 April 2003 of Act No. 2450 regulating salaried domestic work. It notes that this Act, at least to a certain extent, secures the application to women domestic workers of certain provisions of the Convention, including *Article 3* (maternity leave) and *Article 6* (protection against dismissal). However, the Committee notes that the implementing text concerning the affiliation of women domestic workers to the National Social Security Fund, as envisaged in section 24 of Act No. 2450, is still in draft form. ***The Committee therefore hopes that the necessary texts will be adopted in the near future to secure for this category of women workers in both law and practice the protection envisaged by the social security legislation, not only with regard to medical care, but also cash maternity benefits, under the conditions set forth in Article 4 of the Convention.***

The Committee also considers it necessary to supplement Act No. 2450 of 2003 on a number of points that it is raising in a request addressed directly to the Government.

In the absence of a reply by the Government to its previous comments concerning the protection of women agricultural workers, the Committee is bound once again to express the firm hope that the necessary measures will be adopted in the near future to ensure that all of these women workers benefit in law and practice from the maternity protection afforded by the national legislation (General Labour Act and Social Security Code).

Furthermore, the Committee requests the Government to provide detailed information with its next report, including statistics, on the application in practice of the social security scheme (the regions and municipalities covered, the number of employees covered in practice by the protection envisaged by the social security system in relation to the total number of employees) with regard to maternity care and maternity cash benefits.

Article 3, paragraph 2. Duration of maternity leave. The Government indicates in its report that it intends to promote the adoption in the near future of the necessary measures to prevent any contradiction between the various provisions of the legislation applicable in relation to maternity leave. ***The Committee therefore hopes that the relevant provisions of the labour legislation (section 61 of the General Labour Act and Supreme Decree No. 2291 respecting women workers in the public administration) will be aligned in the very near future with those respecting social security (section 31 of Decree No. 13214 of 24 December 1975) so as to establish explicitly and without ambiguity the right to maternity leave of at least 12 weeks, in accordance with the Convention. It considers the adoption of these measures all the more necessary as the social security legislation still does not apply to all the women workers covered by the Convention.***

Article 3, paragraph 4. Late confinement. The Government states once again that it intends to take measures in the near future to incorporate the Committee's recommendations into the national legislation. ***The Committee trusts that the Government will be in a position to provide information in its next report on the measures taken in practice to include in the General Labour Act, the Social Security Code and the legislation respecting the public administration a provision explicitly providing for the possibility of extending prenatal leave where confinement takes place later than the presumed date, without any reduction in the minimum period of post-natal leave of six weeks prescribed by the Convention.***

Article 4, paragraphs 1 and 3. Medical benefits. The Committee notes the information concerning the development of a new national health policy and the adoption of the Act respecting universal health insurance for mothers and children (*Seguro Universal Materno Infantil – SUMI*) on 22 November 2002. It notes in this respect that the principal objectives of the new health policy include the improvement of health services and the proclamation of a right to health guaranteed by the State; with health no longer being considered an exclusive function of the health authorities, but as requiring the involvement of local authorities for the purposes of achieving broader participation by the population and better knowledge of its rights, while refusing the commercialization of the right to health. With regard to the SUMI, which forms part of the first phase of the reform process, the Committee notes that its primary objective is the rapid reduction of maternal and child mortality through the provision, throughout the territory and for all pathologies, of free and full medical care, including surgical care, medical examinations and medicine at all levels, to pregnant women during their pregnancy and up to six months after confinement, and to children under 5 years of age, with specific attention to the particular needs of the rural population. According to the Government's report, the SUMI therefore constitutes one of the elements for securing the provision of health services that are constantly more accessible and leading up to the establishment of an integral and universal social security scheme, instead of the current situation in which only 24 per cent of the population are covered by the network of health funds of the social security system. ***The Committee requests the Government to provide information on the implementation in practice of the SUMI, with the provision of statistics on the number of women workers in relation to the total number of employees and the number of women workers who have received care from the health services in the context of the SUMI, with an indication of the nature of the care received. Please also provide copies of the implementing regulations envisaged in section 10 of the Act of 22 November 2002. The Committee would also be grateful if the Government would provide information with its next report on the results achieved and the difficulties encountered in the implementation of the new national health policy.***

Article 4, paragraphs 4, 5 and 8. Right to benefits. ***The Committee once again requests the Government to indicate the measures adopted or envisaged to ensure the provision of maternity benefits: (i) by means of public funds for women who are not yet covered by the social security scheme; and (ii) in the context of public assistance for those who fail to meet the qualifying conditions prescribed by the Social Security Code.***

Article 5. Nursing breaks. ***The Committee is bound to request the Government once again to indicate in its next report the measures adopted or envisaged to supplement the legislation respecting conditions of employment in the public administration with a provision explicitly granting entitlement to nursing breaks for women workers in this sector.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Chile

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1994)

Article 4, paragraph 3, of the Convention. Medical benefits. In reply to the Committee's previous comments, the Government states that section 139 of Ministry of Health "Decree with Force of Law" No. 1 of 2005 (DFL) to "revise, coordinate and systematize" Legislative Decree No. 2.763 of 1979 and Acts Nos 18.933 and 18.469, requires the State to ensure that care is free from the onset of pregnancy until the sixth month following the birth of the child, and for newborn children until the sixth year of their lives. The Committee notes that what section 139 actually provides is that all pregnant women, during pregnancy and until the sixth month following the birth of the child, are entitled to care including medical checks during pregnancy and following confinement (subsection 1); and that newborn children likewise have this entitlement until the sixth year of their lives (subsection 2). Subsection 3 provides that care during confinement is included in the medical assistance laid down in section 138(b) of DFL No. 1, which specifies that curative medical assistance includes consultations, diagnostical and surgical examinations and procedures, hospitalization, obstetric care and treatment including the medicines specified in the national form and the other health care and measures. With regard to the *costs* of these benefits, the Committee notes that section 145 of DFL No. 1 provides that the care established in subsections 1 and 2 of section 139 is free, whereas the care during confinement laid down in subsection 3 of section 139 (including hospitalization) is charged for. It also notes that under sections 158, 159, 160 and 161, the State's participation in medical costs during confinement has been maintained in respect of beneficiaries whose income exceeds a certain amount (categories C and D). Consequently, some women workers remain under the obligation to share in the cost of medical care received during confinement as laid down in subsection 3 of section 139. The Committee would remind the Government in this connection that, as it has been pointing out for several years, the Convention guarantees *ipso jure*, for all women within its scope fulfilling the requirements, free medical benefits (prenatal care, care during confinement, postnatal care and hospitalization where necessary). It notes with *regret* that the Government has failed to take the opportunity to adopt regulations to this effect in order to bring its legislation into conformity with this provision of the Convention. It draws the Government's attention to the need to fulfil the international obligations assumed by Chile by providing in the national legislation for free medical benefits for maternity. ***The Committee requests the Government to provide information on progress made in this connection in its next report. Please also indicate whether Ministry of Health Resolution No. 1717 of 1985, referred to by the Government in its 2004 report, is still in force and, if so, provide a copy of it.***

The Committee notes that the Government's report does not contain the information that the Committee requested previously regarding freedom of choice of doctor and hospital. ***The Committee requests the Government to specify in its next report whether, in the context of DFL No. 1, insured persons have freedom of choice of doctor and between a public or a private hospital, in accordance with this provision of the Convention, and to specify the relevant legislative and regulatory provisions.***

Article 4, paragraph 5. Assistance benefits. The Committee notes with *regret* that the Government's report does not answer its previous comment that no benefits out of social assistance funds are payable, subject to the means test, to women who do not fulfil the affiliation requirements set in section 4 of Decree with Force of Law No. 4 of 1978 and so are not eligible for cash benefits. ***The Committee accordingly hopes that in its next report, the Government will indicate the measures taken or envisaged to give full effect to this provision of the Convention.***

Germany

Maternity Protection Convention, 1919 (No. 3) (ratification: 1927)

Article 3(c) of the Convention. Financing of cash benefits. In its previous comments, the Committee drew the Government's attention to the need to amend the maternity protection legislation regarding the payment by employers of a part of the cash benefits due to women on maternity leave. It noted that while some of the allowance was covered by sickness insurance, the larger part – consisting of the difference between the coverage assumed by the sickness insurance and the average wage of the women workers – was financed directly by employers. Legal provisions passed in 1997 changed this system in order to have the sickness insurance cover in full the maternity benefits paid by small enterprises, the aim being to enhance the employment prospects of young women in these enterprises. The Committee invited the Government to extend this practice to large and medium-sized enterprises so as to ensure equal treatment between women workers however large or small the enterprise, and to prevent maternity from becoming a source of indirect discrimination among women in the labour market, a possibility where a part of the maternity benefit is payable by employers. In November 2003, the Federal Constitutional Court ruled that the maternity benefit supplement payable by the employer offends against the principle of equal treatment laid down in the German Constitution and is potentially discriminatory against women, in that large and medium-sized enterprises could find it to their advantage to employ fewer women.

In its last report, the Government indicates that, since 1 January 2006, it has amended the applicable legislation so as to extend to all employers the reimbursement of the maternity benefit supplement which they formerly covered, regardless of the number of workers they employ (Act of 22 December 2005 on the compensation of employers' expenditure). The Government states that the new system has removed an incentive for employers to discriminate against women in hiring

staff. The Committee takes note with *satisfaction* of these measures allowing full effect to be given to *Article 3(c)* of the Convention.

Guatemala

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1989)

With reference to its previous comments, the Committee notes the information and statistics provided in the Government report and, in particular, the information concerning the application of *Article 6 of the Convention* regarding the prohibition of dismissal during maternity leave, including the opinion of the Technical and Legal Advisory Council of the Ministry of Labour and Social Welfare.

Article 1. Coverage. The Committee recalls that, in 2003, the Government expressed the intent to extend geographical coverage of the sickness, maternity and employment injury scheme of the Guatemalan Social Security Institute (IGSS) to the remaining three departments (El Petén, El Progreso and Santa Rosa). In this respect, the report indicates that feasibility studies regarding the extension of coverage of the sickness and maternity insurance scheme found that such extension would result in losses for the IGSS and that consequently the only way to extend coverage would be through the use of public funds (*capital solidario*). The administration has put out to public tender the feasibility and viability studies to extend the sickness and maternity programmes and the Government has committed itself to follow-up on this process and inform the Committee accordingly. With regard to statistics on the number and categories of women workers actually covered by the sickness and maternity scheme of the IGSS requested by the Committee in its previous comments, the Government indicated that no such statistics were available, but that currently a new system was being developed to collect this type of information. The Committee takes due note of the Government's commitment to extend maternity benefits to women workers in the departments of El Petén, El Progreso and Santa Rosa either through the sickness and maternity insurance scheme of the IGSS or by means of public funds. ***The Committee hopes that concrete progress will be achieved in this area in the very near future and that the Government will be able to effectively monitor the situation through the new system of collection of statistical indicators on the number of women actually enjoying maternity benefits both in the public and private sectors and irrespective of the size of the enterprise.***

Article 3, paragraphs 2 and 3. Compulsory period of maternity leave. In its previous comments, the Committee asked the Government to amend section 152 of the Labour Code in order to guarantee a period of compulsory post-natal leave of at least six weeks. In response, the Government states that section 34 on the Regulations respecting cash benefits (Order No. 468 of the IGSS) makes the right to maternity cash benefit conditional on effective rest of the woman worker, who has to abstain herself from remunerated work while in receipt of maternity cash benefits. The Committee observes that section 34 prohibits women from receiving concurrently maternity cash benefits and income from work, but does not establish a minimum period of compulsory post-natal maternity leave required by the Convention as a protective measure aimed to prevent women from resuming work as a result of pressure or need before the expiry of the statutory period of leave to the detriment of her health. ***The Committee therefore once again urges the Government to legally guarantee the compulsory period of post-natal leave of at least six weeks to all women covered by the Convention and to prohibit employers from employing a woman during her post-natal leave.***

Article 4, paragraph 1. Suspension of benefits. In its previous comments the Committee asked the Government to repeal the provisions which allow suspension of benefits in the event of "clearly anti-social behaviour" of the beneficiary (section 48 of the Regulations on sickness and maternity protection, section 149 of the Regulations on medical assistance and section 71 of the Regulations on cash benefits). In response, the Government informs that in the last year and a half there have been no cases of dismissal on the basis of the provisions in question and that an information programme has been developed by the IGSS on the rights and obligations of women who are entitled to the maternity protection programme. ***In the light of the practice, the Committee trusts that the Government will have no difficulty in repealing the abovementioned provisions in the very near future.***

Article 4, paragraphs 4, 5 and 8. Employer liability. ***The Committee trusts that the Government's next report will contain a detailed reply to the Committee's longstanding request to amend the national legislation under which the employer may be required to bear the cost of maternity benefits for women workers who are not yet covered by the social security scheme (Chapter X, section 10, of the Basic Act respecting the IGSS) or have not completed the requisite qualifying period (section 23 of the Regulations on sickness and maternity protection and section 24 of the Regulations on cash benefits).***

[The Government is asked to reply in detail to the present comments in 2011.]

Libyan Arab Jamahiriya

Maternity Protection Convention (Revised), 1952 (No. 103) (ratification: 1975)

The Committee notes that the Government submitted to the Office in August 2007 for comments a draft of the new Labour Code. According to the Government's latest report, the draft took account of the observations of the Committee and was to be submitted to the General People's Congress before the end of 2008. ***The Committee asks the Government***

to indicate whether the new Labour Code has been adopted and, if so, to provide a copy of it together with detailed information on the extent to which the new legislation gives effect to the following issues, on which the Committee has commented for many years:

- Inclusion of certain categories of women workers in the scope of application of the new Labour Code, who are excluded from the Labour Code in force, No. 58 of 1970 AD, in particular domestic and similar workers, women engaged in stock-raising and agriculture – except those who work in enterprises processing agricultural products or repairing machinery necessary for agriculture – and permanent or temporary public officials working in public bodies and state administration (*Article 1 of the Convention*).
- Amendment of section 43 of the Labour Code in force, in order to eliminate the requirement that the granting of maternity leave is conditional upon the completion of a qualifying period of six consecutive months of service with an employer (*Article 3, paragraph 1*).
- Elimination of the incompatibility between the provisions of the Labour Code in force relating to the length of maternity leave and those of Social Security Act No. 13 of 1980 so as to ensure that women workers under the new Labour Code are entitled to at least 12 weeks of maternity leave and a compulsory period of maternity leave after confinement of at least six weeks, in accordance with the Convention (*Article 3, paragraphs 2 and 3*).
- Inclusion of a provision supplementing section 43 of the Labour Code in force in order to ensure that where confinement occurs after the presumed date, prenatal leave must in all cases be extended until the actual date of confinement, and that the period of compulsory leave to be taken after confinement shall not be reduced on that account (*Article 3, paragraph 4*).

Article 2. Equal treatment for foreign employees. In its previous comments, the Committee noted that, under the terms of section 5 of the Regulation of 1982 on registration, contributions and inspection, registration under the social security system of non-Libyan officials is on a voluntary basis unless an agreement has been concluded with the countries of which these workers are nationals. In its report, the Government stated that the Social Security Fund has tried to amend section 5 and make participation in the Social Security Fund compulsory for all categories of workers, including non-national self-employed workers, but this amendment has not yet been enacted. **The Committee expresses the hope that the amending legislation will soon be enacted and asks the Government to send in a copy of it, once adopted.**

Article 4, paragraphs 1, 4 and 8. Cash benefits. **The Committee once again draws the Government's attention to the need to bring section 25 of Social Security Act No. 13 of 1980 into conformity with the above provisions of the Convention by organizing the provision of cash benefits in a manner consistent with the Convention and by ensuring that in no circumstances the employer shall be individually liable for the cost of such benefits due to women employed by him either directly, by paying at his cost the benefits to which they are entitled, or indirectly, by acting in place of the social security fund.**

Panama

Maternity Protection Convention, 1919 (No. 3) (ratification: 1958)

The Committee notes the Government's report received in 2009 replying to its 2008 observation and direct request, as well as the Government's response received in 2008 replying to the comments made in 2006 and 2007 by the National Federation of Public Employees and Public Service Enterprise Workers (FENASEP).

Article 1 of the Convention. Coverage. In reply to its previous observation soliciting information on the manner in which the provisions relating to maternity protection are applied in practice to women employed in export processing zones, the Government states that at present export processing zones do not exist anymore. Other sources however, indicate that the so-called free trade zones, most notably the *Colon Free Zone*, are currently operating in Panama (see for example www.dobusinessinpanama.com). **The Committee asks the Government to explain to what extent and in what manner maternity protection (maternity leave, nursing breaks and protection against dismissal) is guaranteed in law and practice to women working in the Colon Free Zone and other free trade zones in Panama.**

Article 3, paragraph (c). Maternity benefit provided to women who do not meet the conditions for entitlement under social insurance. In Panama, according to section 107 of the Labour Code, private employers are obliged to pay the benefits or part of the benefits for women employees who do not fulfil the conditions of entitlement to maternity cash benefits from the Social Security Fund. **Taking into account that making employers directly liable for the costs of benefits due to their women employees may, as a rule, result in their discrimination on the labour market, the Committee asks the Government to study the possibility of replacing employers' liability by social security benefits provided out of public funds.**

Article 3, paragraph (d). Nursing breaks. Section 114 of the Labour Code gives women workers nursing their children the choice between 15-minute breaks every three hours or two half-hour breaks per day. The Government states that the 15-minute nursing breaks every three hours are rarely used in practice, but remains silent as to the use of the other option of two half-hour breaks per day. Instead, the report argues that research in different South American countries shows that nursing may affect the health of the mother and child due to the high incidence of pesticides in the mother's milk. The report indicates, for example, that the use of agrochemicals in the agricultural sector and the substances

contained in the textiles in the confection industry may cause chronic effects for nursing women working in these sectors and their newborns. *The Committee would be grateful if the Government would supply copies of the studies establishing the presence of toxic substances in maternal milk and state what measures have been taken or are contemplated in order to improve conditions of work in the sectors of activity concerned. The Committee also wishes to emphasize that 15-minute nursing breaks every three hours do not enable effect to be given to Article 3(d) of the Convention. It therefore requests the Government to formulate, in consultation with the social partners and representative organizations of women workers, practical recommendations giving effect to the second option offered by section 114 of the Labour Code which provides, in conformity with the Convention, that every woman worker shall have the right to two half-hour nursing breaks.*

Article 4. Employment protection. FENASEP draws attention to numerous cases of the non-renewal of fixed-term contracts of pregnant women or women on maternity leave reported in the public sector. *Taking into account the number of such cases brought to the Committee's attention, and the fact that fixed-term contracts should not be used to circumvent the legislation protecting pregnant women or women on maternity leave, the Committee hopes that all existing procedures including the Bipartite Commission Ministry of Labour and Employment Development (MITRADEL)-FENASEP, would be used in order to investigate and follow up on these cases, and that the Government will provide in its next report information on the measures taken in this respect so as to avoid maternity-based discrimination of women whose fixed-term contracts terminate during the period protected by the Convention.*

[The Government is asked to reply in detail to the present comments in 2010.]

Romania

Maternity Protection Convention, 2000 (No. 183) (ratification: 2002)

With reference to its previous comments, the Committee notes with *satisfaction* new Emergency Government Ordinance No. 148/2005, regarding the provision of leave and indemnities for social health insurance, which ensures a better application of *Articles 4 and 6 of the Convention*. Section 23 provides that all insured persons have the right to maternity leave and benefits for a period of 126 calendar days and that the same benefits are granted to women who are not insured on a compulsory basis if they give birth to a child within nine months after termination of entitlement to insurance.

The Committee is raising other points in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 3** (Argentina, Cameroon, Côte d'Ivoire, Gabon, Guinea, Nicaragua); **Convention No. 103** (Bolivia, Equatorial Guinea, Kyrgyzstan, Mongolia, Papua New Guinea, Russian Federation, San Marino, Slovenia, Spain, Tajikistan, The former Yugoslav Republic of Macedonia, Ukraine); **Convention No. 183** (Belize, Cuba, Cyprus, Hungary, Italy, Lithuania, Republic of Moldova, Romania, Slovakia).

Social policy

Brazil

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1969)

Parts I and II of the Convention. Improvement of standards of living. The Committee notes the Government's detailed report received in November 2008. The Government emphasizes the measures adopted to promote economic growth in the country, infrastructure investments for economic and social development and the introduction of a National Biodiesel Production and Utilization Programme (PNPB). Among other innovative measures, a "social fuel" certification has been established for producers of biodiesel who encourage social integration and regional development. ***The Committee hopes that in its next report the Government will include an updated summary of the results achieved by these measures and by other initiatives intended to ensure that "the improvement of standards of living" is regarded as the principal objective in the planning of economic development (Article 2).***

Part IV. Remuneration of workers. In the 2005 observation, information was requested on the measures envisaged or adopted to determine the maximum amount and manner of repayment of advances on wages, in accordance with *Article 12* of the Convention. The Committee notes that the report received in November 2008 does not contain information on this issue, which has been pending for many years. ***The Committee invites the Government to include with its next report copies of court rulings and administrative decisions giving effect to the provisions of Article 12.***

Democratic Republic of the Congo

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (ratification: 1967)

The Committee notes with **concern** that the Government has not provided information on the application of the Convention since its first report received in June 2002. Major changes have occurred in the Democratic Republic of the Congo. In recent years, the Democratic Republic of the Congo has received technical assistance from the ILO and has been a recipient of aid from international financial institutions and other international partners assisting in the country's transitional process towards political and economic stability.

Parts I and II of the Convention. Improvement of standards of living. The Committee recalls that *Article 1* provides that all policies shall be primarily directed to the well-being and development of the population and to the promotion of its desire for social progress. ***The Committee trusts that the Government will provide information on how the provisions of Parts I and II have been taken into account in the formulation and implementation of the measures adopted in the context of the current economic reforms.***

Part VI. Education and training. The Committee recalls its previous comments indicating that the Government referred to the national education plan "Education for all by 2015" to ensure that children are able to profit from facilities for education. ***The Committee trusts that the Government will provide information on how it gives effect to Part VI.***

The Committee notes that the preparation of a detailed report, including the indications requested in this observation, will certainly provide the Government and the social partners with an opportunity to ensure the effective implementation of the Convention. ***In this regard, the Government might wish to request further technical assistance from the relevant units of the ILO to address obstacles in reporting on compliance with the Convention.***

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 82** (United Kingdom: Anguilla, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: Gibraltar); **Convention No. 117** (Georgia, Ghana, Guinea, Italy, Madagascar, Malta, Republic of Moldova, Nicaragua, Niger, Panama, Paraguay, Senegal, Sudan, Tunisia, Bolivarian Republic of Venezuela).

Migrant workers

Barbados

Migration for Employment Convention (Revised), 1949 (No. 97) (ratification: 1967)

The Committee notes that the Government's report contains no reply to its previous observation. It is therefore bound to repeat its previous observation, which read as follows:

Articles 7 and 9 of the Convention. Free services rendered by public employment agencies and transfer of remittances. The Committee notes the communication from the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB), dated 19 June 2008, in which it expresses concerns relating to the Farm Labour Programme between Barbados and Canada, which still employs thousands of Barbadians. According to the CTUSAB, 25 per cent of the workers' earnings are being remitted to the Barbados Government directly from Canada, 5 per cent of which is retained by the Government for administrative expenses. The CTUSAB also maintains that the costs of going to Canada, as well as pension contributions for both Barbados and Canada and medical contributions in Canada are immediately deducted from their pay, which is creating hardship for the workers concerned. In the view of the CTUSAB, the system must be reviewed so as not to disadvantage the workers under the programme.

The Committee notes that the Government has not replied to the comments from the CTUSAB. The Committee recalls that under *Article 9* of the Convention, ratifying States undertake to permit the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire. Requiring migrant workers to remit 25 per cent of their earnings to the Government would, in the view of the Committee, be contrary to the spirit of *Article 9* of the Convention. Moreover, the Committee recalls that *Article 7(2)* of the Convention provides that services rendered by public employment services in connection with the recruitment, introduction and placing of migrants for employment are to be provided free of charge. The Committee draws the attention of the Government to the fact that charging workers for purely administrative costs of recruitment, introduction and placement is prohibited under the Convention (General Survey of 1999 on migrant workers, paragraph 170). **The Committee urges the Government:**

- (i) *to undertake a review of the Farm Labour Programme between Barbados and Canada, in cooperation with the workers' and employers' organizations;*
- (ii) *to explain the reasons for requiring migrant workers under the programme to remit 25 per cent to the Government, including 5 per cent for administrative costs; and*
- (iii) *to ensure that purely administrative costs of recruitment, introduction and placement are not borne by the workers recruited under the programme, and that migrants for employment are permitted to transfer their earnings or such part of their earnings and savings as they desire.*

The Committee is raising other points in a request addressed directly to the Government.

Italy

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ratification: 1981)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the resulting conclusions of the Conference Committee. It also notes the written information of the Government submitted to the Conference Committee, and the extensive information in the Government's report, including legislation and statistics, received on 1 September 2009. The Committee further notes the communication from the Italian Union of Labour (UIL), submitted on behalf of the UIL, the Italian General Confederation of Labour (CGIL) and the Italian Confederation of Workers' Trade Unions (CISL) received on 24 September 2009, which provides additional information on many of the observations already made by the Worker members during the discussion in the Conference Committee, and adds some new issues. The Committee also notes the Government's reply to the UIL communication, received on 4 December 2009. The Committee will examine the UIL communication together with the Government's reply at its next session.

Combating irregular migration, while protecting the rights of migrant workers in an irregular situation. The Committee notes the conclusion of the Conference Committee that the phenomenon of irregular migration is a complex and global issue, and that Italy faces particular challenges in addressing the rapid increase in immigration flows and in protecting the basic human rights of migrant workers. The Conference Committee noted that the Government was taking certain measures aimed at combating irregular migration, including the illegal employment of migrants, while at the same time improving compliance with the laws and regulations concerning conditions of work and strengthening assistance measures. The Conference Committee asked the Government to undertake a detailed analysis of recent legislative initiatives targeting irregular migration, including the illegal employment of migrants, and to take measures to ensure that migrant workers who are in an irregular situation were able to enjoy their basic human rights, in accordance with *Article 1 of the Convention*. It encouraged the Government to strengthen its efforts to promote tolerance and respect between all groups of society.

The Committee takes due note of the extensive information in the Government's report regarding the many efforts made to combat human trafficking, through national and transnational actions, and the programmes providing assistance

to victims of trafficking and serious exploitation managed by the Inter-Ministerial Committee for the Support of the Victims of Trafficking, Violence and Serious Exploitation contemplated under section 18 of the Unified Text of provisions concerning immigration and the status of foreigners (Legislative Decree No. 286/1998 of 25 July 1998). The Committee also notes that Law No. 94/2009 of 15 July 2009 amending, among others, Legislative Decree No. 286/1998 further increases the sanctions laid down for the exploitation of workers illegally employed.

The Committee notes that the Government reaffirms its commitment to protect the fundamental human rights of all migrant workers, and refers in this regard to section 2 of Legislative Decree No. 286/1998 guaranteeing any foreigner at the border or in Italy the enjoyment of fundamental human rights provided in the national legislation, the international Conventions in force and the generally recognized principles of international law. The Committee further notes the Government's indication that the stigmatization of certain ethnic or social groups and the racist and xenophobic propaganda, mainly targeting non-European Union (EU) immigrants and minority groups, such as the Roma, are matters of serious concern which compromise the difficult process of peaceful integration and coexistence. The Committee notes from the information provided by the Government that the Programmatic Document 2009–11 will contain a strong focus on policies fighting both the exploitation of immigrants and racial discrimination and xenophobia, based on surveys and monitoring interventions and campaigns to promote equal opportunities. The Committee also notes the Government's commitment to see to it that constant action to combat irregular immigration also helps to reduce exploitation of migrant workers who are in the country in an irregular situation and who can therefore be more easily exploited. In this context, the Committee notes the measures taken to regularize undeclared Italian, EU workers and non-EU workers in the care sector pursuant to section 1ter of Legislative Decree No. 27/2008 (converted into Act No. 102/2009 on the "family assistance and support declaration").

With respect to its concerns expressed in its previous observation regarding reports on human rights violations and exploitative working conditions of undocumented workers coming from Africa, Asia and Eastern Europe, the Committee notes the information in the Government's report on the special surveillance campaigns, some aimed at the agricultural sector, carried out in the Puglia region and Foggia district since 2006 where the phenomenon is particularly widespread. It also notes that the 2008 document on Strategic Programming of the Monitoring Activity of the Ministry of Labour, Health and Social Policies gives particular attention to inspections aimed at fighting irregular migration flows and illegal employment of migrants. Particular attention is given to minorities, operating outside any employment or regulatory framework, promoting the irregular immigration of their own nationals to keep them in situations of exploitation in violation of workers' rights. The Committee notes that in 2008 labour inspection activities aimed at detecting abusive employment found that out of the 4,666 workers in an irregular situation, lacking a residence permit, 336 were employed in the agricultural sector, 711 in the services sector, and 2,231 in construction. Out of the 9,608 workers who were found to be irregular for other reasons, 732 were employed in agriculture, 2,229 in services and 2,989 in construction. The Committee further notes that research is being carried out in Campania, Apulia, Calabria and Sicilia on new forms of labour exploitation, which has worsened in recent years. ***The Committee asks the Government to provide information as follows:***

- (i) ***a copy of the Programmatic Document 2009–11 and other documents concerning the policies fighting both the exploitation of immigrants and racial discrimination and xenophobia, including of migrants of Roma and Sinti origin, as well as information on the surveys conducted, the monitoring interventions undertaken, and campaigns held to promote equal opportunities;***
- (ii) ***the results achieved by the various measures and programmes undertaken, including inspections carried out, to detect employment of foreigners in abusive conditions, and to protect those migrants who have been victims of abuse or exploitation;***
- (iii) ***the number and nature of infringements, and sanctions pronounced against those organizing or facilitating clandestine migration, and those employing migrant workers in abusive conditions, particularly in agriculture, construction and services sectors;***
- (iv) ***the number of male and female migrants in an irregular situation who have been identified as victims of abuse and exploitation in the agriculture and construction sectors, and how many of those have been granted a special permit pursuant to section 18 of Legislative Decree No. 286/1998; and***
- (v) ***the number of undeclared EU and non-EU workers, men and women, working in the care sector that have been regularized pursuant to Act No. 102/2009. The Government is also requested to indicate whether it intends to adopt similar measures to regularize undeclared migrant workers in other sectors, such as agriculture and construction.***

Measures directed at migrant workers. The Committee notes that in June 2009 the Conference Committee requested the Government to undertake a detailed analysis of the legislative provisions proposed in the context of the so-called Security Package with a view to ensuring their compliance with the Convention. The Committee recalls that during the discussion in the Conference Committee concerns were raised about the possible adverse effects of the provisions in the Security Package, should it be adopted, especially the provision introducing the offence of illegal entry or residence in Italian territory. The Committee notes that Law No. 94/2009 (the Security Package) amending Legislative Decree No. 286/1998 was adopted on 15 July 2009. The Committee notes the Government's statement that the objective

of the new law is to make State action to prevent or combat minor and major criminality more effective, and that the severe line taken in particular sectors is accompanied by greater protection against every form of oppression and violence against so-called disadvantaged groups. The Committee notes that the law introduces the offence of illegal entry or residence by inserting section 10bis in Legislative Decree No. 286/1998 which punishes unlawful entry and residence in Italian territory by a fine of between 5,000 to 10,000 euros. Section 10bis further provides that the accused foreigner can be expelled without it being necessary to obtain advance clearance from the competent court for the investigation of the offence. Section 10bis further provides that once the foreigner has been expelled, the Chief of Police (*questore*) informs the court which dismisses the case based on no case to answer.

The Committee also notes that the Tribunal of Pesaro, in a decision of 31 August 2009, raised a question to the Constitutional Court regarding the constitutionality of section 10bis, as regards the offence of “illegal stay” on the territory, on the basis of the consideration that it is contrary to: (i) the principle of reasonableness, including from the perspective of proportionality; (ii) the principle of equality (article 3 of the National Constitution) as it assumes arbitrarily that all migrants in an irregular situation are socially dangerous; (iii) the principle of solidarity (articles 2 and 3 of the National Constitution); (iv) article 10 of the National Constitution that provides for the respect of international customary law; and (v) articles 3 and 37 of the National Constitution because it does not contemplate the possibility of a “justified cause” for the irregular stay in the country.

The Committee draws the attention of the Government to the fact that if the fight against clandestine migration is justified, at the same time, it is important to ensure respect of the basic human rights of all migrant workers, in order to avoid migrant workers (notably those in an irregular situation) finding themselves in a situation where their rights are not respected and where they are vulnerable to abuses of all kinds (paragraph 361 of the 1999 General Survey on migrant workers). The measures advocated in *Part I* of the Convention to combat clandestine movements of migrants (*Articles 2–6*) are primarily targeted at the demand for clandestine labour rather than the supply (see paragraph 338 of the 1999 General Survey on migrant workers). The objective of *Article 6(1)* of the Convention is therefore to define and apply sanctions against organizers of clandestine movements and against employers in cases of illegal employment, and not against migrant workers who are in an irregular situation themselves. Through *Articles 1 and 9*, the Convention aims to ensure that migrant workers enjoy a minimum level of protection with respect to their basic human rights and with respect to claims regarding rights arising out of past employment, even when they have immigrated or are employed illegally and their situation cannot be regularized.

The Committee notes that pursuant to section 331(1) of the Code of Criminal Proceedings public officials are obliged to report criminal offences and that the introduction of the crime of illegal entry and stay of foreign workers may prevent migrant workers in an irregular situation from requesting assistance from essential public services. This may also prevent them, in practice, from filing complaints with regard to violations of their basic human rights. The possibility for migrant workers to claim certain rights arising out of past employment with respect to remuneration, social security and other benefits before a competent body, as provided by *Articles 9(1) and (2)* of the Convention, may also remain merely theoretical if migrant workers in an irregular situation who report violations of these rights are immediately expelled. The Committee expresses *concern* that section 10bis of Legislative Decree No. 286/1998 will further marginalize and stigmatize migrant workers in an irregular situation, and increase their vulnerability to exploitation and violation of their basic human rights. The Committee notes that the Government’s report does not contain any information on whether it has undertaken the detailed analysis of the impact of recent legislative initiatives targeting irregular migration, including illegal employment of migrants, especially the Security Package, as requested by the Conference Committee.

The Committee, in line with the Conference Committee’s conclusions, asks the Government to undertake a detailed analysis of the impact of recent legislative measures aimed at combating irregular migration, and especially of section 10bis of Legislative Decree No. 286/1998, on the basic human rights of migrant workers in an irregular situation and the equality of treatment of these workers with respect to their rights arising out of past employment, guaranteed by Articles 1 and 9 of the Convention, with a view to assessing the need to amend or repeal this and other provisions of Legislative Decree No. 286/1998. Concerning the pending question before the Constitutional Court on the constitutionality of section 10bis, the Committee asks the Government to provide information on the outcome of the decision, once handed down. The Committee further asks the Government to provide information on the practical application of section 10bis, including the number of migrant workers who have been identified as irregular and expelled since the entering into force of the Act. The Government is also requested to indicate how it is ensured that migrant workers, who are in an irregular situation, especially those accused of the crime of illegal immigration, including as a result of labour inspections, and who are the object of an expulsion order, can file complaints with regard to violations of their basic human rights and can claim certain rights arising out of past employment with respect to remuneration, social security and other benefits as provided by Articles 1 and 9 of the Convention.

Part II of the Convention. Equality of opportunity and treatment between migrants lawfully in the country and nationals. The Committee notes that the Conference Committee requested the Government to ensure full respect for the equality of opportunity and treatment of migrant workers lawfully in the country with nationals, and to pursue its efforts, in cooperation with the social partners, to promote and ensure the observance of a national policy in this regard. The Conference Committee states further that the Government should take additional measures to ensure the effective protection of migrant workers against direct and indirect discrimination, in accordance with *Articles 10 and 12* of the

Convention. The Committee notes that the integration of the immigrant population is one of the objectives of the social inclusion strategy outlined in the National Report on Social Protection and Inclusion 2008–10, and that the Programmatic Document 2009–11 is to include interventions on integration and immigration. The Committee also notes the information in the report on the initiatives carried out under the National Fund for Social Policies (FNPS) to promote social inclusion and integration, including the interventions promoting labour insertion of the Roma, Sinti and Traveller populations (Lombardia, Piemonte, Toscana and Puglia).

With respect to the incidences of discrimination against the Roma, including attacks at Roma camps, the Committee notes the Government's reply that the issues connected with the presence of the Roma community on the national territory has long received attention and that it is making all efforts to put in place initiatives aimed at ensuring a more secure and fairer civil coexistence. According to the Government these initiatives aim at improving integration and the quality of relations with the resident population in order to protect more effectively public security, and to prevent discrimination and intolerance against the Roma. The Government mentions in this regard the state of emergency declared in some regions between 21 May 2008 and 31 May 2009 and the collaborative actions of delegated commissions in this context, which according to the Government had positive results. The Committee notes that during the Conference Committee discussion the Worker members questioned the emergency-like approach vis-à-vis the Roma and Sinti populations, and called for a well-defined integration policy on housing, schooling and employment. The Committee notes the Government's written statement to the Conference Committee that as part of its efforts of defining a national strategy on Roma issues, the Programmatic Document 2009–11 will include a special section on actions supporting the Roma and Sinti communities, promoting and defining a new approach to the issue of Sinti and Roma, based on interventions on social inclusion, the concept of equal rights and duties for nationals and immigrants, the reception of immigrants and acceptance of diversity. In addition, the Committee notes the information in the Government's report on the activities organized by the Office for the Promotion of Equality of Treatment and the Elimination of Discrimination based on Race and Ethnic origin (UNAR) to promote social inclusion and intercultural dialogue, and to address discrimination against immigrant workers. Recalling that the policy on equality of opportunity and treatment between nationals and migrant workers referred to in *Article 10* of the Convention focuses on discrimination based on nationality, the Committee will examine any issues and action taken specifically relating to combating discrimination on the basis of race, colour or national extraction against the Roma and Sinti populations, including in the context of an integrated national strategy on the Roma, in the context of the Government's report on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The Committee asks the Government to provide information, including statistics, on the specific results achieved under the projects to promote equality of opportunity and treatment between nationals and migrant workers lawfully in the country and to eliminate discrimination based on nationality, in particular with regard to employment and occupation. Please indicate how the social partners have been involved in any of the measures taken or envisaged to promote and ensure the observance of the national equality policy. Noting the information in the Government's report regarding specific programmes and actions, including awareness raising, to combat discrimination and promote social inclusion in the labour market and society, the Committee asks the Government to indicate the impact of these measures on promoting tolerance and respect between all groups of society. The Committee also asks the Government to provide information on all actions taken in the context of a national integrated strategy on the Roma, to prevent and address discrimination against Roma migrant workers, and promote their equal opportunity and treatment with nationals in accordance with Article 10 of the Convention.

Integration agreement. The Committee notes that Law No. 94/2009 introduces section 4bis in Legislative Decree No. 286/1998 aimed at promoting cohabitation between Italians and foreigners and making the issuing of a residence permit conditional upon the signing of an "Integration Agreement" setting out the objectives of integration (and related "credits") to be achieved by the foreigner during the period of validity of his or her residence permit. In the event of complete loss of "credits", the residence permit is revoked and the foreigner must be expelled from the national territory, with some exceptions relating to asylum, humanitarian reasons, long-term EC residence permit, or family reasons. The Committee notes that the criteria and modalities for the signing of the Integration Agreement will be established by regulations. ***The Committee asks the Government to provide a copy of the regulations and examples of any integration agreements already signed and information on the measures taken to assist foreigners to achieve the integration objectives set under the agreements.***

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 97** (Albania, Barbados, Belize, Guyana, Nigeria, Saint Lucia, Tajikistan, United Republic of Tanzania: Zanzibar, United Kingdom: Anguilla, United Kingdom: British Virgin Islands); **Convention No. 143** (Guinea, Italy, Philippines, San Marino, Togo, Uganda).

Seafarers

General observation

Maritime Labour Convention, 2006

The Maritime Labour Convention, 2006 (MLC, 2006) requires registered ratifications by at least 30 Members, representing at least 33 per cent of the world gross tonnage of ships, to enter into force. To date, five of the 30 ratifications have been registered representing approximately 44 per cent of the world fleet and more than satisfy the tonnage requirement. According to available information, the parliamentary processes to allow for ratification are either completed or well advanced in a number of countries. Implementation measures such as the training of national maritime inspectors are also under way in many countries. Based on this information, it is expected that the remaining 25 ratifications will be deposited in the course of the year 2010, with entry into force 12 months after the 30th registered ratification. A new format and approach to the article 22 report for the MLC, 2006, based on the features of the MLC, 2006, as well as providing for electronic reporting, is under preparation. The entry into force of the MLC, 2006, will necessitate considerable adjustments to the approach which the Committee has adopted to the examination of the 37 maritime labour Conventions that will be revised by the MLC, 2006.

The Committee requests all governments (except those that have ratified the MLC, 2006) to provide information or supplement the information already provided to the Director-General of the International Labour Office in accordance with article 19, paragraph 5(c), of the ILO Constitution for evaluation at the Committee's next session, on the advancement of the ratification process and any implementation steps for the MLC, 2006.

Algeria

Food and Catering (Ships' Crews) Convention, 1946 (No. 68) ***(ratification: 1962)***

The Committee notes with *regret* that the Government's report contains no reply to its previous comments. It is therefore bound to repeat its previous observation, which read as follows:

The Committee refers to its previous requests for statistical information in the form of an annual report on inspection activities regarding food and catering, as required under *Article 10 of the Convention*.

The Committee renews its request for the Government to forward the required annual report, and in particular to provide full information concerning: (i) the number of inspectors assigned to carry out the required food and hygiene inspections; (ii) the number of crew complaints received and complaint-generated inspections carried out and their results; (iii) the number of programmed inspections of national and foreign vessels and their results; and (iv) the number and results of inspections carried out at sea.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Accommodation of Crews Convention (Revised), 1949 (No. 92) ***(ratification: 1962)***

The Committee notes the information supplied by the Government concerning the draft Decree to establish detailed conditions for the arrangement and equipment of crew accommodation. It notes that the Merchant Marine Directorate deemed the adoption of such a decree to be untimely because the Maritime Labour Convention, 2006 (MLC, 2006) is under consideration with a view to ratification, and it covers aspects of crew accommodation dealt with by this Convention. The Committee draws the Government's attention to the fact that the MLC, 2006, requires, as does the present Convention, that Members adopt legislation to ensure that vessels flying their flags observe the minimum standards needed to ensure that the accommodation made available to seafarers working or living on board is safe, decent and consistent with the relevant provisions of the MLC, 2006. *Recalling that the present Convention is still not fully applied, the Committee again asks the Government to remedy this situation. Furthermore, it asks the Government to report on any developments regarding the ratification of the MLC, 2006.*

Argentina

Officers' Competency Certificates Convention, 1936 (No. 53) ***(ratification: 1955)***

The Committee notes the information provided by the Government in response to its previous observation, including information concerning the application of the legislation in practice with regard to the recognition of foreign competency certificates as well as the number of competency certificates issued during the course of the last reporting period.

Barbados

Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1967)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the observations made by the Congress of Trade Unions and Staff Associations of Barbados (CTUSAB).

In its previous comments, the Committee had noted with regret from the Government's reports that the seafarers' identity document required under the Convention did not exist for national seafarers in Barbados, and that foreign seafarers holding identity documents issued pursuant to the Convention are not accorded the facilities provided for in that instrument.

It had further noted that the Immigration Department has no objections to accepting the responsibility for issuing the seafarers' identity document provided for in the Convention, although it had never been assigned to do so. The Government had referred to two possible solutions: amending the Immigration Act; or enacting new legislation to empower the Immigration Department to issue such documents.

In its latest report, the Government indicates that no legislation has been amended or enacted that would affect the application of the Convention. Changes had, however, occurred with respect to the practical application of the Convention, since, over the past years, the lack of new opportunities had impacted severely on the seafaring industry, and the job opportunities offered to Barbadian seafarers had disappeared. This meant that, while the requisite regulations giving force of law to the Convention were in place, there were no situations in practice to apply them to.

The Government does not give any indication as to whether, in the meantime, foreign seafarers holding identity documents issued pursuant to the Convention are accorded the facilities provided for in that instrument.

The Committee therefore again requests the Government to take the necessary steps to ensure that its obligations under the Convention are fully respected, at least with regard to foreign seafarers calling in its ports, and to inform the Office of measures taken in this regard. The Committee also requests the Government to indicate any instances in which Barbadian seafarers apply for seafarers' identity documents, and to describe the action taken to provide them with the requisite documents in accordance with the requirements of the Convention.

The Committee also wishes to revert to the observations made by the CTUSAB which, with a view to enhancing national and personal security, suggested that the Government of Barbados move to ratify the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), which revises the present Convention and calls for improved security measures.

The Committee asks the Government to inform the Office of any consultations held and of any steps taken or envisaged with a view to ratifying Convention No. 185.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Cameroon

Placing of Seamen Convention, 1920 (No. 9) (ratification: 1970)

The Committee notes the information provided by the Government in reply to its previous comments relating to the application of *Article 5 of the Convention*. In particular, it notes the establishment of a joint mixed commission to draw up and negotiate the national collective agreement for the maritime sector in Cameroon. The Committee would be grateful if the Government would provide additional information in its next report on the following points.

Article 2, paragraph 2. Penal sanctions. In its previous comments, the Committee recalled the requirements set out in the Convention that the law of each country shall provide for penal sanctions for any violation of the provisions of the Convention. The Government indicates that it has noted these requirements, without, however, providing information on the measures adopted to give effect to them. ***The Committee therefore once again requests the Government to indicate the penal sanctions applicable in the event of violations of the provisions of the Community Merchant Shipping Code relating to the placing of seafarers.***

Article 3. Exceptions. The Government emphasizes in its report that it could not refuse to authorize the placement of seafarers by an enterprise engaged in the training of seafarers, which applies for such authorization in accordance with the conditions established by Decree No. 93/570 of 15 July 1993 determining the arrangements for the placement of workers. It reiterates the existence of the National Employment Fund and the decentralized services of the Ministry of Employment and Vocational Training, which are responsible for the placement of workers free of charge and which offer an alternative to the fee-paying placement of seafarers. However, the co-existence of public employment services free of charge and of fee-paying placement agencies for seafarers does not suffice to ensure compliance with the Convention, since the latter expressly prohibits the placement of seafarers for pecuniary gain, without any exceptions. The Committee notes that the Government has taken note of its previous comments. ***It requests the Government to indicate the measures envisaged or adopted to separate training activities from those of placement, which cannot be carried out on a profit-making basis.***

The Committee welcomes the Central African Economic and Monetary Community (CEMAC) Subregional Workshop on the Maritime Labour Convention, 2006 (MLC, 2006), organized by the Government in Douala from 30 May to 2 April 2009, which provided an opportunity for Cameroon to obtain further information on this instrument. It invites

the Government to envisage ratifying the MLC, 2006, following which the existence of profit-making recruitment and placement agencies would be allowed under the conditions established in its Title 1.4. *The Committee would be grateful if the Government would provide information in its next report on any consultations held to this end.*

Cuba

Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1975)

The Committee notes the adoption of Resolution No. 9 of 13 May 2009 approving the Regulation concerning the issuance of the seafarers' book of the Republic of Cuba.

Article 3 of the Convention. Retention of the seafarer's identity document by the seafarer. For many years, the Committee had been requesting the Government to bring section 33 of the Decree No. 26 of 1978 into conformity with the Convention to ensure that the seafarer's identity document remains in the seafarer's possession at all times. The Committee notes with *interest* that the seafarer is obliged to carry the new seafarer's book, and to present it to national or foreign migration or maritime authorities on request (section 7 of the 2009 Regulation). *However, in view of section 8 of this Regulation, the Committee asks the Government to explain how the new seafarer's book relates to the seafarer's passport issued under the 1978 Decree.*

Furthermore, the Government had previously indicated that it was examining the possibility of ratifying the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), which is the up to date instrument in the field, and whose ratification would entail the denunciation of the present Convention. *The Committee would be grateful if, in its next report, the Government would communicate information on any consultations held in this regard and on any developments concerning the ratification of Convention No. 185.*

Djibouti

Sickness Insurance (Sea) Convention, 1936 (No. 56) (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 is once again bound, as it has done for a number of years, to draw the Government's attention to the need to establish in the country a compulsory sickness insurance scheme applicable to seafarers employed on board vessels, other than ships of war, carrying out maritime navigation or sea-fishing, in accordance with the provisions of the Convention. The special compulsory sickness insurance scheme for seafarers, which must be established pursuant to the Maritime Affairs Code of 1982, has never been established owing to the low number of seafarers in Djibouti; as to the general social protection scheme established by Act No. 135/AN/3ème of 1997 establishing the social protection body, it does not comprise a compulsory sickness insurance branch. *In these circumstances, the Committee once again expresses the hope that the Government will be able, in its next report, to inform it of the adoption of measures constituting real progress concerning the establishment of a sickness insurance system applicable to seafarers that will guarantee them protection in conformity with that envisaged by the Convention.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Seafarers' Pensions Convention, 1946 (No. 71) (ratification: 1978)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that, as the number of seafarers in Djibouti is very small, they are subject to the general retirement scheme for salaried employees and that the special pension insurance scheme for seafarers envisaged in section 142 of the Code of Maritime Affairs has not accordingly been established. *The Committee would be grateful if the Government would indicate in its next report whether, as the Committee understands, the pensions scheme for salaried employees is governed by Act No. 154/AN/02/4ème of 31 January 2002 codifying the operation of the Social Protection Organization (OPS) and the general retirement scheme for salaried employees.* This legislation guarantees, in accordance with the Convention, the right for salaried employees who have reached the age of 55 years to benefit from a pension at the rate of 2 per cent or 1.5 per cent (depending on the year of retirement) for all insurance annuities applied to the average wage for the past ten years subject to a ceiling.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Egypt

Placing of Seamen Convention, 1920 (No. 9) (ratification: 1982)

The Committee notes that the Bill to improve recruitment and placement agencies for seafarers has not yet been finalized. It would be grateful if the Government would provide information on the following points.

Article 2 of the Convention. Prohibition of fees. In its previous observation, the Committee noted that, according to the Labour Code of 2003, recruitment agencies are authorized to obtain fees from the employer and, exceptionally and in order to cover administrative expenses, to charge a sum not exceeding 2 per cent of a worker's pay during the first year

of employment. While noting that this matter is being discussed by the competent authority, the Committee points out that the Convention expressly prohibits the business of finding employment for seafarers as a commercial enterprise for pecuniary gain. While the Maritime Labour Convention, 2006 (MLC, 2006) allows recruitment and placement services to obtain remuneration from employers, it prohibits, in Standard A1.4, paragraph 5, the charging of seafarers for recruitment or placement. ***The Committee again asks the Government to take the necessary steps to prevent any person, company, or other body from obtaining, directly or indirectly, remuneration of any kind for the placement of seafarers, whether for administrative or other costs, in order to bring the legislation in line with the Convention.***

Article 4. Public employment offices for seafarers. The Government indicates that placement and recruitment agencies for seafarers have been established in accordance with the General Shipping Union, and are under constant supervision by the Ministry of Labour and Migration. The Committee reminds the Government that, unlike the MLC, 2006, which authorizes private recruitment and placement services for seafarers to operate in the context of a licensing or certification system, the present Convention requires that a system of public employment offices for seafarers shall be organized and maintained either by representative associations of shipowners and seafarers under the control of a central authority, or by the State itself. ***The Committee again asks the Government to take the necessary steps to ensure that the system of placement offices for seafarers is organized and maintained jointly by representative organizations of shipowners and seafarers under the control of a central authority, or by the State itself.***

Article 5. Advisory committees. The High Commission for Planning and Employment of Labour Inside and Outside Egypt (HCPem), composed of representatives of the Government and employers' and workers' organizations, has been established to formulate a general policy on the placement of workers in Egypt and abroad and to establish the necessary regulations and procedures. The Government's report again indicates that a project to change the operating methods of the HCPem, improve its facilities, set up new offices and train its staff, is currently under discussion with the competent authority. ***The Committee strongly hopes that, in the context of this project launched by the HCPem, the Government will do its utmost to give effect in the very near future to Article 5 of the Convention by setting up advisory committees composed of an equal number of seafarers and shipowners, who could be consulted on issues pertaining to the operation of seafarers' placement offices.***

The Committee also invites the Government to envisage ratifying the MLC, 2006, which is the most up to date international instrument in this area, and the ratification of which would have the effect of partially aligning the national legislation with this new instrument. ***The Committee would be grateful if the Government would provide information in its next report on any consultations held on this matter.***

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1982)

Article 11 of the Convention. Equality of treatment for foreign seafarers. The Committee notes with *regret* that, according to the Government's report, the amendment of the Social Insurance Act (No. 79 of 1979) has not yet been completed. It recalls the comments that it has been making for many years on the need to ensure the application of the Convention to foreign seafarers, irrespective of the duration of their contracts and whether or not a reciprocity agreement has been concluded. ***The Committee asks the Government to refer to the observation under the Equality of Treatment (Social Security) Convention, 1962 (No. 118).***

Estonia

Placing of Seamen Convention, 1920 (No. 9) (ratification: 1923)

The Committee notes the information provided by the Government in reply to its previous observation concerning the existence of private placement agencies on its territory. It also notes the adoption, in 2006, of a new Act governing labour market services. Under section 38(1) of this Act, private entities which have registered in advance with the competent administration may place individuals seeking employment. These private placement agencies may also charge fees payable by employers, but the new text expressly prohibits agencies from making the persons seeking employment bear the costs of the placement. The Committee recalls that, contrary to the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), and the Maritime Labour Convention, 2006 (MLC, 2006), which allow private agencies to place seafarers provided that they demand no fees from them, the present Convention prohibits the placement of seafarers for pecuniary gain. Neither shipowners nor seafarers should have to pay fees. The Committee also emphasizes that each Member is required to establish an efficient system of – in principle – public employment offices for finding employment for seafarers without charge (*Article 4 of the Convention*). It also notes that the exceptions authorized to the principle of the free placement of seafarers under *Article 3* should be temporary, and that the Government agrees to take all practicable measures to abolish the practice of finding employment for seafarers as a commercial enterprise for pecuniary gain as soon as possible. The Committee notes that the new legislation is not in conformity with the obligations arising under the Convention.

In view of the envisaged ratification of the MLC, 2006, an amendment of the legislation and the return to a practice in conformity with the provisions of Convention No. 9, ratified in 1923, does not appear desirable. ***The Committee therefore requests the Government to ensure the necessary legal consistency by taking, for example, all possible***

measures to ratify the MLC, 2006, which authorizes private recruitment and placement services to be operated in conformity with a system of licensing, certification or other form of regulation. The Committee requests the Government to keep the Office informed of any measures taken or envisaged with a view to ratifying the MLC, 2006.

France

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1978)

The Committee notes the Government's communication that, due to internal administrative constraints related to preparations for ratification of the Maritime Labour Convention, 2006, the services in charge of reporting on maritime Conventions were unable to submit the reports on time and will make efforts to communicate them to the Office as soon as possible. In the meantime, the Committee is bound to repeat its previous comment, which read essentially as follows:

Article 6, paragraphs 2 and 4, of the Convention. Appropriate measures to ensure compliance with the provisions on accident prevention. The Committee notes the information concerning the preparation of a draft Act establishing the Higher Council for the Prevention of Occupational Risks in the Maritime Sector and for Seafarers' Welfare, an advisory body participating in the drawing up of a national policy for the prevention of occupational risks in maritime labour and for the welfare of seafarers at sea and in port. The Council will propose to the ministry concerned any measures likely to improve safety and health, working conditions and welfare for seafarers. It will also give an opinion on the laws and regulations adopted in these areas and will promote any initiative designed to improve the prevention of occupational risks. *The Committee requests the Government to provide a copy of the abovementioned Act once it is adopted.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Greece

Accommodation of Crews Convention (Revised), 1949 (No. 92) (ratification: 1986)

In its report concerning the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Government indicates that national legislation is currently being revised in the framework of the adjustment of internal legislation to the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), "since Greece promotes the necessary procedures for the ratification" of that Convention.

The Committee draws the Government's attention to the fact that when the MLC, 2006 will come into force for Greece, Regulation 3.1, paragraph 2, of this Convention provides that, for ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92), shall continue to apply to the extent that they were applicable, prior to that date, under law and practice of the Member concerned.

Under article 28, paragraph 1, of the Greek Constitution, international conventions, once ratified, have the force of law without the need for transposition into national legislation.

The Committee nevertheless emphasizes that certain provisions of the Convention are of a general nature and require the adoption of national legislation for their application. Hence, under *Article 3 of the Convention*, "each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions in *Parts II, III and IV* of this Convention". Such legislation shall, in particular:

- (a) require the competent authority to bring it to the notice of all persons concerned;
- (b) define the persons responsible for compliance therewith;
- (c) prescribe adequate penalties for any violation thereof;
- (d) provide for the maintenance of a system of inspection adequate to ensure effective enforcement; and
- (e) require the competent authority to consult the organizations of shipowners and/or the shipowners and the recognized bona fide trade unions of seafarers in regard to the framing of regulations, and to collaborate so far as practicable with such parties in the administration thereof.

Consequently, the Committee requests the Government to take the necessary measures in the framework of the adjustment of the legislation which is supposed to give effect to the MLC, 2006, to ensure that effect is given in compliance with the relevant provisions.

The Committee is raising other points in a request addressed directly to the Government.

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1986)

In its report concerning the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the Government indicates that national legislation is currently being revised in the framework of the adjustment of internal legislation to

the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), “since Greece promotes the necessary procedures for the ratification” of that Convention.

The Committee draws the Government’s attention to the fact that when the MLC, 2006 will come into force for Greece, Regulation 3.1, paragraph 2, of this Convention provides that, for ships constructed before that date, the requirements relating to ship construction and equipment that are set out in the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133), shall continue to apply to the extent that they were applicable, prior to that date, under law and practice of the Member concerned.

Under article 28, paragraph 1, of the Greek Constitution, international conventions, once ratified, have the force of law without the need for transposition into national legislation.

The Committee emphasizes, nevertheless, that certain provisions of the Convention are of a general nature and require the enactment of national legislation for their application.

Under *Article 4 of the Convention*, “each Member for which this Convention is in force, undertakes to maintain in force laws or regulations which ensure its application”.

This legislation shall, in particular:

- (a) require the competent authority to bring it to the notice of all persons concerned;
- (b) define the persons responsible for compliance therewith;
- (c) prescribe adequate penalties for any violation thereof;
- (d) provide for the maintenance of a system of inspection adequate to ensure effective enforcement; and
- (e) require the competent authority to consult the organizations of shipowners and/or the shipowners and the recognized bona fide trade unions of seafarers in regard to the framing of regulations, and to collaborate so far as practicable with such parties in the administration thereof.

Consequently, the Committee asks the Government to take the necessary measures in the framework of the adjustment of the legislation which is supposed to give effect to the MLC, 2006, to ensure that effect is given in compliance with the relevant provisions.

The Committee is raising other points in a request addressed directly to the Government.

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1979)

The Committee notes with *satisfaction* the adoption of Ministerial Circular No. 3529.2/15/2009 of 18 February 2009 concerning the strengthening of the supervision of the application of the relevant legislation relating to ships’ crews, in accordance with the provisions of *Article 2(b)(ii) and (d) of the Convention*.

Furthermore, it notes with *interest* that the national legislation is in the process of being revised in the context of the adjustment of the national legislation in line with the provisions of the Maritime Labour Convention, 2006, given that Greece is in the process of promoting the necessary procedures for ratification of that Convention.

The Committee is raising other points in a request addressed directly to the Government.

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (ratification: 2002)

The Committee notes with *interest* that, according to the information provided in the Government’s report concerning the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), the national legislation is in the process of being revised in the context of the adjustment of the national legislation in line with the provisions of the Maritime Labour Convention, 2006 (MLC, 2006), given that Greece is in the process of promoting the necessary procedures for ratification of that Convention.

Furthermore, the Committee notes with *satisfaction* the adoption of Ministerial Circular No. 3529.2/15/2009 of 18 February 2009 concerning the strengthening of supervision of the application of the relevant legislation relating to ships’ crews, thereby giving full effect to *Article 15(a) and (c) of the Convention*.

The Committee draws the Government’s attention to the following points.

Article 8, paragraph 1. Copy of records. The Government’s report refers to section 9(1) of Presidential Decree No. 152/2003, which provides that seafarers “may” receive a copy of the records pertaining to them. However, *Article 8(1)* of the Convention provides that seafarers “shall” receive a copy of the records pertaining to them. In the same vein, the Committee draws the Government’s attention to the fact that Standard A2.3, paragraph 12, of the MLC, 2006, also provides that seafarers shall receive a copy of the records pertaining to them, without having to request it. ***The Committee requests the Government to take measures to ensure that all seafarers receive, without having to request it, a copy of the records of their daily hours of work and rest.***

Article 8, paragraph 2. Retention of records. With regard to the matter of keeping records on board, the Government previously referred to section 9(2) of Presidential Decree No. 152/2003, which provides that the records of

the past eight days and, in any case, the records relating to the voyage from one port to the following port shall be kept at the disposal of the authorities responsible for inspection.

In its previous comments, the Committee emphasized that the retention of records on board for a period of only eight days or for only one voyage makes it virtually impossible for any inspection service to examine and endorse these records, since inspections are normally carried out at much larger intervals in practice. The Committee also reminded the Government that the legislations of other ratifying countries provide for the keeping of records on board for periods of up to several years, to allow effective monitoring of hours of work and rest.

In its latest report, the Government maintains that the provisions of section 9(1) of Presidential Decree No. 152/2003 are not contrary to those of *Article 8(2)* of the Convention. The Government adds that this provision of the Convention does not expressly establish the period during which these records shall be retained on board. Furthermore, the Government indicates that, under section 9(1) of Presidential Decree No. 152/2003, the master shall ensure that the records of daily hours of work and rest are kept on board.

The Committee draws the Government's attention to the fact that Standard A2.3, paragraph 12, of the MLC, 2006, provides that each Member shall require that records of seafarers' daily hours of work and rest be maintained to allow monitoring of compliance with the requirements set out in paragraphs 5–11 of Standard A2.3.

Although the relevant provisions of the national legislation provide that records of daily hours of work and rest shall be kept on board, and that the master shall be responsible for keeping these records, the period during which these records remain on board is too short to make it possible to monitor compliance with the requirements relating to the hours of work and rest of seafarers. ***The Committee requests the Government to take the necessary measures to ensure that the procedures for keeping records on board allow monitoring of their conformity with the provisions relating to hours of work and rest.***

Article 9. Examination and endorsement. In reply to the Committee's previous comments concerning how often the records referred to in *Article 8* are examined and endorsed, the Government previously indicated that it is impossible to determine beforehand regular intervals for the examination of the records for ocean-going ships because of the nature of their voyages. The Government added that the records of ships flying the Greek flag are in any case examined each time that these ships call at Greek ports or at ports where Greek consular authorities are based.

The Committee reminds the Government that, under *Article 9*, the competent authority shall examine and endorse, at appropriate intervals, the records of seafarers' daily hours of work and rest. In this context, the notion of "appropriate" intervals is distinguished from that of "preset" intervals. In this regard, and particularly in view of the nature of maritime transport, a certain degree of discretion may be allowed with regard to the choice of minimum and maximum intervals between examinations. However, examining records only when ships call at Greek ports, or at foreign ports where Greek consular authorities are based, would seem difficult to achieve in practice. Consequently, in order to allow the effective monitoring of compliance with the requirements relating to hours of work and rest, this type of information shall be kept for a relatively long period and, in any case, for a period exceeding eight days, as is currently the case under section 9 of Presidential Decree No. 152/2003.

The Committee draws the Government's attention to the fact that Standard A5.1.3 of the MLC, 2006, provides that maritime labour certificates, which shall contain information relating to hours of work and rest, shall be inspected and approved by the flag State as part of the ship certification procedure. The MLC, 2006, provides that maritime labour certificates shall be issued to ships for a period which shall not exceed five years, and that the validity of the certificate shall be subject to an intermediate inspection between the second and third anniversary dates of the certificate.

The Committee requests the Government to set intervals at which the competent authority shall examine and endorse the records of seafarers' daily hours of work and rest, so as to ensure compliance with the provisions relating to hours of work and rest giving effect to the Convention. Furthermore, the Committee requests the Government to provide a copy of the inspection report on the records of hours of work and rest on ships flying the Greek flag, where inspections are carried out by the competent Greek consular authority.

The Committee is raising other points in a request addressed directly to the Government.

Guinea

Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (ratification: 1977)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

For many years, the Committee has been asking the Government to indicate the specific instruments that govern the prevention of occupational accidents of seafarers. The Government has so far indicated that appropriate regulatory texts were in preparation and would be reviewed with the technical assistance of the ILO to ensure their compliance with the provisions of the Convention. In its last report, the Government refers only to the provisions of the Labour Code and Merchant Shipping Code, noting that they provide for the adoption of regulations on occupational safety and health. The Government further indicates that the authorities responsible for framing and supervising maritime regulations were also to draft a whole series of texts in this area. The Committee emphasizes that Guinea ratified this Convention 32 years ago, in 1977. It also points out that the provisions of the

national legislation are general in nature and do not always ensure that full effect is given to the requirements of the Convention. *Consequently, the Committee once again expresses the hope that the Government will make every effort to ensure that legislative texts giving full effect to the Convention are adopted in the very near future. It requests the Government to provide a copy of them as soon as they have been enacted.*

Part IV of the report form. Court decisions. The Committee requests the Government to indicate whether the courts of law or any other tribunals have handed down decisions involving matters of principle pertaining to the application of the Convention and, if so, to provide copies of them with its next report.

Part V of the report form. Application in practice. The Committee also asks the Government to provide general information on the manner in which the Convention is applied, supplying extracts of reports of inspection services, information on the number of workers covered by the legislation, and the number and nature of contraventions and of occupational accidents reported.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guinea-Bissau

Certification of Ships' Cooks Convention, 1946 (No. 69) (ratification: 1977)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes that there is no naval school in the country, and that, therefore, the certificates of qualification are for internal use only. The Committee hopes that the state services and national institutions will soon be operating normally again, and that the necessary legislation and practical measures to implement the Convention will be put in place. The Committee requests the Government to keep the Office informed about all progress made in this respect, and to continue to provide information with respect to its previous observation regarding Articles 3(2) and 4 of the Convention, as well as Part V of the report form.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Honduras

Seafarers' Identity Documents Convention, 1958 (No. 108) (ratification: 1960)

The Committee notes all the documents provided by the Government in reply to its previous observation concerning the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). The Government has transmitted a preliminary draft of a legislative decree dated 15 January 2009, which is intended to introduce as rapidly as possible the biometric identification of national seafarers. However, no information concerning the ratification of Convention No. 185 or the use of its Article 9 has been provided by the Government. *The Committee requests the Government to keep the Office informed of any new developments relating to the ratification of Convention No. 185 or the use of the transitional provisions set out in its Article 9.*

Iraq

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (ratification: 1966)

Articles 2 and 3 of the Convention. Payment of indemnity against unemployment; Remedies. For many years, the Committee has been pointing out that the provisions of the existing Labour Code No. 71 of 1987 do not give effect to these Articles of the Convention. The Government states that, under the existing Labour Code, the employer shall, in the event of shipwreck of any vessel for unforeseen reasons or in circumstances of force majeure, pay to the workers of the vessel an indemnity against unemployment for the period during which the vessel is wrecked, not exceeding 30 days. Indeed, section 65 of the Labour Code in force provides that, if work has stopped entirely or in part owing to exceptional circumstances or force majeure, the employer shall be required to pay to the workers their wages for the period of stoppage for up to 30 days. Under the Convention, however, seafarers shall be paid, in every case of loss or foundering of their vessel, irrespective of the circumstances, an indemnity against unemployment at the same rate as the wages, which may only be limited to two months. Section 65 of the 1987 Labour Code thus cannot be considered to be in compliance with Article 2 of the Convention.

The Government further indicates that the draft new Labour Code is currently at the stage of being examined in the State Consultative Council in order to finalize the legislative aspects. *The Committee therefore requests the Government to make every effort to ensure that, either the necessary amendments to the Labour Code are made or that new relevant legislation is adopted, providing that: (i) in every case of loss or foundering of any vessel, each person employed thereon shall be paid for the days during which he or she remains unemployed, an indemnity against unemployment at the same rate as the wages payable under the contract, although the total indemnity payable to any one seafarer may be limited to two months' wages (Article 2); and (ii) seafarers have the same remedies for recovering the indemnities as they have for recovering arrears of wages earned (Article 3). The Committee trusts that the Government will take all*

measures to ensure that full effect is given to Articles 2 and 3 of the Convention, and that it will report on any progress made in its next report.

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1985)

The Committee notes from the Government's two most recent reports, that follow-up to the Committee's previous comments is ongoing with the competent authority (i.e. Ministry of Transport) to obtain the requested data related to the Convention. The Committee had invited the Government to consider the possibility of ratifying the Maritime Labour Convention, 2006 (MLC, 2006), which is the up to date international instrument in the field and whose ratification would result in the automatic denunciation of the present Convention. The Committee notes the Government's response that Iraq has not ratified the MLC, 2006, because the extent of maritime labour in the country is limited. For the same reason, no decision in this respect has been taken by the Tripartite Consultation Committee.

Article 2, clause (a), of the Convention. Conventions listed in the Appendix to Convention No. 147, but not ratified by Iraq. Substantial equivalence. In its previous comments, the Committee had requested the Government to indicate how substantial equivalence with the ILO Conventions enumerated in the Appendix to the Convention, is ensured in law and practice in Iraq. In its reports, the Government confines itself to indicating that Iraq has not ratified the Officers' Competency Certificates Convention, 1936 (No. 53), the Sickness Insurance (Sea) Convention, 1936 (No. 56), the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), the Medical Examination (Seafarers) Convention, 1946 (No. 73), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134). The Committee wishes to point out that, in accordance with Article 2(a) of Convention No. 147, each Member is under an obligation to satisfy itself that its relevant legislation is substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, even if the Member has not ratified them. In the case of Iraq, the Government is under an obligation to satisfy itself that national laws or regulations are substantially equivalent to the following Conventions, which it has not ratified: Convention No. 53, Articles 3 and 4; Conventions Nos 56, 73 and 87; and Convention No. 134, Articles 4 and 7; and also to satisfy itself that, unless the relevant shipboard living arrangements are covered by collective agreements, national legislation is substantially equivalent to Convention No. 68 (Article 5).

In the absence of relevant information in response to the previous direct request, the Committee is bound to repeat its previous comments which read as follows:

- *Convention No. 56.* The Committee recalls that, for the purposes of substantial equivalence with Convention No. 56, there should be a compulsory sickness insurance scheme (Article 1) with cash benefits for the seafarer or his family at the national going rate for at least 26 weeks (Articles 2 and 4); medical benefit (Article 3); maternity benefit (Article 5); and death or survivor's benefit (Article 6); benefits should cover the normal interval between engagements (Article 7); and the shipowners and seafarers should share the expenses of the scheme (Article 8). The Committee notes the clarification provided by the Tripartite Consultation Committee that measures ensuring compliance with Convention No. 56 do not fall under the scope of the Ministry of Labour but rather within the remit of the Ministry of Transport, which has already been approached. ***The Committee therefore hopes that the Government will soon be in a position to indicate the specific provisions of the national legislation substantially equivalent to Convention No. 56 and to provide copies of the respective laws or regulations.***
- *Convention No. 73.* The Committee recalls that the requirement of substantial equivalence in respect of Convention No. 73 may be met where there are laws or regulations providing for compulsory regular medical examinations for seafarers, preferably every two years (six years in respect of colour vision), but more frequently than every five years; the certificate issued should attest to fitness in respect of hearing and sight and, where necessary in the deck department, colour vision, and should attest that no disease incompatible with service at sea or likely to endanger the health of others is suffered; there should preferably be arrangements for re-examination in case of refusal of certificate. The Government indicates that measures ensuring compliance with Convention No. 73 fall within the remit of the Ministry of Transport. ***The Committee hopes that the necessary efforts will soon be made to ensure that specific provisions substantially equivalent to Convention No. 73 are adopted; the Committee asks the Government to provide a copy of the relevant applicable laws or regulations.***
- *Convention No. 134 (Articles 4 and 7).* The Committee notes that measures ensuring compliance with these provisions of Convention No. 134 fall within the remit of the Ministry of Transport. ***The Committee hopes that the Government will soon be in a position to indicate, for the purposes of substantial equivalence with Convention No. 134, the specific provisions of the national laws or regulations dealing with the nine general and specific subjects listed in Article 4(3) and providing for the appointment of one or more crew members as responsible for accident prevention under Article 7.***
- *Convention No. 68 (Article 5).* The Committee recalls that, for the purposes of substantial equivalence with Convention No. 68: (i) food and water supplies, having regard to the size of the crew and the duration and nature of the voyage, should be suitable in respect of quantity, nutritive value, quality and variety; and (ii) the catering department in every vessel should be arranged and equipped in such a manner as to permit the service of proper meals to crew members. The Government indicates that measures ensuring compliance with this provision of Convention No. 68 fall within the remit of the Ministry of Transport. ***The Committee hopes that, unless the issue is covered by collective agreements, the necessary efforts will soon be made, to indicate the specific provisions in national laws or regulations substantially equivalent to Article 5 of Convention No. 68 and to provide copies of the respective legislation.***
- *Convention No. 53 (Articles 3 and 4).* The Committee notes that measures ensuring compliance with these provisions of Convention No. 53 fall within the remit of the Ministry of Transport. ***The Committee hopes that the Government will soon be in a position to indicate the specific provisions of the national legislation which establish requirements in respect of the education of officers, prescribe requirements in respect of a minimum period of professional experience, and***

provide for the organization and supervision of examinations, so as to ensure substantial equivalence with Convention No. 53 for the purposes of Article 2(a)(i).

- *Convention No. 87.* The Committee recalls that substantial equivalence to Convention No. 87 involves at the minimum the observance and implementation in respect of seafarers on ships registered in the national territory of the following four basic guarantees of freedom vis-à-vis the public authorities for workers and employers to exercise the right to organize: (i) all workers and employers should have the right to establish and join organizations of their own choosing without previous authorization (Article 2 of Convention No. 87); (ii) those organizations should have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes (Article 3 of Convention No. 87); (iii) the organizations are not liable to be dissolved or suspended by administrative authority (Article 4 of Convention No. 87); and (iv) the organizations should have the right to establish and join federations and confederations and affiliate with international organizations of workers and employers (Article 5 of Convention No. 87), such federations and confederations having the same rights as their constituent organizations (Article 6 of Convention No. 87).

In its previous reports, the Government had indicated that seafarers are considered as civil servants rather than workers. In its latest report, however, the Government refers to Trade Union Organization Act No. 52 of 1987, which only applies to private, mixed and cooperative sectors. ***The Committee requests the Government to clarify the statute of seafarers (civil servants or workers) and to indicate the specific provisions in national legislation that are substantially equivalent to Convention No. 87. It further asks the Government to provide a copy of these laws or regulations. With respect to the Government's indication that the new draft Labour Code took into account the relevant provisions of Convention No. 87, the Committee asks the Government to supply a copy of the draft Labour Code and provide information on any further developments regarding its adoption.***

Standards of manning. In the absence of relevant information, the Committee recalls that the essential requirement of Article 2(a)(i) in respect of standards of manning is that ships should be sufficiently manned to ensure the safety of life on board. ***The Committee hopes that the Government will soon be in a position to ensure that national laws or regulations laying down safety standards in respect of manning are adopted. Please report on any progress made in this respect.***

Article 2, clause (f). ***The Committee again asks the Government to describe the inspection or other arrangements which exist to verify compliance with the national laws or regulations required under Article 2(a), applicable collective agreements and ratified international labour Conventions. Please also give details of the functioning of these arrangements such as size of inspection staff, numbers and results of inspections and investigations of complaints, penalties imposed, etc.***

Italy

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1981)

The Committee notes the legislative and other texts communicated by the Government and, in particular, the adoption of Legislative Decree No. 108 of 27 May 2005 amending Legislative Decree No. 271 of 27 July 1999 on working time on board merchant ships. The Committee further notes the information supplied by the Government in response to the Committee's previous comments concerning Article 2(a)(i) and (g), of the Convention, and Part V of the report form, as well as the statistical data provided with regard to Article 2(f).

Article 2, subparagraphs (a), (b) and (f). ***Obligations of the ratifying Member with regard to ships registered in its territory.*** The Committee had previously noted the establishment of the "international register" in accordance with Act No. 30 of 27 February 1998 and, in particular, the possibility provided by section 3 of that Act to apply, in case of seafarers who are not nationals or residents of a European Union (EU) Member State, the law selected by the parties. In an earlier direct request, the Committee had asked the Government to furnish details as to how it fulfils its obligations under Article 2(b) and (f) with regard to vessels registered in the international register.

The Government merely indicates that, in the case of ships registered in Italy (including those in the international register), control of application of provisions of national legislation concerning safety and working and living conditions on board is carried out by the harbour master's office in the port where the ship is moored. According to the Government's report, for every engagement of seafarers on board ships registered in Italy (including those in the international register), the articles of agreement must show the conditions established in the current national collective agreement and in laws governing the sector.

According to section 3(1) of Act No. 30/1998, the economical, normative and social security conditions of seafarers with Italian or other nationality of an EU Member State on board vessels registered in the international register are governed by the laws concerning contracts and by the collective agreements of the respective member States.

Section 3(2) of that Act provides that the work relationships of seafarers on board vessels registered in the international register who are not nationals or residents of an EU Member State, are regulated by the law selected by the parties and in conformity with ILO maritime Conventions. In the Committee's view, this could lead to situations where the work relationship of foreign seafarers working on board ships registered in the Italian international register is, for instance, governed by the legislation of the country of origin of the respective seafarer, instead of the law of the country in which the ship is registered (for example, the Italian law). The Committee considers that such a scenario would not be in compliance with Convention No. 147, which places the primary responsibility as regards regulation of working and living conditions of seafarers on the flag State. In this context, the Committee wishes to point out that, similar to this Convention, the Maritime Labour Convention, 2006 (MLC, 2006) places the primary responsibility for regulating working

and living conditions on board ships on the flag State, with the exception of Title 1.4 (recruitment and placement) and Title 4.5 (social security), which place the responsibility on the labour-supplying States.

The Committee wishes to recall that *Article 2(a)*, sets out the obligation of every ratifying Member “to have laws or regulations laying down, for ships registered in its territory”, safety standards ((i)); social security measures ((ii)); and shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements ((iii)); and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions referred to in the appendix, in so far as the Member is not otherwise bound to give effect to the Conventions in question.

Furthermore, the Committee reminds the Government that, under *Article 2(b)*, each Member which ratifies this Convention undertakes “to exercise effective jurisdiction or control over ships which are registered in its territory”, in respect of safety standards, social security measures and shipboard conditions of employment and living arrangements prescribed by national laws or regulations.

Moreover, the Committee draws the Government’s attention to *Article 2(f)*, according to which each Member which ratifies this Convention undertakes “to verify by inspection or other appropriate means that ships registered in its territory comply with ... the laws and regulations required by *subparagraph (a) of Article 2*”, with ratified international labour Conventions and, as appropriate, with collective agreements. ***The Committee requests the Government to make every effort necessary to ensure that flag State obligations in respect of ships registered in the international register of Italy are effectively discharged, in conformity with Article 2(a), (b) and (f).***

Furthermore, the Committee invites the Government to consider the possibility of ratifying the MLC, 2006, which is the up to date instrument in the field, and is expected to enter into force in the near future. The provisions of the present Convention have been consolidated into the MLC, 2006, which, similar to Convention No. 147, places the primary responsibility for regulating working and living conditions on board ships on the flag State (see Article V(1)), with the exception of Title 1.4 (recruitment and placement) and Title 4.5 (social security), which place the responsibility on the labour-supplying States. ***The Committee would be grateful if the Government would communicate information on any measures taken concerning the ratification of the MLC, 2006, and on any progress achieved in this respect.***

Japan

Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) (ratification: 1983)

Article 2, clause (a)(i), of the Convention. Conventions listed in the Appendix to the Convention but not ratified by Japan. *Convention No. 53, Article 3, paragraph 1.* The Committee notes with **satisfaction** the information provided by the Government in reply to its previous observation. The Government indicates that, following consultations held between the Government and organizations of shipowners and seafarers, the regulations on watch duty were amended in March 2006, so as to place the master of the vessel under the obligation to ensure that at least one person performing watch duty has been awarded an officers’ competency certificate of grade six. In the case of watch duty being performed by several persons, the persons other than the officer shall be in possession of a certificate issued by the ministry testifying to their knowledge and skills in this area.

The Committee is raising other points in a request addressed directly to the Government.

Liberia

Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) (ratification: 1960)

The Committee notes with interest that on 7 June 2006, Liberia ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force of the MLC, 2006, will result in the immediate denunciation of, inter alia, the present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the conformity of national legislation with the relevant requirements of the present Convention.

The Committee notes with **regret** that the Government’s report contains no reply to its previous comments. It is therefore bound to repeat its previous observation which read as follows:

Article 1, paragraph 2, of the Convention. In reply to the Committee’s previous comments, the Government refers to the provisions of section 51 of the Maritime Law concerning vessels which can be registered under Liberian law. ***In this regard, the Committee wishes to draw the Government’s attention to the fact that its comments concerned section 290-2 of the Law, which provides that persons employed on vessels of less than 75 net tons are not covered by the provisions of Chapter 10 of the Law relating specifically to the obligations of the shipowner in the event of seafarers’ sickness or accident.***

Article 2, paragraph 1. The Committee noted that section 336-1 of the Maritime Law provides for payment of the wages, maintenance and medical care of the seafarer in cases of sickness or accident while he or she is off the vessel provided that the seafarer is “off the vessel pursuant to an actual mission assigned to him by, or by the authority of, the master”. ***The Committee recalls that under this provision of the Convention the shipowner is liable in all cases of sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) (ratification: 1978)

The Committee notes with interest that, on 7 June 2006, Liberia ratified the Maritime Labour Convention, 2006 (MLC, 2006). The entry into force of the MLC, 2006, will result in the immediate denunciation of, inter alia, the present Convention. Pending the entry into force of the MLC, 2006, however, the Committee will continue to examine the conformity of national legislation with the relevant requirements of the present Convention.

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:

At the 89th Session of the International Labour Conference (ILC) in June 2001, a Government representative indicated that the first report would be submitted to the Committee in the near future. In agreement with the findings of the Conference Committee on the Application of Standards during that session of the ILC, the Committee reiterates the crucial importance of submitting first reports on the application of ratified Conventions. *The Committee urges the Government to submit the report for the attention of the Committee at its next session.*

The Committee notes the Government's response to the comments made by the Norwegian Union of Marine Engineers (NUME) that alleges non-observance by Liberia of the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the present Convention. The Committee notes, in particular, the Government's indication that the ship "Sea Launch Commander" serves as the command ship, that is "mission control", for the launching of rockets from the seagoing launch platform M/S Odyssey. The rockets are assembled in the assembly bay of the "Sea Launch Commander" while the ship is in port moored to a dock and then transferred to M/S Odyssey. The Government points out that the "Sea Launch Commander" neither transports cargo or passengers for the purpose of trade nor does it engage in other traditional commercial activity while at sea. According to the Government, the primary functions of the "Sea Launch Commander" are to serve as the assembly facility for the rockets when the ship is moored to the dock, and to serve as command ship for the launching of rockets from the M/S Odyssey when the ships are at sea.

The Government considers that, based on the nature of its operations, the "Sea Launch Commander" is not a seagoing vessel for the purpose of trade or commercial activity in the sense envisaged by the relevant ILO Conventions. Therefore, it is the Republic of Liberia's determination that the aforementioned ILO Conventions do not apply to this ship, and the NUME complaint is neither appropriate nor applicable to the "Sea Launch Commander", and that its "statement of claim" to the ILO is, therefore, without merits.

The Committee recalls that the present Convention applies to every seagoing ship, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose, and which is registered in a territory for which this Convention is in force (*Article 1(1) of the Convention*). National laws or regulations shall determine when ships are to be regarded as seagoing ships for the purpose of this Convention (*Article 1(2)*). Under *Article 1(1)*, the Convention applies "to every seagoing ship ... employed for any other commercial purpose" and does not distinguish between traditional and non-traditional commercial activities.

Referring also to its 2002 observation, the Committee asks the Government to clarify: (i) whether the ship "Sea Launch Commander" is regarded under national laws or regulations as a "seagoing ship"; (ii) whether national laws or regulations contain the definition of the term "commercial activity"; and (iii) whether the launching of rockets from the seagoing launch platform M/S Odyssey is carried out for a commercial purpose.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Seychelles

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8) (ratification: 1978)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

With reference to its previous comments, the Committee notes the information supplied by the Government in its report. According to this information, the proposals to amend the Merchant Shipping Act and its enabling regulations are shortly to be submitted to the National Assembly for adoption. The Government adds that it will send a copy of these texts as soon as they have been adopted. *The Committee consequently refers the Government to its observation and direct request of 2005 in which it pointed out where the national laws and regulations needed amending to bring them fully into conformity with the Convention. The Committee trusts that the texts adopted will enable all matters pending to be resolved.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sweden

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) (ratification: 2000)

The Committee notes the observations submitted by the Swedish Ship Officers' Association, the Merchant Marine Officers' Association and the Union of Service and Communication Employees (SEKO) – Seafarers' Branch, as well as by the Swedish Shipowners' Employer Association (SEA).

Article 4 of the Convention. Normal working hours' standard. In its previous observation, the Committee had requested the Government to indicate by what means it was ensured that the mathematically admissible maximum of 91 hours of work per week retains its exceptional character, thus ascertaining that the normal working hours' standard for seafarers of 48 working hours per week, as acknowledged by Sweden through its ratification of the Convention, remains meaningful.

The Government contests that *Articles 4 and 5* of the Convention constitute a system with a principal rule (*Article 4*) and exceptions (*Article 5*). In the Government's view, *Article 4* only obliges the ratifying State to acknowledge – not to legislate – a certain normal working hours' standard. This was reflected in section 7 of Act No. 958/1998, which was even more favourable to seafarers than the Convention, as it provided that working time exceeding 40 hours a week shall be compensated.

The unions consider that Sweden does not acknowledge the eight-hour day with one day of rest per week and rest on public holidays given that, in its safe manning decisions, the competent authority may dispense with positions of crew members on board, as long as Act No. 958/1998 is not violated and overtime compensation is paid. Moreover, section 7 gives the possibility to work 52 times 48 hours per year (i.e. 2,496 hours) as opposed to the annual working hours of shoreworkers of 1,880 hours.

The SEA opposes the unions' view, since both the old legislation based on working hours and Act No. 958/1998 assume a 40-hour working week.

The Committee wishes to point out that *Article 4* does not require the ratifying State to prescribe a certain normal working hours' standard or to justify deviations from it. The Committee reiterates, however, that, according to *Article 4* of the Convention, ratifying Members acknowledge that the *normal* working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. This has implications for the compensation of overtime. Moreover, a bona fide application of the provisions of the Convention means that applying minimum hours of rest provisions does not imply that all hours not devoted to rest may be considered as hours of work. The practice of dispensing with positions on board, as long as the rest of the crew can work within the limits of hours of rest prescribed by Act No. 958/1998, may amount to treating the prescribed minimum hours of rest as the normal standard.

The Committee therefore requests the Government to provide further information on how work is organized in practice so as to ensure both a bona fide application of Article 4 and strict compliance with the minimum hours of rest prescribed by Act No. 958/1998, in order not to compromise the health and safety of seafarers as well as navigational safety. Please also provide samples of relevant collective bargaining agreements, statistics of results of inspections on the issue and any other relevant documentation.

Procedure for compensation of overtime. In its previous observation, the Committee had asked the Government to provide details on the procedure for compensating seafarers working more than 40 hours a week. In its response, the Government refers to the collective agreement concerning wages and general conditions of employment of helmsmen and telegraphers communicated with the report.

The unions allege that collective agreements are mostly "all-in-one" or uniform pay agreements, and that they do not prevent dispensing with positions of crew members on board, which usually results in 13- to 14-hour days for the remaining crew. The SEA asserts that the unions have full control over working hours, since uniform pay agreements are based on average working hours and are concluded with the central trade unions. If the normal working hours were 13–14 hours per 24 hours of service, most uniform pay agreements would need to be renegotiated, as they were based on an average of 10–11 working hours per day. Moreover, the old legislation allowed the crew to be exempted from the Act and permitted up to 16 working hours per day and 112 per week. Act No. 958/1998 was more restrictive, since no seafarer on watch can be exempted from the Act, the maximum working hours per 24 hours are 14 and the maximum weekly working hours are 91 hours.

The Committee notes that, according to the information provided by the unions and the SEA, most collective agreements take an "all-in-one" or uniform payment approach based on an average of 10–11 working hours per day. This would mean that the ceiling amount of compensation for seafarers who have been working 14 hours in a 24-hour period would correspond to the compensation paid for a 10- to 11-hour working day. While the collective agreement for helmsmen and telegraphers supplied by the Government does not appear to take such an approach, the Committee would like to point out that compensation for overtime needs to mirror the actual overtime hours worked in addition to the normal working hours' standard based on an eight-hour day with one day of rest per week. ***The Committee asks the***

Government to indicate by what means it is ensured that seafarers working more than the normal working hours' standard established in Article 4 are compensated for the overtime hours that they have effectively worked.

Enforcement. Furthermore, the Committee had previously asked the Government to explain how section 7 of Act No. 958/1998 concerning rest periods for seafarers was enforced in practice.

The Government explains that the procedure for compensating seafarers working more than 40 hours a week is a matter for collective bargaining agreements. As to enforcement in practice, the Government did not control by inspection or other means whether obligations under collective agreements were met by the parties, since enforcement of collective agreements was the concern of the parties to the agreement. Labour-related disputes can, however, be brought before the Swedish Labour Court.

The Committee draws the Government's attention to Article 1(7)(c) and Article 5(2)(b) of the Labour Inspection (Seafarers) Convention, 1996 (No. 178), ratified by Sweden, according to which inspections are also carried out to verify that collective agreements upon which the force of law is conferred, are being observed. Moreover, section 7 of Act No. 958/1998, which stipulates that working hours above 40 hours a week shall be paid in accordance with a collective agreement, is a provision of national law that needs to be enforced by the competent authority. ***The Committee asks the Government to indicate the measures envisaged or taken to ensure that section 7 of Act 958/1998 is complied with in practice.***

Article 5, paragraph 1, clause (b), in conjunction with Article 11. Limits on hours of rest and manning. In its previous observation, the Committee had requested the Government to indicate what measures had been taken to avoid infringements of the requirements of the Convention as regards rest hour limits, resulting from additional work which officers have to perform outside their watchkeeping routine, e.g. duties under the International Ship and Port Facility Security (ISPS) Code. The Committee had also asked the Government to indicate by what means it is ensured that, when determining, approving or revising manning levels, the competent authority takes into account the need to ensure sufficient rest.

The Government states that infringements resulting from additional work under the ISPS Code are avoided by means of inspection by the competent authority (Swedish Maritime Safety Inspectorate (SMI)) and via the shipowner's shipboard organization and standing working orders. It further indicates that, according to its written working procedures, the SMI, when determining or revising manning levels, is bound to take into account the provisions of Act No. 958/1998.

The unions emphasize that the safe manning document does not take into account duties other than watchkeeping. They also reiterate that, in its safe manning decisions, the competent authority authorizes to exempt a position if the rest of the crew can work within the limits of Act 958/1998, and that this practice has resulted in crews being cut down to an absolute minimum. The SEA considers that, where available time is insufficient, further crew members should be signed on, regardless of the crew size indicated in the safe manning document.

The Committee notes the procedures of the SMI. In view of the unions' comments regarding duties other than watchkeeping, the Committee recalls that time during which a seafarer is required to do work on account of the ship shall be considered to be working time (*Article 2(b)*). It is essential for securing compliance with the prescribed minimum hours of rest that, when determining the safe manning of a vessel, account is taken not only of duties relating to watchkeeping but of all duties, including duties under the ISPS Code or duties pertaining to the arrival in and departure from port. Moreover, the practice of systematically allowing the exemption of positions, provided that the rest of the crew is able to work within the limits on hours of rest, does not give effect to the requirement in *Article 11(2)*. ***The Committee therefore requests the Government to take the necessary measures to ensure that the competent authority, when determining, approving or revising manning levels: (i) makes allowance for all work that officers regularly have to perform on account of the ship, including work outside their watchkeeping duties; (ii) takes into account, especially in case of ships that operate on a two-watch system, the need to limit fatigue, in particular cumulative fatigue, and to minimize excessive hours of work as far as practicable; and (iii) takes into account the international instruments identified in the Preamble, especially IMO Assembly Resolution A.890(21) (1999) on Principles of Safe Manning.***

Article 5, paragraph 1, clause (b), in conjunction with Article 9. Examination of the records of ships operating on a two-shift system. The Committee had previously queried whether the examination of the records of ships operating on a two-shift system had revealed infringements of the requirements of the Convention.

The Government states that it is not in a position to respond, since the shift system is irrelevant when examining the records, the inspector's concern being solely to check whether the relevant national legislation has been infringed. The report thus indicates that it was not possible to deduce from the inspection material what shift system the inspected ship operated on, and even less whether and to what extent the shift system had any influence on infringements. As a measure to avoid future infringements, the SMI was planning for random inspections of the rules on rest periods.

The unions counter that the shift system had an important role to play when it came to infringements of Act No. 958/1998. If two officers shared the watch hours of each day, there was no time left for other duties of the officer, for example relating to arrival and departure from port. Moreover, the safe manning document did not take into account duties other than watchkeeping. The SEA indicates that a two-watch system could consist of either an officer and a mate or an officer and two mates. In its view, if the two-watch system consisted of the former and the time available was insufficient, an additional mate should be signed on so that the officer could relieve the mates when necessary.

The Committee considers that a six hours on/six hours off watchkeeping regime is more liable to pose a serious risk of cumulative fatigue than the three-watch system, in particular in the event of an intense trading pattern of the ship. It is therefore imperative for inspectors checking the records on hours of rest of ships operating on a two-shift system to be aware of this background and be particularly vigilant. *Given that there is a number of ships registered in Sweden that operate on a system where the watchkeeping responsibilities are shared by only two officers, the Committee requests the Government to adopt the necessary measures to ensure that, when examining and endorsing the records on hours of rest to monitor compliance with the minimum hours of rest, the competent authority takes into account the nature of the watchkeeping regime of the vessel.*

Articles 9, 10 and 15, and Part V of the report form. Enforcement of prescribed maximum of yearly working hours. The Committee had previously asked the Government to describe how the provision prescribing a maximum of yearly working hours is controlled and enforced in practice.

The Government explains that the control and enforcement of the maximum yearly working hours is a task for the ship surveyor responsible for the inspection of the records of hours of rest and the International Safety Management (ISM) Code, as well as the responsibility of the master and of the designated person of the shipowner.

The unions criticize that the Government did not clarify how the competent authority controlled and enforced the maximum yearly working hours in case of a seafarer changing ship and employer. The SEA shares the unions' concerns in this respect. It would prefer that the provision be removed from the legislation, as annual hours of work were not relevant and very difficult both for the public authority and the shipping company to check.

In view of the comments of the social partners, the Committee requests the Government: (i) to explain the purpose of this provision as compared to the daily and weekly minimum hours of rest; (ii) to furnish details on methods to effectively verify maximum yearly working hours; and (iii) to provide a general appreciation of the practical application of this provision in Sweden.

The Committee notes with *interest* the detailed information provided by the Government in its report. It notes, in particular, the information regarding the adoption of a national "Social Plan of the Republic of San Marino 2006–2008" taking an innovative approach to occupational safety and health including closer collaboration with universities and research centres with the objective of participating in international research projects and increasing awareness among professionals and citizens. It also notes the information regarding the adoption of numerous pieces of legislation in the area of occupational safety and health including Decree No. 25 of 26 February 2006, amending Decrees No. 74 of 17 May 2005 and No. 139 of 30 October 2003, which prescribe collaboration between several employers at temporary or mobile work sites and give effect to *Article 6(2) of the Convention*. The Committee also notes the information regarding effect given to *Articles 12–15*.

The Committee is raising other points in a request addressed directly to the Government.

United Kingdom

Montserrat

Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

The Committee notes that the Government's report, received in 2008, contains no reply to previous comments. It is therefore bound to draw the attention of the Government to the substance of its previous observation.

Article 2 of the Convention. Payment of indemnity against unemployment. Section 37 of the 1979 United Kingdom Merchant Shipping Act amends section 15 of the 1970 United Kingdom Merchant Shipping Act to the effect that it is no longer possible to deprive seafarers of the right to unemployment indemnity, where they have failed to exert reasonable efforts to save the ship, persons and cargo. According to the Government's indications, however, the provisions of section 37 of the 1979 United Kingdom Merchant Shipping Act have not been extended to Montserrat.

For a number of years the Government has failed to reply to the Committee's comments in this regard. *The Committee therefore urges the Government to re-examine the question and indicate, in its next report, the steps taken to extend to Montserrat the application of section 37 of the 1979 United Kingdom Merchant Shipping Act, so as to ensure to seafarers, in case of loss or foundering of the vessel, the payment of an unemployment indemnity for a period of at least two months without restriction, as required by the Convention.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 7** (Guinea-Bissau); **Convention No. 8** (Belgium, Bosnia and Herzegovina, Canada, Chile, Croatia, Dominica, Fiji, Ghana, Grenada, Jamaica, Nigeria, United Kingdom: Anguilla); **Convention No. 9** (Belgium, Bosnia and Herzegovina, Colombia, Djibouti, Germany, Italy, Japan); **Convention No. 16** (Albania, Belgium, Bosnia and Herzegovina, Colombia, Denmark, Djibouti, Dominica, France, Guatemala, Guinea, Iraq, Jamaica, Japan); **Convention No. 22** (Argentina,

Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Colombia, Croatia, Cuba, Egypt, India, Iraq, Japan, Seychelles); **Convention No. 23** (*Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Djibouti, Estonia, France, Iraq, Ireland, Italy, United Kingdom: Anguilla*); **Convention No. 53** (*Bosnia and Herzegovina, Bulgaria, Croatia, France*); **Convention No. 55** (*Bulgaria, Djibouti*); **Convention No. 56** (*Bulgaria, Croatia, Egypt*); **Convention No. 58** (*Guatemala*); **Convention No. 68** (*Bulgaria, Egypt*); **Convention No. 69** (*Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, France, Ghana, Italy*); **Convention No. 73** (*Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Denmark, Djibouti, France, Guinea-Bissau*); **Convention No. 74** (*Bosnia and Herzegovina, Canada, Croatia, France, Ghana, Guinea-Bissau*); **Convention No. 91** (*Algeria, Bosnia and Herzegovina, Croatia, Guinea-Bissau*); **Convention No. 92** (*Australia, Belgium, Belize, Bosnia and Herzegovina, Croatia, Cuba, Cyprus, Greece, Guinea-Bissau, Iraq*); **Convention No. 108** (*Bulgaria, Cameroon, Estonia, Guinea-Bissau, Iceland, India, Iraq, Italy, Saint Lucia, United Kingdom: St Helena*); **Convention No. 133** (*Australia, Belize, Côte d'Ivoire, Greece, Guinea*); **Convention No. 134** (*Belize, Italy, Russian Federation*); **Convention No. 145** (*France, Iraq*); **Convention No. 146** (*Bulgaria, Cameroon, Germany, Iraq*); **Convention No. 147** (*Algeria, Barbados, Belize, Bulgaria, Canada, China: Hong Kong Special Administrative Region, Croatia, Denmark, Estonia, Finland, Greece, Hungary, Iceland, India, Ireland, Japan, Lithuania, Slovenia*); **Convention No. 163** (*Bulgaria, Denmark, France, Georgia, Russian Federation*); **Convention No. 164** (*Bulgaria, France, Germany, Italy*); **Convention No. 166** (*Bulgaria, France, Guyana*); **Convention No. 178** (*Albania, Bulgaria, France, Ireland, Peru*); **Convention No. 179** (*Bulgaria, Croatia, Finland, France, Ireland*); **Convention No. 180** (*Belgium, Bulgaria, Denmark, Finland, France, Greece, Ireland, Sweden*).

The Committee noted the information supplied by the following States in answer to a direct request with regard to: **Convention No. 9** (*Panama*); **Convention No. 16** (*Hungary*); **Convention No. 22** (*Estonia*); **Convention No. 23** (*Azerbaijan*); **Convention No. 53** (*Italy*); **Convention No. 69** (*Greece*); **Convention No. 73** (*Argentina*); **Convention No. 74** (*Algeria*); **Convention No. 92** (*Angola, China: Hong Kong Special Administrative Region, Denmark*); **Convention No. 108** (*China: Hong Kong Special Administrative Region, Guatemala*); **Convention No. 133** (*China: Hong Kong Special Administrative Region, Denmark*); **Convention No. 134** (*Finland, Israel*); **Convention No. 163** (*Hungary*); **Convention No. 164** (*Hungary*); **Convention No. 165** (*Hungary*); **Convention No. 166** (*Hungary*); **Convention No. 178** (*United Kingdom: Isle of Man*).

Fishers

Liberia

Minimum Age (Fishermen) Convention, 1959 (No. 112) (ratification: 1960)

Article 1 of the Convention. Scope of application. The Committee notes with **regret** that the Government's very brief report does not reply to its previous observations and that, 49 years after its ratification, the Convention has still not been given effect in its entirety. It recalls that, under the terms of *Article 1* of the Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters. Only fishing in ports or in river estuaries, and individuals fishing for sport or recreation, are excluded from the scope of the Convention. However, the Committee observes that section 326 of the Maritime Act of Liberia, which establishes the minimum age for work on board vessels (including fishing vessels) at 15 years, only applies to vessels registered under the Act. Section 51 of the Maritime Act limits the registration procedure to certain types of vessels. This procedure is open to any vessel under 20 tonnes, the owner of which is a national of Liberia and which only makes voyages between Liberian ports or between Liberia and other West African countries, as well as any vessel of over 1,600 tonnes engaged in international trade, the constructor or owner of which is a national of Liberia. Furthermore, by virtue of section 290 of the Maritime Act, Chapter 10 of the Act, which covers seafarers and includes, among its provisions, the rules respecting minimum age, only applies to persons engaged on board vessels of at least 75 tonnes. The Committee wishes once again to draw the Government's attention to the fact that the scope of the provisions of the national legislation respecting the minimum age required for work on board fishing vessels is much narrower than that of the Convention. **The Committee urges the Government to adopt the necessary measures without further ado to bring its legislation into conformity with the Convention on this point. The Committee also requests the Government to provide information on the manner in which the Convention is applied in practice including, for instance, extracts from the reports of the inspection services and, if such statistics are currently available, information on the number and nature of the contraventions reported and the measures taken as a consequence. It further requests the Government to indicate the number of fishing vessels and fishers who are currently excluded from the scope of application of the Convention.**

Finally, the Committee understands that the tripartite representatives of Liberia participated in a subregional workshop organized in Accra (Ghana) in October 2009 which was intended to promote the ratification of the Work in Fishing Convention, 2007 (No. 188). **It requests the Government to keep the Office informed of any measure that may be taken, in the context of the follow-up to this workshop, with a view to the ratification of Convention No. 188.**

[The Government is asked to reply in detail to the present comments in 2010.]

Medical Examination (Fishermen) Convention, 1959 (No. 113) (ratification: 1960)

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Article 3 of the Convention. Nature of medical examination and particulars to be included in medical certificate. For many years the Committee has asked the Government to indicate whether certain provisions applicable to merchant vessels, i.e. the Requirements for Merchant Marine Personnel (RLM-118) and Maritime Regulation No. 10.325(2), also apply to fishing vessels. **The Committee once again expresses the hope that the Government will provide full explanations regarding the applicability of the Liberian maritime laws and regulations to the medical examination of fishermen. The Government is requested to indicate whether consultations with the fishing-boat owners' and fishermen's organizations concerned, if they exist, had taken place prior to the adoption of the applicable laws and regulations on the nature of the medical examination and the particulars to be included in the medical certificate as required by Article 3(1) of the Convention and to provide particulars on how the age of the person to be examined and the nature of the duties to be performed are taken into account in prescribing the nature of the examination as required by Article 3(2).**

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 113. **While noting the Subregional Seminar on the promotion of the Work in Fishing Convention, 2007 (No. 188), which was held in Accra from 27 to 30 October 2009 for the English-speaking countries in West Africa, the Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.**

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Fishermen's Articles of Agreement Convention, 1959 (No. 114) (ratification: 1960)

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Articles 3 to 9 of the Convention. Articles of agreement. The Committee notes the Government's earlier indication that the Committee's comments have been submitted to the Commissioner of the Bureau of Maritime Affairs for immediate action.

Referring to its previous comments, the Committee requests the Government to provide information on any possible reaction by the Commissioner. It also urges the Government to provide full information on each of the provisions of the Convention and each question in the report form approved by the Governing Body.

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing, including Convention No. 114. *The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Sierra Leone

Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1967)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Articles 3 to 15 of the Convention. Certificates of competency. The Committee has been commenting for a number of years on the absence of laws and regulations giving effect to the Convention. The Government stated in its report communicated in 2004 that progress was being made in this respect and that a national workshop on the formulation of fishing policies was organized. The Government also indicated that copies of the new legislation and the texts defining the new policies would be communicated to the ILO as soon as they were adopted.

The Committee asks the Government to provide detailed information on the outcome of the national workshop on the formulation of fishing policies and on any concrete progress made in respect of the adoption of national laws implementing the Convention. The Committee understands that the Office remains ready to offer expert advice and to respond favourably to any specific request for technical assistance in this regard. *Finally, the Committee would appreciate receiving up to date information concerning the fishing industry, including statistics on the composition and capacity of the country's fishing fleet, the approximate number of fishers gainfully employed in the sector, etc.*

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

The Committee also draws the Government's attention to the new Work in Fishing Convention, adopted by the International Labour Conference at its 96th Session (June 2007), which revises and updates most ILO instruments on fishing. *The Committee requests the Government to give all due attention to this new comprehensive instrument on the working and living conditions of fishers and to keep the Office informed of any decision that it may take with a view to its eventual ratification.*

Trinidad and Tobago

Fishermen's Competency Certificates Convention, 1966 (No. 125) (ratification: 1972)

The Committee notes that the Government in its very brief report indicates that it participated in the activities organized by the International Maritime Organization (IMO) to assist its member States in the implementation of the 1993 Torremolinos Protocol for the Safety of Fishing Vessels and the 1995 International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F Convention). It further notes the Government's indications that it has embarked upon a legislative process with a view to giving effect to Convention No. 125 and the STCW-F Convention. However, the Committee *regrets* to note that the Government does not indicate any tangible measures to finally give effect to the Convention, almost 40 years after its ratification. *It is therefore bound once again to urge the Government to adopt the necessary measures without further delay to ensure the full application of the Convention. The Government is requested to provide information on the results of the activities to promote the implementation of the STCW-F Convention organized by the IMO, in which it participated, and on the progress achieved in the procedure of the adoption of legislation to give effect to Convention No. 125.*

[The Government is asked to reply in detail to the present comments in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 113** (Guinea, Kyrgyzstan, The former Yugoslav Republic of Macedonia); **Convention No. 114** (Cyprus, The former Yugoslav Republic of Macedonia); **Convention No. 126** (Denmark: Faeroe Islands, Kyrgyzstan, Sierra Leone, The former Yugoslav Republic of Macedonia).

Dockworkers

Algeria

Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) (ratification: 1962)

Articles 12, 13 and 15 of the Convention. Application of the Convention. The Committee notes with **regret** that the Government's report of 2008 is almost identical to the one which was sent in 2007, that it contains no reply to the Committee's comments despite its repeated requests over a number of years and that the Government still does not appear to have taken the necessary steps to adopt the legislative text concerning ports and dockers pursuant to Act No. 88-07 as planned. However, the Committee notes the Government's efforts to improve the situation relating to occupational safety and health by ratifying the Occupational Safety and Health Convention, 1981 (No. 155). It notes that this Convention applies to all branches of economic activity, including dock enterprises and dockworkers, and that it therefore constitutes a general context for the application of Convention No. 32. However, the Government continues to be bound by its obligation to adopt specific legislative provisions giving full effect to the provisions of Convention No. 32. **The Committee requests the Government once again to take the necessary steps in the very near future to give full effect, in law and in practice, to the provisions of the present Convention, particularly Articles 12, 13 and 15, and to send copies of all relevant legislative texts once they have been adopted.**

Part V of the report form. Application in practice. Article 17, paragraph 2. Labour inspection. The Committee notes the lack of information concerning the application in practice of the Convention. **With specific reference to the provisions of Article 17, paragraph 2, of the Convention, the Committee requests the Government to send its general observations on the manner in which the Convention is applied, including, for example, extracts of the reports of the inspection services, up to date statistical information on the number of inspection visits carried out, the number of infringements reported and also the number, nature and causes of accidents recorded, etc.**

The Committee takes this opportunity to remind the Government that the ILO Governing Body invited the States parties to Convention No. 32 to envisage ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which revises Convention No. 32 (GB.268/LILS/5(Rev.1), paragraphs 99–101). Ratification of Convention No. 152 would entail ipso jure the immediate denunciation of Convention No. 32. The Committee would also like to draw the Government's attention to the code of practice recently adopted by the ILO entitled *Safety and health in ports* (Geneva, 2005), which is available, inter alia, on the ILO web site: www.ilo.org/public/english/protection/safework/cops/english/index.htm. **The Government is requested to keep the Office informed of all progress made in this field.**

[The Government is asked to reply in detail to the present comments in 2010.]

Brazil

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1990)

Legislation. The Committee notes with interest the full report from the Government and notes with **satisfaction** the consolidated version of Regulatory Standard on Safety and Health in Dock Work No. NR 29 of 17 April 2006, and which provides for mandatory protection for dock workers against accidents and diseases, facilities first aid, and aims at establishing the best possible conditions for safety and health for dockworkers, and which, in conjunction with other provisions already in force, gives substantial expression to the Convention. However, the Committee notes that more detailed information is required to clarify a number of points which are being dealt with in a direct request.

The Committee is raising other points in a request addressed directly to the Government.

Congo

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1986)

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

The Committee notes the information provided by the Government according to which a national advisory technical committee on occupational safety and health has been set up pursuant to Decree No. 2000-29 of 17 March 2000 which gives effect to *Article 7 of the Convention*. It also notes, however, that the information requested concerning *Articles 2, 4, 5, 6 and 11–36* are to be provided by the Government subsequently. As regards the further information the Committee has requested the Government to provide, the Committee notes with **regret** that the Government has either not replied to questions raised by the Committee in its previous comments or it has provided information that is applicable to enterprises in general. The Government appears to imply that dockworkers should be treated in the same manner as other workers and ports be treated like any other enterprise. **With reference to Articles 4–7, the Committee wishes to recall that the Government is required to take measures to**

give effect to the specific provisions in the Convention. The Committee must therefore once again repeat its previous observation which read as follows.

The Committee draws the Government's attention to the absence of specific health and safety provisions for dock work. The Committee noted previously that a draft Order on safety and health in dock work had been prepared by the technical departments of the Ministry of Labour and Social Security. In its report for the period ending 30 June 1993, the Government repeated this information and added that the draft had been submitted for adoption. The Committee hopes that the provisions of this text will ensure the application of the following provisions of the Convention: *Article 4* (objectives and areas to be covered by measures to be established by national laws and regulations, in accordance with *Part III* of the Convention); *Article 5* (responsibility of employers, owners, masters or other persons as appropriate, for compliance with safety and health measures; duty of employers to collaborate whenever two or more of them undertake activities simultaneously at one workplace); *Article 7* (consultation of and collaboration between employers and workers). *It asks the Government to provide a copy of the above Order as soon as it has been adopted.*

In its previous reports, the Government referred to Orders No. 9033/MTERFPPS/DGT/DSSHT on the organization and functioning of the socio-medical centres of enterprises in the People's Republic of the Congo and No. 9034/MTERFPPS/DGT/DSSHT laying down the procedures for the establishment of socio-medical centres which are common to several enterprises in the People's Republic of the Congo. *Since these texts have not been received, the Committee would be grateful if the Government would provide a copy of them.*

Article 6. The Committee notes from the Government's report for the period ending 30 June 1993 that briefings are to be organized to inform workers about safety provisions in the place of work at which heads of establishment can alert them about the dangers arising from the use of machinery and the precautions to be taken. *The Committee asks the Government to provide a copy of the provisions concerning the organization of these briefings and the measures taken to give effect to paragraph 1(c) of this Article.*

Article 8. The Committee notes the Government's statement in its report for the period ending 30 June 1993 that all safety measures are provided for in Chapter II of Order No. 9036 of 10 December 1986. The Committee notes that the above part of the Order provides for general protective measures whereas the Convention requires the adoption of measures specific to dock work. *It asks the Government to indicate which provisions require the adoption of effective measures (fencing, flagging or other suitable means including, when necessary, cessation of work) to ensure that when the workplace has become unsafe, workers are protected until it has been made safe again.*

Article 14. The Committee notes from the Government's report for the period ending 30 June 1993 that the application of this Article is ensured by labour inspectors by means of inspections in enterprises. *The Committee asks the Government to indicate which provisions ensure that electrical equipment and installations are so constructed, installed, operated and maintained as to prevent danger, and which standards for electrical equipment and installations have been recognized by the competent authorities.*

Article 17. The Committee notes that section 41 of Order No. 9036, cited by the Government in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention, includes specific measures only for the use of lifting gear in particular weather conditions (wind). *The Committee asks the Government to indicate the measures taken to ensure that the means of access to a ship's hold or cargo deck are in conformity with the provisions of this Article.*

Article 21. The Committee notes the provisions of sections 47–49 of Order No. 9036 which the Government cites in its report for the period ending 30 June 1993 as giving effect to this Article of the Convention. It notes that the above sections provide for protective measures for some machinery or parts of machines which can be dangerous. *It asks the Government to indicate the measures taken or envisaged to ensure that all lifting appliances, every item of loose gear and every sling or lifting device forming an integral part of a load comply with the provisions of the Convention.*

Articles 22, 23, 24 and 25. Further to its previous comments, the Committee notes that, in its report for the period ending 30 June 1993, the Government refers to the certification of machinery, including lifting appliances, which is conducted by technical inspectors and advisory bodies, as a general measure to ensure that lifting appliances are sound and in proper working order. However, these Articles of the Convention provide for a set of measures to ensure that appliances and loose gear can be used by workers without any danger or risk: testing of all lifting appliances and loose gear (every five years in ships); thorough examination (at least once every 12 months); regular inspection before use. *The Committee asks the Government to indicate the provisions requiring the above measures to be taken in respect of all lifting appliances – on shore and on board – and of all loose gear.*

Article 30. The Committee notes that section 43 of Order No. 9036 referred to by the Government, does not relate to the attaching of loads to lifting appliances. *It asks the Government to indicate which provisions relate to this matter.*

Article 34. *The Committee asks the Government to provide a copy of the instructions concerning the wearing of personal protective equipment referred to by the Government in its report for the period ending 30 June 1993.*

Article 35. Further to its previous comments, the Committee notes that section 147 of the Labour Code regulates the evacuation of injured persons who are able to be moved and who are not able to be treated by the facilities made available by the employer. It notes that the Government also refers in its reports to Orders Nos 9033 and 9034 mentioned in paragraph 2 above. *The Committee asks the Government to indicate the measures taken either under the above texts, or otherwise, to ensure that adequate facilities, including trained personnel, are available for the provision of first aid.*

Article 37, paragraph 1. The Committee recalls that, under this provision of the Convention, committees which include employers' and workers' representatives must be formed at every port where there is a significant number of workers. *Recalling the Government's statement that the health and safety committees provided for by the law have not been formed, the Committee asks the Government to indicate the measures taken to ensure the establishment of such committees in ports with a significant number of workers.*

Article 38, paragraph 1. The Government indicates in its report that, in the absence of health and safety committees, instruction and training are entrusted to a specialist in the matter within the enterprise. *The Committee asks the Government to provide information on the activities of these specialists.*

Article 39. The Committee notes that section 61 of Act No. 004/86 of 25 February 1986 establishing the Social Security Code gives effect in part to this Article of the Convention. *It asks the Government to indicate the provisions which ensure that this Article is applied to occupational diseases.*

Article 41, paragraph 1(a). Further to its previous comments, the Committee notes that the Government refers to Order No. 9036 of 10 December 1986 as being the text which lays down general obligations for the persons and bodies concerned with dock work (ports being treated as any industrial enterprise) and that no specific measures have been taken in respect of dock work. **The Committee asks the Government to indicate the measures taken or envisaged to set out the specific obligations taken for the persons and bodies concerned with dock work.**

In the absence of any information on the application of the above provisions, the Committee asks the Government to indicate the specific measures which give effect to the following provisions of the Convention.

- *Article 9, paragraphs 1 and 2.* Safety measures with regard to lighting and marking of dangerous obstacles.
- *Article 10, paragraphs 1 and 2.* Maintenance of surfaces for traffic or stacking of goods and safe manner of stacking goods.
- *Article 11, paragraphs 1 and 2.* Width of passageways and separate passageways for pedestrians.
- *Article 16, paragraphs 1 and 2.* Safe transport to or from a ship or other place by water, safe embarking and disembarking, and safe transport to or from a workplace on land.
- *Article 18, paragraphs 1, 2, 3, 4 and 5.* Regulations concerning hatch covers.
- *Article 19, paragraphs 1 and 2.* Protection around openings and decks, closing of hatchways when not in use.
- *Article 20, paragraphs 1, 2, 3 and 4.* Safety measures when power vehicles operate in the hold; hatch covers secured against displacement; ventilation regulations; safe means of escape from bins or hoppers when dry bulk is being loaded or unloaded.
- *Article 26, paragraphs 1, 2 and 3.* Members' mutual recognition of arrangements for testing and examination.
- *Article 27, paragraphs 1, 2 and 3.* Marking lifting appliances with safe working loads.
- *Article 28.* Rigging plans.
- *Article 29.* Strength and construction of pallets for supporting loads.
- *Article 31, paragraphs 1 and 2.* Operation and layout of freight container terminals and organization of work in such terminals.
- *Article 38, paragraph 2.* Minimum age limit for workers operating lifting appliances.

Hoping that the Government will make every effort to take the necessary measures in the very near future, the Committee invites the Government to solicit technical assistance of the ILO to resolve any problems related to the application of this Convention.

Costa Rica

Dock Work Convention, 1973 (No. 137) (ratification: 1975)

National policy to ensure employment for dockworkers. The Committee notes the Government's report requested for 2009. The Government provides information on the Pacific and the Atlantic ports. With regard to the former, the Costa Rican Pacific Ports Institute (INCOP) confirms that since August 2006, all the workers covered by Convention No. 137 and the Continuity of Employment (Seafarers) Convention, 1976 (No. 145), have been dismissed. The Committee notes that INCOP acts as the guarantor of compliance with workers' rights for enterprises licensed to operate in Puerto Caldera. INCOP refers to the preliminary study for the drafting of regulations to define the rights of seafarers and dockworkers as part of the staff hired by these enterprises. With regard to the Atlantic ports, the Committee understands that the workers of the Committee for Port Administration and Economic Development of the Atlantic Coast (JAPDEVA) have been offered compensation for dismissal. The Committee notes that the Government has no exact figures for the number of dockworkers covered by the Convention.

In these circumstances, the Committee requests the Government to provide in its next report detailed information on the following matters:

- **the measures taken to encourage all concerned (particularly INCOP and the enterprises licensed to operate on the Atlantic coast) to provide permanent or regular employment for dockworkers (Article 2(1), of the Convention). The report should also indicate the minimum periods of employment or minimum income assured to dockworkers, as prescribed in Article 2, paragraph 2;**
- **the manner in which registers are established and maintained for all occupational categories of dockworkers (Article 3(1)); and**
- **the manner in which registered dockworkers are assured priority of engagement for dock work (Article 3(2)–(3)).**

Article 4, paragraph 2, and Article 5. The Committee emphasizes that the next report should describe the measures taken to prevent or minimise the detrimental effects on dockworkers due to a reduction in numbers and should provide particulars on safety, health, welfare and vocational training provisions applying to dockworkers.

Article 5. The Committee stresses that for dealing with the matters covered by this observation and for improving the efficiency of work in ports, it is important to encourage cooperation between the social partners.

France

Dock Work Convention, 1973 (No. 137) (ratification: 1977)

The Committee notes with *regret* that the Government's report has not been received since 2002. *It hopes that a report will be supplied for examination by the Committee at its next session and that it will provide updated information on the effect given to the provisions of the Convention and on changes in the number of professional and monthly dockworkers. Please also include copies of the collective agreements concluded, and particularly agreements relating to the organization and conditions of work and agreements on wages.*

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1985)

The Committee notes the information supplied by the Government concerning the adoption of new regulations designed to improve the application of the Convention, particularly Decree 2006-892 of 19 July 2006 issuing safety and health regulations applicable in cases where workers are exposed to noise-related hazards; the Order of 1 March 2004 concerning the inspection of lifting appliances and gear; the Order of 2 March 2004 concerning maintenance of records for lifting appliances; and the Order of 3 March 2004 concerning the close inspection of tower cranes. The Committee also notes the Government's reply concerning the provisions giving effect to *Article 31(2), of the Convention* with regard to the safety of workers lashing or unlashng containers. The Committee is also aware of the adoption of Act No. 2008-660 of 4 July 2008 concerning dock reforms and the texts for the implementation thereof. It notes the amendments relating to dock development and the organization of dock work and also the implementation of a new mode of governance of major seaports.

With reference to its comments in 2002 and 2007, the Committee notes that the Government's report does not contain any information on the measures taken to ensure the application of certain provisions of the Convention. The Committee is therefore bound to repeat its previous requests to the Government, which read as follows:

Article 20, paragraphs 1, 2, 3 and 4. Safety measures to be taken where power vehicles operate in the hold; securing of hatch covers; ventilation regulations; safe means of escape from bins or hoppers when dry bulk cargo is being loaded or unloaded. With reference to its previous comments, the Committee notes that the Government's report contains no information on the measures taken to ensure the application of this provision of the Convention. *The Committee once again requests the Government to provide detailed information on the measures taken or envisaged with a view to applying the provisions of this Article.*

Article 26, paragraphs 1, 2 and 3. Mutual recognition of arrangements made by Members for testing and examination. The Committee notes the information contained in the Government's report that there is not a principle of general recognition of the international equivalence of testing. However, the Government indicates that a principle of equivalence is implicit under the European Treaty. *The Committee requests the Government to provide information on the measures adopted to ensure the mutual recognition of arrangements made by other Members for the testing, examination, inspection and certification of lifting appliances and items of loose gear forming part of a ship's equipment.*

Article 28. Measures to ensure that rigging plans are carried on board every ship. With reference to its previous comments, the Committee notes that the Government's report contains no information on the measures taken to give effect to this Article of the Convention. *The Committee once again requests the Government to provide detailed information on the measures taken or envisaged with a view to applying the provisions of this Article.*

In view of the possible practical repercussions of the abovementioned reforms on safety and health in dock work, the Committee requests the Government to supply all relevant information concerning the impact of all the new legislative provisions and regulations concerning the application of the Convention, particularly Articles 4, 5, 7 and 31.

Guinea

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1982)

The Committee notes with *regret* that the Government's report has not been received. It must, therefore, repeat its previous direct request which read as follows:

Article 6, paragraph 1, subparagraphs (a) and (b), of the Convention. Measures to ensure the safety of portworkers. The Committee notes that the Government indicates that sections 170 and 172 of the Labour Code, establishing that workers have a general obligation to use health and safety equipment correctly and that those responsible for workplaces have an obligation to organize appropriate practical training with regard to safety and hygiene issues for the benefit of workers, ensure the application of *Article 6, (1)(a) and (b), of the Convention.* *The Committee requests the Government to provide detailed information on the measures taken to ensure that these general provisions are applied to portworkers.*

Article 7. Consultation with employers and workers. The Committee notes the information provided by the Government with regard to sections 288 and 290 of the Labour Code, which provide for the establishment of a consultative committee which is to be responsible, amongst other things, for issuing opinions and formulating proposals and resolutions on labour legislation and regulations and social laws. *The Committee requests the Government to provide information on the application, in practice, of the measures taken to ensure the collaboration between workers and employers provided for in Article 7 of the Convention.*

Article 12. Fighting fire. The Committee notes that sections 71, 72 and 76 of the Merchant Marine Code briefly touch upon the question of fire protection systems and equipment, but only in the context of inspections of vessels engaged in

international voyages. ***The Committee requests the Government to take the measures necessary to ensure that appropriate and sufficient firefighting measures are made available for use wherever dock work is carried out.***

Article 32, paragraph 1. Dangerous cargoes. The Committee notes that section 174 of the Labour Code states, in general, that vendors or distributors of dangerous substances, as well as those responsible for workplaces where such substances are used, are required to mark and label them. ***The Committee requests the Government to indicate the measures taken to ensure the application, in practice, of this provision, which is general in scope, in the dock sector.***

The Committee notes that the information provided by the Government in its report of May 2005 on the application of Articles 16, 18, 19(1), 29, 30, 35 and 37, are general in nature and do not permit the Committee to ascertain whether they are being applied in the dock sector. ***The Committee requests the Government to provide further information on the measures taken to ensure the application of Articles 16, 18, 19(1), 29, 30, 35 and 37, of the Convention and to attach copies of the relevant national laws and regulations.***

The Committee notes that the Government's report does not contain replies to its request for further information contained in the previous direct request regarding the application of Articles 19(2) and 33, of the Convention. ***The Committee requests the Government to provide the information requested, as well as information on the measures taken with regard to the application of these Articles.***

The Committee notes that, in its report, the Government does not provide any clarification with regard to the measures taken to give effect to Article 6(1)(c), and Articles 2, 8, 9, 10, 11, 14, 15, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 31, 32(2-5), and 34 of the Convention. ***The Committee requests the Government to take measures to ensure the application of these Articles and to keep the Committee informed of any action taken in this regard.***

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Japan

Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) (ratification: 1931)

The Committee notes the Government's report submitted in October 2008 including, in annex, observations submitted by the Japanese Trade Union Confederation (JTUC-RENGO) dated 29 August 2008 and the Government's additional comments submitted 2 November 2009, including, in annex, further observations submitted by JTUC-RENGO dated 2 October 2009. The Committee notes that the Government indicates, in both its reports, that there was no new information to report as regards questions I, IV and V of the report form.

Marking of weight and application of the Convention in practice. Article 9 of the Convention. The Committee notes that the Government indicates that, in addition to relevant legislation, "Guidelines for Safe Overland Transportation of International Marine Containers" were developed and adopted in 2005 providing for concrete measures that have to be taken by each party affected in order to increase safety in transportation. The Committee also notes that the JTUC-RENGO observes that these guidelines are not sufficient to prevent accidents during the transit of international marine containers because of their non-binding force and fatal accidents have continued to occur frequently including six accidents in the first five months of 2009 resulting in four fatalities, and that, as measures taken often are not in line with the guidelines, binding legislation is indispensable for preventing overloading, improper loading or mislabelling of cargo items by shippers, requiring shippers to disclose information and enabling parties to share cargo information. The Committee further notes that the JTUC-RENGO also states that since container transportation has become predominant in the area of logistics worldwide, it cannot be said that the Convention is well suited for dealing with cargo handling operations and that efforts to draw up a new Convention should be initiated as soon as possible in this respect, and that, in response to a request by the Japanese dockworkers union, the International Transport Workers Federation (ITF) adopted a resolution in June 2008 calling upon the ILO to set up a forum for the examination of problems related to the safe transportation of container cargo. In its most recent report the Government indicates that according to a survey published in August 2009, safety problems experienced by truck drivers while transporting containers have decreased after the publication of the guideline. The Committee also notes the information provided by the Government that while the number of labour inspection offices seems to remain stable, the number of labour standards inspectors had increased to 3,939. ***The Committee once again refers to its 2007 general observation on the Convention and asks the Government to continue to provide information on any difficulties encountered in the application of the Convention in relation to modern methods of cargo handling, with particular reference to containers, as well as on the measures taken to prevent accidents.***

Netherlands

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1998)

The Committee notes the information provided by the Government in response to its direct request including information on amendments adopted in 2007-08 to the Working Conditions Act (WCA), 1998 (available as amended until 18 March 2008) the Working Conditions Decree (WCD), 1997 (available as amended until 18 March 2008) and the

Working Conditions Rules (WCR), 1997. The Committee notes with *satisfaction* that these amendments include provisions which give effect to *Articles 22(4), 36(1), and 39 of the Convention*.

The Committee also notes that the Netherlands Trade Union Confederation (FNV) submitted observations on 2 November 2007 concerning the application in practice of the Convention, that these observations were transmitted to the Government on 17 December 2007, but that the Government has not provided a response thereto. ***The Committee requests the Government to provide further information on the following points.***

Article 32, paragraphs 3 and 4. Safe handling of dangerous substances. The Committee notes the response provided by the Government with reference to section 4 of the WCD as enforced by the labour inspectorate. The Committee also notes the FNV's comments that workers are frequently exposed to dangerous goods (notably disinfectants and pesticides) during the handling and trans-shipment of containers and that the FNV regrets the lack of information from the Government on the application in practice of these provisions of the Convention. ***The Committee requests the Government to provide further information on the practical application of Article 32(3) and (4), taking into account, inter alia, the comments by the FNV.***

Part V of the report form. Application in practice. The Committee notes more generally that the Government's response to the Committee's request for information on the application in practice is limited to affirmations that the labour inspectorate continues to address the situation regarding dock work, and that, during the period 2001–06, 319 companies active in dock work were visited by the inspectorate. No further details were provided, however, regarding the outcome of these visits. The Committee deems it relevant to note the limited information on the application in practice of the Convention in the light of three different circumstances. (1) The fact that the Government in its response to the Committee's requests for further information on the application of numerous Articles of the Convention, including *Articles 2, 11(1), 15, 16(1), 17(1)(b), 18(1), 20(4), 21(a), 22(2), 24, 29, 38(2) and 41(a)* states that enforcement of national legislation is ensured by the labour inspectorate. (2) The observations by the FNV that information regarding application in practice is readily available. The FNV underlines the persistence of a large number of risks for safety and health in dock work, and that enforcement of the WCA is only partly possible because there are many self-employed workers on ships engaged in inland navigation. As a result, a lot of dangerous and unsafe situations remain invisible and unreported. In terms of available information on the application in practice of the Convention, the FNV refers, inter alia, to the 2005 inspection report concerning Inland Navigation (*Projectrapportage Inspectieproject Binnenvaart 2005*) in which it is noted that 136 offences were recorded on 73 ships out of 210 inspected, and in the period 1997–2003, 12 fatal accidents, in which eight workers drowned, and 100 serious accidents were reported. Major offences consisted of not wearing life jackets during hazardous operations, unsafe workplaces as well as unsafe work equipment. The FNV also refers to the 2005 report on Ports of Trans-shipment A697 (*Projectrapportage Inspectieproject Overslag Havens 2005-A697*) noting that there were, on average, 32 serious accidents per year in the Dutch transit harbours (a higher average than in any other sector in the Netherlands); that great problems were caused by the exposure of workers to carcinogenic diesel particles (for example by the use of forklift trucks), and that there was no surveillance over the use of personal protective equipment. The FNV concluded its observations by calling for better monitoring of risks and a stricter implementation of legislation. (3) The third factor to be taken into account is that in its reply on the question of application in practice of the Convention, the Government reports on a change in its national policy on occupational safety and health. This change implies a shift of the Government's role towards formulating basic rules. These basic rules would be further detailed only when a clear need existed and it would be the responsibility of the social partners to develop in further detail these basic rules within the areas of their respective responsibilities. ***Against this background the Committee requests the Government to provide further detailed information on how the Convention is applied in practice, including as regards the application of Articles 2, 11(1), 15, 16(1), 17(1)(b), 18(1), 20(4), 21(a), 22(2), 24, 29, 38(2) and 41(a) and taking into account the comments by the FNV. The Committee also requests the Government to provide further details on the reported shift in the national OSH policy, whether this new approach has been applied as regards matters relevant for the application of the present Convention and in that case, provide an appreciation of the impact that this shift has had on the application of the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

Peru

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) (ratification: 1988)

Legislation. The Committee notes with *interest* the adoption of Act No. 27866 (Dock Work Act) of 16 November 2002 issuing employment regulations applicable to the handling of loads, unloading of goods and related tasks in dock work; Supreme Decree No. 013-2004-TR, approving the single unified text of the implementing regulations for the Dock Work Act; Directorial Decision No. 011-2006-APN/DIR, as amended on 9 September 2008, approving the general considerations for the use of personal protective equipment in docks and dock installations and the national standard providing for the use of personal protective equipment in docks and dock installations, the preamble of which refers to the present Convention; Directorial Decision No. 010-2007-APN/DIR establishing the national standard for occupational

safety and health in dock work and directives for obtaining a safety certificate for dock installations, which refers to the Occupational Safety and Health Convention, 1981 (No. 155); and Supreme Decree No. 009-2005-TR (Occupational Safety and Health Regulations), and Supreme Decree No. 007-2007-TR, which amends it. The Committee notes that this new legislative framework substantially modifies the application of the Convention. ***The Committee therefore requests the Government to supply a detailed report indicating the legislative, regulatory and other provisions and their relevant sections which give legislative expression to each Article of the Convention. The Committee also requests the Government to supply the practical information requested in the report form.***

[The Government is asked to report in detail in 2010.]

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 27** (Denmark, France, Kyrgyzstan); **Convention No. 32** (Azerbaijan, Bosnia and Herzegovina, China: Hong Kong Special Administrative Region, Kyrgyzstan, Malta, Nigeria); **Convention No. 137** (Guyana, Iraq, Kenya, Nigeria); **Convention No. 152** (Brazil, Denmark, Iraq, Italy, Jamaica, Netherlands, Spain).

The Committee noted the information supplied by the following State in answer to a direct request with regard to: **Convention No. 27** (Bolivarian Republic of Venezuela).

Indigenous and tribal peoples

Argentina

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2000)

The Committee notes a communication from the Association of Health Professionals of Salta (APSADES), of 12 June 2009, forwarded to the Government on 2 October 2009. It also notes a communication from the Confederation of Argentinean Workers (CTA), of 31 August 2009, forwarded to the Government on 18 September 2009. The Committee will examine these communications at its next session together with any observations of the Government in this regard. **The Committee requests the Government to respond to the communication of APSADES and CTA.**

Follow-up to the representation submitted under article 24 of the ILO Constitution (report of the Governing Body (GB.303/19/7) 12 November 2008). The Committee recalls that in November 2008, the Governing Body adopted a report on the representation made under article 24 of the ILO Constitution by the Educational Workers' Union of Río Negro (UNTER), in which the Governing Body examined issues of consultation at national level as well as issues of consultation, participation and performance of traditional activities of indigenous peoples in the province of Río Negro. The Committee notes that, in its report, the Government refers to the Provincial Survey Programme on Indigenous Communities for the Province of Río Negro, which provides for the survey of 124 communities to be executed over the next two years. However, the Committee notes with **regret** that no information is provided in reply to the recommendations formulated in paragraph 100 of the Governing Body's report. **The Committee therefore asks the Government to provide information, in its next report, with respect to the following recommendations formulated by the Governing Body:**

- (a) *continue making efforts to strengthen the CPI and ensure that, when elections of indigenous representatives are held in all the provinces, all the indigenous communities and all institutions considered by the communities themselves to be representative are invited to participate;*
- (b) *carry out consultations with regard to the bills referred to in paragraphs 12 and 64 of this report and to establish mechanisms to ensure that consultations with indigenous peoples take place whenever legislative or administrative measures that may directly affect them are being considered. The consultations should be carried out sufficiently early so as to be effective and meaningful.*
- (c) *ensure that, in implementing Act No. 26.160, all communities and truly representative institutions of the indigenous peoples likely to be directly affected are consulted and able to participate;*
- (d) *ensure that, in accordance with the principle of concurrent powers of national and provincial authorities, effective consultation and participation mechanisms are established involving all the truly representative organizations of the indigenous peoples, as set out in paragraphs 75, 76 and 80 of this report, in particular in the process of implementing national Act No. 26.160;*
- (e) *in implementing Act No. 26.160 to make substantial efforts, in consultation with and with the participation of the indigenous people of Río Negro Province, to clarify: (1) the difficulties in the procedures for regularizing land, with a view to developing a rapid and accessible procedure that meets the requirements of Article 14, paragraph 3, of the Convention; (2) the question of the levy for land use referred to in paragraph 92 above; (3) any problems in obtaining legal personality; and (4) the issue of dispersed communities and their land rights;*
- (f) *make efforts to ensure that measures are adopted in Río Negro Province, including interim measures, with the participation of the indigenous people involved, to ensure that indigenous stockbreeders have easy access to marks and signs certificates and carry on their activities in conditions of equality, and to strengthen that activity in accordance with the terms of Article 23 of the Convention.*

Communication from the UNTER of July 2008. The Committee recalls that in its previous observation it referred to a communication from UNTER, received on 28 July 2008, in which various issues related to the alleged violation of Articles 6, 7, 15(2) and 17(2), of the Convention are raised. The Committee asked the Government to provide information on the points raised in UNTER's communication, so that it could fully examine these matters in 2009. The Committee notes with **regret** that such information was not received. **The Committee urges the Government to provide complete information in its next report on the issues raised in UNTER's communication.**

Follow-up to the seminar/workshop. The Committee notes that, according to the Government, as a result of the seminar/workshop which took place in May 2007, involving representatives of indigenous communities, social partners, the National Institute of Indigenous Affairs (INAI), the Ministry of Labour and the ILO, among others, proposals and an action plan were drawn up for the purpose of applying the Convention relating to the following points: lands, work, health and social security, vocational training, education and communication, and participation and consultation. **The Committee requests the Government to provide information on the follow-up to the proposals and action plan, and the results achieved, particularly with regard to participation and consultation.**

Coordinated and systematic policy

Coordination Council provided for in Act No. 23302. Further to its previous comments, the Committee notes with *interest* that pursuant to INAI Decision No. 042 of 28 February 2008, the Coordination Council provided for in section 5 of Act No. 23302/85 has been created. The Committee notes that pursuant to this Decision, the persons mentioned in the annex are included, on a provisional basis, as the representatives of indigenous communities and shall remain in their posts until replaced by other representatives elected in accordance with the mechanisms established by INAI Decision No. 041/2008. The Committee also notes the establishment of the Advisory Council which has the functions set out in section 15 of Regulatory Decree No. 155/89. ***While it considers that the establishment of the Coordination Council and the Advisory Council constitutes progress, the Committee requests detailed information on the procedures for the election of indigenous representatives, in particular whether such procedures ensure that the indigenous peoples are able to elect their representatives without any interference. The Committee also requests copies of the decisions mentioned.***

Coordination of the various bodies representing indigenous peoples. The Committee notes that the Indigenous Participation Council (CPI) has the functions set out in Act No. 26160, Regulatory Decree No. 1122/07 and Decision No. 587/07 which creates the land survey programme. According to the Government, the CPI has been given considerable recognition by the institutions of the national Government and those of the provincial governments and its minutes are made public to ensure that the communities are aware of the issues dealt with by the CPI. ***The Committee requests the Government to provide information on the distribution of competencies and the coordination mechanisms established between the Coordination Council, the Advisory Council and the CPI.***

Lands. Emergency Act No. 26160 on the ownership and possession of traditionally occupied lands. The Committee notes that a central coordination team has been set up in this regard. The Committee notes the detailed information provided by the Government concerning the national programme entitled “Indigenous Communities Land Survey” (Re.Te.Ci.), created under Decision No. 587 of 27 October 2007. Furthermore, the Government indicates that, at the decentralized level, a technical operation team will be set up in each province, which will work in coordination with the CPI and with a member of the provincial executive branch appointed by the Governor. The Committee notes that a “National Coordination Network for the Survey of Lands of Indigenous Communities” has been established and the following instruments have been created to implement the programme: (a) the “jaguar” system, which is a geographical information system; (b) a social community questionnaire, which is a tool for gathering socio-demographic data; (c) a survey of natural and cultural resources; and (d) an administrative procedures and operations manual. As of September 2008, projects were being developed relating to the regularization of lands in Buenos Aires (involving 40 communities), Chaco (involving 40 communities), Río Negro (involving 87 communities) and Salta (involving 330 communities). The Committee notes that the state of emergency declared with regard to the possession and ownership of traditionally occupied lands will last for four years from 23 November 2006, the date on which Act No. 26160 entered into force, and that the suspension of evictions will therefore be lifted on 23 November 2010. ***The Committee requests the Government to continue providing information on the progress made and difficulties encountered with regard to the regularization of lands traditionally occupied by indigenous peoples, including information on the following:***

- (i) *lands claimed by indigenous peoples, including quantity and percentages by province;*
- (ii) *lands regularized in relation to these percentages; and*
- (iii) *lands to be regularized.*

Please also indicate the measures envisaged to guarantee the rights laid down in Article 14 of the Convention if the regularization process has not been completed within the period mentioned.

Advances in case law. The Committee notes with *interest* the detailed information provided by the Government on new decisions relating to the rights established in the Convention. These decisions appear to be in line with the Convention, in terms of both lands and participation. With regard to lands, the Committee notes, for example, the decision of the Magistrate’s Court of the Fourth District of the Province of Neuquén in the case of *Antiman, Víctor Antonio y Linares, José Cristóbal Linares s/ usurpación*, of 30 October 2007, in which the court recognized the new era with regard to rights over indigenous lands, ruling that it was “an era of recognition, recovery and reassertion of rights enshrined in the Constitution, as a result of which a decision criminalizing the conduct of the Mapuche people on 31 January 2005 would mean going back in time and failing to recognize the current legal and constitutional framework”. With regard to participation and natural resources, the Committee notes that the Supreme Court of Justice, in a decision of 26 March 2009 (S.1144.XLIV, *Salas, Dino y otros c/ Salta, provincial y Estado Nacional*), confirmed the suspension of authorizations for felling and clearing until the completion of an environmental study and stipulated that the study had to be carried out “with the broad participation of the communities living in the affected area”. ***The Committee requests the Government to continue providing information on this matter. Furthermore, referring to a 2004 ruling which it noted in its previous comments, declaring that the Forestry Act of the Province of Chaco was unconstitutional because the indigenous communities had not been consulted, the Committee requests the Government to report on the measures taken as a result of the ruling.***

The Committee is raising other points in a request addressed directly to the Government.

[The Committee is asked to reply in detail to the present comments in 2010.]

Bangladesh

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1972)

The Committee notes the Government's report which covers the period from 1 September 2007 to 30 August 2008. It also notes the Decent Work Country Programme for Bangladesh (2006–09) and the National Strategy for Accelerated Poverty Reduction II (2009–11) (NSAPR) published by the Government in October 2008, which address matters relevant to the application of the Convention. ***The Committee welcomes the commitment of the Government, expressed in the NSAPR, to ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and it encourages the Government to seek technical assistance from the ILO in this regard.***

Implementation of the Chittagong Hill Tracts Peace Accord, 1997. The Committee recalls that it has been examining the situation in Bangladesh for many years, against the background of large-scale migration into the Chittagong Hill Tracts (CHT) by non-indigenous Bengali settlers from other parts of Bangladesh, the consequent displacement of indigenous communities from their traditional land, and an armed insurgency by indigenous militants which was resolved by the Chittagong Hill Tracts Peace Accord, 1997. In reply to the Committee's request to identify those provisions of the Peace Accord which remain to be implemented, the Government provided an overview table indicating the status of implementation of the Peace Accord's various provisions. The Committee notes that, according to the Government, the implementation of the following provisions remains "under process": the transfer of authority to appoint local police officers to the district hill councils (Clause B, section 24); the harmonization of the Chittagong Hill Tracts Regulation, 1900, and related laws with the Local Government Council Act of 1989 (Clause C, section 11); the cancellation of land allocation for rubber and other plantations to non-tribal and non-local persons who did not undertake any projects during the last ten years or had not used the land properly (Clause D, section 8). With regard to the land survey envisaged under Clause D, section 2, the NSAPR states that the land survey has not yet started. Referring to 200 temporary army camps, the Government's report considers the Peace Accord's provisions regarding demilitarization as "implemented". The Government's report makes reference to the implementation of Clause B, section 34, which lists subjects to be added to the functions and responsibilities of the Hill District Councils. ***Considering that the implementation of the outstanding provisions are crucial with a view to building and consolidating peace in the region, the Committee requests the Government to take the measures necessary to achieve the full implementation of the Peace Accord and to provide detailed information on the progress made in this regard. Please also provide information on the implementation of Clause B, section 34.***

Articles 2 and 5 of the Convention. Coordinated and systematic government action – collaboration and participation. The Committee notes that a series of government interventions are set out in the NSAPR to address the situation of indigenous communities of the plains and in the CHT, with the overall objective of ensuring their "social, political and economic rights; ensure their security and fundamental human rights; and preserve their social and cultural identity". The NSAPR aims at achieving access of indigenous communities to education, health care, food and nutrition, employment and protection of rights to land and other resources. The Committee notes that overall responsibility for coordinating governmental activities for indigenous communities in the plains is with the Special Affairs Division, while the Ministry for Chittagong Hill Tracts Affairs continues to take the lead for that region. The Committee also notes the information provided by the Government concerning development projects carried out in the CHT. ***The Committee requests the Government to provide information on the concrete measures taken by the relevant line ministries responsible for the action in favour of indigenous communities in the plains and the CHT envisaged under the NSAPR and on the results achieved in improving their situation. It also requests the Government to report on the progress made in adopting and implementing the National Indigenous People's Policy as mentioned in the NSAPR. Finally, the Committee requests that the Government ensure appropriate collaboration and participation of the indigenous communities and their representatives concerned in the design and implementation of measures affecting them, in keeping with Article 5 of the Convention, and to provide information in this regard.***

Legislation in force. The Committee notes the Government's indication that the Chittagong Hill Tracts Regulation, 1900, is still in force, but that it has been supplemented by a number of subsequent laws, including a number of laws passed after the Peace Accord. The Committee also notes that the 1900 Regulation was amended by the Chittagong Hill Tracts Regulation (Amendment) Act, 2003, which has been put in effect as of 1 August 2008. The Committee notes that these amendments concern the transfer to newly established courts of jurisdiction in civil and criminal matters which formerly vested in civil servants at the district and divisional levels. According to a recent ILO study, the amendments do not affect the existing functions of the traditional chiefs and head men in dispensing justice on tribal customary laws (Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107), and the Laws of Bangladesh: A Comparative Analysis*, 2009, p. 30). ***The Committee requests the Government to provide, on a continuing basis, information on legislative developments relating to the application of the Convention with regard to the indigenous communities of the plains and the CHT.***

Articles 11–14. Land rights. The Committee recalls that the Peace Accord envisages the rehabilitation of indigenous returned refugees and internally displaced indigenous persons and the resolution of land disputes, followed by a land survey to be conducted by the Government in consultation with the Regional Council. As previously noted by the

Committee, the Land Commission Act was enacted in 2001, to provide for the establishment of such a Commission to resolve land disputes in the CHT. While noting that, at the time of reporting, the Land Commission was still not functioning, the Committee understands that a new Chair of the Commission has been appointed recently. According to the Government, a process had been started to amend the Act to bring it in line with the Peace Accord. ***The Committee hopes that the process of amending the Land Commission Act will be concluded without delay, and requests the Government to provide information on the measures taken to this end, and any other measures taken to enable the Land Commission to fulfil its functions.***

The Committee notes from the NSAPR that indigenous communities are subject to extortion by “land grabbers”, and that the formulation of a policy to address issues affecting indigenous communities is envisaged. ***Recalling that under Article 11 of the Convention, the right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognized, the Committee urges the Government to take immediate steps to ensure that the land rights of indigenous people and communities in Bangladesh, including those of the plains, are fully recognized and effectively protected, in collaboration with their leaders. The Committee requests the Government to provide detailed information on the specific measures taken in this regard, including measures to investigate fully reports of illegal seizures of the traditional lands of indigenous communities. In addition, the Committee requests the Government to provide information on the progress made in adopting and implementing the national land policy for indigenous communities envisaged under the NSAPR.***

Rehabilitation of returned refugees and internally displaced persons. The Committee notes the Government’s indication that it has appointed a new chairperson of the Task Force envisaged under the Peace Accord mandated to rehabilitate indigenous refugees repatriated from India and internally displaced indigenous persons. ***While noting that, according to the Government, all refugees from India have been rehabilitated, the Committee requests the Government to provide information on the specific activities undertaken by the Task Force with regard to internally displaced indigenous persons in the CHT who have yet to be rehabilitated. It once again requests the Government to indicate the number of internally displaced indigenous persons yet to be rehabilitated.***

Jum cultivation. The Committee recalls its previous comments regarding statements made by the Government to the effect that it was making efforts to abolish “jum cultivation”, which is the traditional shifting cultivation method of many people in the CHT. The Committee notes that the Government’s report no longer refers to the abolition of jum cultivation and that the NSAPR calls for the preservation of the social and cultural identity of the indigenous communities and recognizes their traditional food production systems. The Government indicates that development projects focusing on alternative livelihood strategies were undertaken with the consent and participation of the population concerned “to reduce dependence on jum cultivation”, as produce and income obtained from it was inadequate on account of “constantly shrinking area of jum lands”. ***The Committee requests the Government to indicate the measures taken to ensure that indigenous communities have the possibility to continue to engage in jum cultivation, including through accelerating measures protecting their land rights, and the measures taken to include shifting cultivation in relevant policies and programmes regarding rural development.***

Bolivia

Indigenous and Tribal Peoples Convention, 1989 (No. 169) ***(ratification: 1991)***

The Committee notes with ***satisfaction*** the legislation issued by Bolivia with regard to consultation on oil and gas exploitation and the consultations already held, and these will be referred to in greater detail below. In more general terms, the Committee welcomes the efforts made by Bolivia to achieve full participation which establishes the right of indigenous peoples to decide their own priorities for the process of development, in accordance with *Article 7 of the Convention*.

Articles 2 and 33. Coordinated and systematic action. The Committee notes the dissolution of the Ministry of Indigenous Affairs and Native Peoples (MAIPO). The Committee notes with ***interest*** that the Government has established the Unit for Indigenous Peoples’ Rights (UDPI) at the Ministry of the President’s office with the aim of promoting and coordinating the mainstreaming of indigenous peoples’ rights within state institutions. The Committee considers that this mainstreaming initiative could provide important channels for achieving greater coordination of state institutions in the handling of issues covered by the Convention and thereby facilitate coordinated and systematic action for its application. ***The Committee asks the Government to supply information on the following: (i) the manner in which the UDPI structures and develops this mainstreaming, including the results achieved and any difficulties encountered; (ii) the manner in which the UDPI gives effect to Articles 2 and 33 of the Convention; and (iii) the manner in which the UDPI guarantees indigenous participation according to the terms established by Articles 2 and 33.***

Consultation, participation and natural resources: hydrocarbons

Legislation. For a number of years the Committee has been asking the Government to develop mechanisms and procedures for consultation and participation provided for by the Convention in relation to the exploration and exploitation of natural resources, particularly hydrocarbons (oil and gas). The Committee welcomes the efforts made by the

Government to implement the consultation and participation rights of indigenous peoples with regard to natural resources. In this regard, the Committee notes the promulgation of Act No. 3058 (Hydrocarbons Act) (sections 114–118), which provides for mandatory consultation; Supreme Decree No. 29033 of 16 February 2007, issuing regulations for consultation and participation regarding oil and gas activities, which develops procedures for consultation and participation; and Supreme Decree No. 29124 of 9 May 2007, which complements the above.

Supreme Decree No. 29033. The Committee notes that, in the preamble to Decree No. 29033, there are multiple references to the Convention and also to the recommendations made by the ILO Governing Body in the report adopted on the representation made by the Bolivian Workers' Federation (COB) in March 1999 (GB.274/16/7). The Committee notes that this Decree defines an extensive scope of application for consultation in both the personal field (indigenous and original peoples, and peasant farming communities), and in the material field (community lands of origin, community properties and lands to which these groups traditionally occupied or had access to). It establishes that the decision-making and representative bodies of the indigenous and original peoples and peasant farming communities at national, departmental, regional and local levels are the representative institutions to be involved in the processes of consultation and participation. It also regulates the financing of procedures (charged to the project). The Committee notes in particular that, under section 11 (planning), a joint agreement – between the competent authority and the representatives of the indigenous and original peoples and peasant farming communities – must be drawn up on the procedure to be followed for consultation, which will give rise to a memorandum of understanding. The consultation process will then be executed by the competent authority in coordination with the representative bodies of the indigenous and original peoples and peasant farming communities. The results of the consultation procedure will be set down in a validation agreement, which will state the position, observations, suggestions, additions and recommendations agreed upon by the indigenous and original peoples and peasant farming communities which might be affected. The consultation process will be deemed null and void if the established procedure is not respected, on account of false information or obtaining consent through pressure, intimidation, bribery, blackmail or violence, etc.

The Committee notes that efforts are being made to extend consultation to the mining and metallurgy sectors and work is being done on a project for indigenous participation in benefits and environmental control. ***The Committee would be grateful if the Government would supply information on the progress achieved in this respect and on any other new legislation adopted relating to participation and consultation.***

Forced labour, consultation and participation. The Committee will provide a more detailed follow-up regarding forced labour in the context of the Forced Labour Convention, 1930 (No. 29), and in these comments it will examine the general measures adopted and indigenous consultation and participation for the elimination of forced labour. In its previous observation the Committee noted that a plan of action had been formulated, with ILO technical assistance, to eliminate forced labour, most victims of which are members of indigenous peoples, and that consultations on the plan were being held with workers' organizations, indigenous organizations and the Ministry of Indigenous Affairs and Original Peoples. The Committee notes numerous measures adopted by the Government to eliminate forced labour. It notes that these include Act No. 3351 of 21 February 2006 and its regulations (Decree No. 28631 of 8 March 2006), which gives the Ministry of Labour competence for the development and coordination of policies to eliminate forced labour. By virtue of these competencies, the Ministry of Labour, by means of Supreme Decree No. 29292 of 3 October 2007, established the Inter-Ministerial Council for the elimination of forced labour comprising the following: the Ministry of Justice; Ministry of Rural Development, Agriculture and the Environment; Ministry of the President's Office; Ministry of Development Planning; Ministry of Production and Micro-enterprise; and chaired by the Ministry of Labour. It indicates that the elimination of forced labour was based on joint action by various ministries and contained a land reorganization component. According to the report, the main difficulty encountered by this objective has been the resistance of landowners to the land reorganization process.

The report states that the following participatory measures were implemented: (i) the Assembly of the Guarani People approved the 2007–08 Inter-Ministerial Plan for Guarani people, the aim of which is to create decent living conditions for the Guarani families registered in the Chaco Boliviano, further to which the Government approved the execution of the Plan by means of Supreme Decree No. 29292; (ii) on 5 November 2008, the Ministry of Labour approved the internal regulations of the 2007–08 Inter-Ministerial Plan approved by the Guarani people and formed an executive board comprising six minister members of the Inter-Ministerial Council for the elimination of bonded labour, forced labour and other similar practices and six representatives of the Assembly of the Guarani People; (iii) other actions of the Ministry of Production and the Ministry of Justice. ***The Committee encourages the Government to continue its efforts to eliminate forced labour involving indigenous persons and to provide information in this respect, particularly as regards indigenous participation in the formulation, application and monitoring of measures adopted to eliminate indigenous forced labour.***

Articles 21–23. Training. The Committee notes with *interest* that pursuant to Supreme Decree No. 29664 of 2 August 2008, three indigenous universities – of a community, inter-cultural and productive nature – were set up under the collective title of the Indigenous University of Bolivia (UNIBOL). One is for the Aymara people, another for the Quechua people and the third for the Guarani people. Areas of study include: highland (*altiplano*) agronomy, food industry, textiles industry, veterinary science, zoology, oil and gas industry, forestry and fisheries. Academic training will be in each people's language, with additional courses for learning Spanish and a foreign language. Thesis projects will be

defended in the native language of each region. Diplomas will be awarded at higher technical, bachelor's degree and master's degree level. The objective of the three universities is to reconstruct indigenous identities and develop scientific knowledge, know-how and technology on the basis of community criteria and the principles of complementarity, cooperative work, individual and collective responsibility, and respect for the environment. ***The Committee would be grateful if the Government would continue to supply information in this respect.***

Constitutional reform. ***The Committee notes with interest that on 7 February 2009 the constitutional reform establishing a pluri-national State was promulgated and requests the Government to supply information on the changes that have occurred in law and in practice pursuant to the reform, in accordance with the provisions of the Convention.***

The Committee is raising other points in a request addressed directly to the Government.

Brazil

Indigenous and Tribal Peoples Convention, 1989 (No. 169) ***(ratification: 2002)***

The Committee notes the communication from the Union of Rural Workers of Alcántara (STTR) and the Union of Family Agriculture Workers of Alcántara (SINTRAF), of 20 October 2009, forwarded to the Government on 6 November 2009. The Committee will examine this communication at its next session together with the observations of the Government in this regard. ***The Committee requests the Government to respond to the communication of the STTR and SINTRAF.***

The Committee recalls that on 27 August 2008 it received a communication from the STTR and SINTRAF on the application of the Convention in the country, which was sent to the Government on 5 September 2008. It also recalls that on 1 September 2008, it received a communication from the Single Confederation of Workers (CUT) sent to the Government on 18 September 2008. This communication also attached comments made by the following indigenous organizations: the Coordinating Committee of the Indigenous Peoples of the North-East, Minas Gerais and Espírito Santo (APOINME), the Indigenous Council of Roraima (CIR), the Coordinating Committee of the Indigenous Organizations of Brazilian Amazonia (COIAB) and the Warã Brazilian Indian Institute. Furthermore, the Committee recalls that it received a communication, dated 19 September 2008, from the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), forwarded to the Government on 4 November 2008.

Quilombola communities of Alcántara. The Committee notes that by means of a communication of 26 December 2008, the Government provided information with regard to the observations formulated by the STTR and SINTRAF. The Committee notes that the information submitted by the Government only refers to one of the issues raised by the STTR and SINTRAF, namely the situation of Quilombola communities in the face of the establishment and expansion of the Alcántara Launch Centre (CLA) and the Alcántara Space Centre (CEA) on territory traditionally occupied by Quilombola communities, without their being consulted and without their participation.

The Committee notes that, according to what emerges from the information submitted by the Government, the Technical Study on Identification and Demarcation was published. Following an administrative conciliation procedure between the governmental institutions concerned (Ministry of Science and Technology, Ministry of Agricultural Development, National Institute for Settlement and Agrarian Reform (INCRA), the Brazilian Spatial Agency and the Alcántara Space Centre), the Study established that 78,105,3466 hectares will be considered as territory of the Quilombola communities of Alcántara. The Committee understands that this entailed the reduction of the territory occupied by Quilombola communities and notes that the indications regarding the extent of such reduction differ. The Committee also notes that, according to article 11 of Decree No. 4887/2003, when the lands occupied by descendants of Quilombola communities overlap with, among others, national security areas, appropriate measures shall be taken to ensure the sustainability of these communities, conciliating, at the same time, States' interests. In this regard, the Committee notes that according to the Advisory Opinion/AGU/MC/N.1/2006 of the Attorney General, in the event of overlapping interests, conflicts shall be settled in the light of the principle of "reasonableness".

The Committee recalls that, as indicated in its previous observation, the communities in question appear to meet the requirements for being covered by the Convention and they identify themselves as tribal peoples within the meaning of *Article 1(1)(a)* of the Convention. Inasmuch as these communities meet the requirements set out in *Article 1* of the Convention, the Articles of the Convention shall be applied when addressing the issue which is the object of the communication. The Committee recalls the special importance for the cultures and spiritual values of the peoples covered by the Convention of their relationship with the lands or territories which they occupy or otherwise use and the obligation of governments to respect that relationship. The Committee considers that the recognition and effective protection of the rights of these peoples to the lands that they traditionally occupy in accordance with *Article 14* of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Likewise, the Committee emphasizes that governments have the obligation, under *Article 6(1)(a)* and (2), of the Convention, to consult the peoples covered by the Convention, through their representative institutions, whenever

consideration is being given to legislative or administrative measures which may affect them directly, with the objective of achieving agreement or consent to the proposed measures. The Committee also draws the Government's attention to the fact that, pursuant to *Article 7(3)* of the Convention, governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The Committee cannot overemphasize that the results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee notes that the information provided by the Government does not contain any reference to the participation of the affected communities in the procedure mentioned above. Neither does it contain references to their consultation. ***In light of the above, the Committee asks the Government to provide detailed information on:***

- (i) ***the way in which the participation and consultation of the Quilombola communities affected were ensured, through their representative institutions, with the objective of achieving agreement or consent about the solution of the case, including information on the participation of these communities in the elaboration of the Technical Study on Identification and Demarcation;***
- (ii) ***the way in which due account was taken of the obligation to ensure the cultural, social and economic integrity of the Quilombola communities affected when reconciling the conflicting interest of the parties involved in the issue at hand;***
- (iii) ***the measures adopted to carry out studies in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of the establishment and expansion of the CLA and the CEA, including with a view to ensuring the viability of the traditional activities of these communities;***
- (iv) ***the progress made in identifying and demarcating the lands traditionally occupied by the Quilombola communities following the adoption of the Technical Study on Identification and Demarcation and the measures adopted to guarantee the rights of ownership and possession of these communities over their traditional lands and to safeguard their right to use lands not exclusively occupied by them but to which they have traditionally had access for their subsistence and traditional activities; and***
- (v) ***the special measures adopted, in accordance with Article 4 of the Convention, to safeguard the persons, institutions, property, labour, cultures and environment of the communities concerned for as long as the recognition and demarcation of their lands is pending.***

Communication from the Workers' Union of the Federal University of Santa Catarina (SINTUFSC), dated 19 September 2009. The Committee asks the Government to reply to the communication from SINTUFSC so as to allow the Committee to examine it in detail at its next session.

Noting the Government does not provide information in respect to the other points raised in its previous observation, the Committee is bound to repeat its previous observation, which read in relevant parts as follows:

Article 1, paragraph 2. Undermining of the application of the criterion of self-identification. The CUT also states that the criterion of self-identification established in *Article 1(2)* of the Convention was incorporated in national law by means of Decree No. 4887/2003, which regulates the procedure for granting titles regarding lands occupied by the remaining Quilombola communities. Nevertheless, the Government is allegedly undermining self-identification by means of subsequent legislation (Decree No. 98/2007), thereby preventing issues regarding land titles from being settled since doing so depends on registration of communities. It is, according to the trade union, more and more difficult to obtain registration and thus secure the application of other rights, in particular with regard to land. The violation of the criterion of self-identification is also visible in the dispute between the Quilombola community of Isla de Marambai and the Navy. The communities identify themselves as indigenous and claim the protection afforded by the Convention. Although occurring less frequently, the indigenous identity of the Indians of the North-East is sometimes not recognized either, and this makes the recognition of their rights to the lands they have traditionally occupied more difficult. In the light of the information received, the Committee considers that the Quilombola communities appear to meet the requirements laid down by *Article 1(1)(a)* of the Convention, according to which the Convention applies to "tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations". *Article 1(2)* states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups for which the provisions of this Convention apply". ***The Committee requests the Government to provide information on the application of the Convention to the Quilombola communities, and should the Government consider that these communities do not constitute tribal peoples within the meaning of the Convention, the Committee requests the Government to state the reasons for its viewpoint.***

Communication from the CUT

Articles 2, 6, 7 and 33. Consultation and participation. The communication indicates that although there has been an increase in social dialogue, the effectiveness of such forums is questioned by the indigenous peoples because of their defining features (places which are difficult to access, convocations issued with little notice or superficial discussions) and the impression exists that the sole purpose of such consultations with the peoples, when they are actually held, is to rubber-stamp public policies. The Committee reminds the Government, as it has done repeatedly, that consultation and participation must not just be formal and devoid of content but must constitute a genuine dialogue, by means of appropriate mechanisms, so that they can result in projects including those in which the peoples covered by the Convention may participate in their own development. ***The Committee requests the Government to examine the existing mechanisms for consultation and participation, in cooperation with the indigenous organizations, so as to ensure that they are in conformity with the Convention, and to supply information in this respect.***

Article 6. Consultation and legislation. The communication indicates that no consultation takes place with regard to the legislative and administrative measures referred to in *Article 6* of the Convention. Examples of this are Decree No. 98/2007 concerning the Palmares Cultural Foundation referred to above, the draft Act concerning mining on indigenous lands

(PL No. 1610/1996) and draft Decree No. 44/2007, which suspends the application of Decree No. 4887/2003 regulating the procedure for granting titles regarding Quilombola lands. **The Committee notes that governments have the obligation to consult the peoples covered by the Convention whenever consideration is given to legislative or administrative measures which may affect them directly, and requests the Government to supply information in this respect.**

Article 14. Lands. The CUT points out that the Constitution guarantees for Indians and Quilombola communities the right to the lands which they occupy but, although there are 343 indigenous territories and 87 Quilombola territories which are registered, land titles have still not been regularized for most of the lands; 283 indigenous lands and 590 Quilombola lands are the subject of administrative proceedings and 224 indigenous lands have not even reached this stage. The number of indigenous persons who have been killed has increased, particularly in Mato Grosso do Sul, as a result of unresolved land disputes. **The Committee requests the Government to supply information on the application of Article 14 of the Convention with regard to the Quilombola communities.**

Articles 6, 7 and 15. Participation, consultation and natural resources. Detailed reference is made to five projects in which the CUT alleges there has been no participation or consultation: (1) the Belo Monte hydroelectric project; (2) diversion of the River San Francisco; (3) draft Act No. 2540/2006, which proposes authorization for a hydroelectric project at the Tamanduá Falls on the River Cotingo in the Raposa Serra do Sol indigenous territory; (4) the Guaraní-K'iwóá indigenous territory, where 12,000 indigenous persons live confined to reserves such as Dourados, living in abject poverty, with projects and policies implemented without any consultation or participation; (5) mining in the Cinta Larga indigenous territory, which will be severely affected by the draft law on mining, regarding which there has been no consultation with the peoples concerned. **The Committee expresses its concern regarding the allegations and reminds the Government that, under the terms of Article 7, it must ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities. The Committee requests the Government to supply detailed information regarding the cases referred to above.**

The Committee hopes that the Government will supply detailed information in this regard. The Committee requests the Government to send its comments on these communications, together with its reply to the present comments. Noting that the Government's report does not provide a reply to the questions posed by the Committee in its 2005 direct request, it requests the Government to also include a reply to the 2005 comments.

[The Government is asked to reply in detail to the present comments in 2010.]

Colombia

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1991)

The Committee takes note of the communication of 27 August 2009 by the Workers' Trade Union Confederation of the Oil Industry (USO), sent to the Government on 2 September 2009. It also notes the communication of 28 August 2009 from the Union of Workers of the National Mining Enterprise "Minercol Ltda." (SINTRAMINERCOL), sent to the Government on 18 September 2009. It further notes the communication of 31 August 2009 by the International Trade Union Confederation (ITUC) sent to the Government on 3 September 2009. The Committee notes that the Government's report was received on 14 August 2009 and that, consequently, it contains no observations responding to the abovementioned communications.

The Committee notes that the recent communications from the USO, SINTRAMINERCOL and ITUC follow up on issues raised by the Committee in its previous comments, such as the situation of the Afro-Colombian communities of Curvaradó and Jiguamiandó, the situation in the Chidima and Pescadito reservations and the situation of the Embera Katío peoples of Alto Sinú. A new dimension that arises is that of the implementation of the Mandé Norte project which is affecting the Afro-Colombian community of Jiguamiandó and the Embera community of the Urada Jiguamiandó reservation and is related to matters brought up by the Committee in earlier comments.

In view of the gravity of the events alleged, the persistence of the issues raised by the Committee and the irremediable consequences that could result, the Committee will have regard to the relevant information contained in the new communications, as it relates to matters that have already been raised by the Committee. Before turning to the specific cases, however, the Committee deems it appropriate to make some general remarks on the situation of indigenous and Afro-Colombian peoples in Colombia, since the problems in applying the Convention indicated in the communications are widespread.

The Committee notes with **serious concern** the persistence of violence in the country. It is particularly worried to note that the indigenous and the Afro-Colombian communities are still the brunt of violence, intimidation, dispossession of lands and the imposition of projects on their territory without consultation or participation, and continue to suffer violations of the rights laid down in the Convention. It notes with **regret** that, according to the communications, the leaders of these communities and the organizations involved in defending the communities' rights are often the victims of violence, threats, harassment and stigmatization because of their work and that, according to the allegations, the offenders often go unpunished.

The Committee takes notes of the statement made by the United Nations Special Rapporteur on the situation of human rights defenders on completion of a mission to Colombia in September 2009 to the effect that indigenous and Afro-Colombian leaders, as well as other categories of human rights defenders, have been killed, tortured, ill treated, disappeared, threatened, arbitrarily arrested and detained, judicially harassed, under surveillance, forcibly displaced or forced into exile (United Nations Press Release, 18 September 2009). The Committee also notes that, according to the

Special Rapporteur on extrajudicial summary of arbitrary executions, such executions affect the indigenous and Afro-Colombian peoples disproportionately (Press Release, 18 June 2009). The Committee notes that similar concerns were expressed by the United Nations Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (see, respectively, concluding observations, CERD/C/COL/CO/14, 28 August 2009, paragraphs 12, 14 and 15, and Preliminary note on the situation of indigenous peoples in Colombia, A/HRC/12/34/Add.9, 23 September 2009) which likewise emphasize that there are serious problems regarding the indigenous and Afro-Colombian communities' rights to land and consultations (respectively, paragraphs 19–20, and 10–11).

The Committee notes that according to Resolutions Nos 004 and 005 of January 2009 by the Constitutional Court of Colombia which concern indigenous and Afro-Colombian peoples who have been, or are in danger of being, forcibly displaced, there is “a general attitude of indifference at the horror the indigenous communities of the country have had to bear in recent years”. It also notes the Court's view that “the response of the state authorities ... has mainly been to issue rules, policies and official documents, which, while valuable, have had little practical effect” (Resolution No. 004).

The Committee notes with **concern** from the Government's report that in the last year there has been a significant increase in the number of killings of indigenous people. It notes the Government's statement that the National Directorate of Public Prosecutions has devised and is implementing a comprehensive action plan aimed at greater efficiency in the investigation of cases in which the victims are members of indigenous communities. It also notes the initiatives taken to comply with the orders set forth in Resolution No. 004 of the Constitutional Court concerning the preparation of a “programme to guarantee the rights of indigenous peoples affected, or in danger of being affected, by displacement” and “ethnic safeguard plans”.

The Committee urges the Government to:

- (i) ***adopt without delay and in a coordinated and systematic manner all necessary measures to protect the physical, social, cultural, economic and political integrity of the indigenous and Afro-Colombian communities and their members and to guarantee full observance of the rights laid down in the Convention;***
- (ii) ***take urgent measures to prevent and punish acts of violence, intimidation and harassment against members of the communities and their leaders and to investigate the alleged offences efficiently and impartially;***
- (iii) ***immediately suspend the implementation of projects affecting indigenous and Afro-Colombian communities until an end has been put to all intimidation of the affected communities and their members and until the participation and consultation of the peoples concerned has been ensured through their representative institutions in a climate of full respect and trust, pursuant to Articles 6, 7 and 15 of the Convention;***
- (iv) ***provide detailed information on the results of the investigations held under the action plan of the National Directorate of Public Prosecutions; and***
- (v) ***provide information on the measures taken to comply with the resolutions of the Constitutional Court.***

Afro-Colombian communities of Curvaradó and Jiguamiandó. In its previous observation the Committee expressed deep and growing concern at the allegations made in the USO's communication of 2007 and at the lack of any response to them by the Government. The USO referred in particular to the presence of paramilitary groups in the community territory, impunity for violations of the fundamental rights of members of the community and the “judicial persecution” against members of these communities and members of supporting organizations who are accused of assisting the guerilla. The Committee urged the Government to take the necessary measures without delay to guarantee the lives and physical and moral integrity of the members of the communities, to put an end to all persecution, threats or intimidation and to ensure that the rights laid down in the Convention are implemented in a climate of security.

The Committee notes with **deep concern** that, according to the USO's communication of 2009, the threats, harassment and attempts on the lives and integrity of members of the community have not stopped. The USO alleges in its communication that although the Colombian Institute for Rural Development (INCODER) issued Resolutions Nos 2424 and 2155 in 2007 clarifying and setting the boundaries of the private property of community territories, recognizing collective entitlement, in a show of bad faith third parties continue to occupy these lands. It further alleges a lack of prompt and timely investigations of those responsible, and the persistence of “judicial persecution” and smear campaigns against members of the communities and their supporting organizations.

The Committee notes that according to the Government's report, in February 2009 the company “Agropalma” voluntarily handed over 254 hectares of territory to the Community Council of the Rio Curvaradó Basin. According to the report, 220 of these were sown with palm trees, 100 per cent of which were diseased (bud rot) upon delivery. The Committee notes that the legal offices of the Ministry of the Interior and Justice and the Ministry of Agriculture and Rural Development are engaged in initiatives for the physical restitution of the territories. ***The Committee refers to its previous comments and also urges the Government to take all necessary steps to ensure effective protection of the rights of the Curvaradó and Jiguamiandó Afro-Colombian communities over their lands, and to prevent any intrusion, in accordance with Articles 14(2) and 18 of the Convention. Please provide information on the measures taken to this end and report on the restitution of lands at the initiative of the abovementioned ministries.***

The Embera Katío and Embera Dóbida peoples. Chidima and Pescadito reservations. In its previous observation, the Committee noted the invasion by outsiders of the lands of the Embera Katío and Embera Dóbida peoples and a series of activities that were implemented without consulting these peoples. The Committee urged the Government to take steps as a matter of urgency to put an end to the intrusion and asked it to join the three plots of the Chidima reservation into one in so far as there had been traditional occupation of the land. It also asked the Government to suspend activities arising from concessions granted for exploration and/or infrastructure projects, pending the consultation and participation of the indigenous peoples, in accordance with *Articles 6, 7 and 15 of the Convention*.

The Committee notes that in its communication of 2009, the USO alleges that the Government has taken no steps to carry out a study of traditional occupation by these communities in the Chidima reservation with a view to joining the three plots, as the Committee requested. It also notes that the settlers are still present. It notes that according to the Government's report, as a result of Constitutional Court decision No. C-175 of 2009, the establishment, reorganization, restructuring and extension of reservations is no longer the responsibility of the Directorate of Indigenous Affairs, Minorities and Roma of the Ministry of the Interior and Justice, but of INCODER.

The USO also states that the abovementioned projects are still ongoing with no consultation of the indigenous peoples. It also asserts that there have been threats to the lives and physical integrity of a number of indigenous leaders and that the army's presence in the territory is growing ever more permanent. Further, on 1 June 2009, the communities filed a constitutional complaint (*acción de tutela*) against the national bodies, seeking a halt to the construction works for the Ungia-Acandí highway, and the infrastructure, hydroelectric and mining exploration and exploitation works, on grounds of breach of their right to prior consultation, participation and collective ownership; but the complaint failed. With regard to the mining concession in the municipality of Acandí, the USO reports that the Environmental Alternatives Diagnosis is being conducted and that according to the Ministry of Environment, Housing and Territorial Development, "prior consultation is not required" as regards this study. The Committee would point out to the Government that according to *Articles 6, 7 and 15 of the Convention*, the peoples concerned must participate and be consulted regarding environmental impact studies. ***The Committee again urges the Government to take steps as a matter of urgency to put an end to all intrusion in the lands of the Embera Katío and Embera Dóbida peoples and to suspend exploration and exploitation activities and implementation of infrastructure projects affecting them, pending full compliance with Articles 6, 7 and 15 of the Convention. It also repeats its requests to the Government to take steps to join the three plots of the Chidima reservation into one in so far as there has been traditional occupation of the land and to guarantee effective protection of the rights of ownership and possession of the peoples concerned, in accordance with Article 14(2) of the Convention.***

Embera Katío people of Alto Sinú. The Committee recalls that the case of the Embera Katío people of Alto Sinú was examined by the Governing Body in connection with the construction, without consultation, of the Urrá I hydroelectric dam in a report adopted in 2001 (document GB.282/14/4). In that report, the Governing Body recommended that the Government maintain dialogue with the Embera Katío people in a climate of cooperation and mutual respect, in order to seek solutions to the situation that this people was going through and that it provide information in particular on measures taken to safeguard the cultural, social, economic and political integrity of this people, prevent acts of intimidation or violence against its members and compensate them for the losses and damage suffered. The Committee notes with *regret* that according to the ITUC's communication of 2009, there has been no compensation for the damage caused to the Embera Katío people by the Urrá I dam, and that, in 2008, a project for the construction of a new dam on their territory was submitted. The ITUC indicates that in June 2009, the Ministry of Environment turned down the application for an environmental licence for the project but that the risk that projects for the exploitation of environmental resources will be imposed remains latent. It further indicates that the people's traditional authorities have reported an ever-growing military presence on their territory since 2007 and that this is involving the community directly or indirectly in armed conflict. It further alleges that the protection machinery set up to safeguard the lives and personal safety of the members of the community has grown gradually weaker and that in the last few years there has been a serious decline in the situation regarding security and guarantees. ***The Committee refers to its earlier comments and requests the Government to guarantee the right of the Embera Katío people to decide their own priorities for the process of development and participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, in accordance with Article 7 of the Convention.***

Mandé Norte project. The Committee notes with *concern* the communication sent by SINTRAMINERCOL in 2009, alleging that the Embera people in the Urada Jiguamiandó reservation are in imminent danger of forced displacement due to the implementation, without consultation, of the Mandé Norte mining project, the militarization of their land, the threat of armed conflict and the invasion and disregard of their holy places by the armed forces.

SINTRAMINERCOL indicates that the Colombian Institute of Agrarian Reform (INCORA) issued Resolution No. 007 of 2003 establishing a reservation for the Embera Dóbida community covering a total area of 19,744 hectares consisting of two plots of unplanted land that form part of the Pacific Forest Reserve. In 2005, a licence was granted for the technical exploration and economic exploitation of a copper, gold and molybdenum mine in an area of approximately 16,000 hectares for a period of 30 years, renewable for a further 30 years. Of these 16,000 hectares, the areas located in the municipality of Carmen del Darién, amounting to 11,000 hectares, are traditional lands and the reserve of the indigenous Embera people of Urada Jiguamiandó. Overall, the project affects more than 11 indigenous communities, two

Afro-Colombian communities and an unspecified number of peasant communities. The organization adds that the indigenous and Afro-Colombian communities were not consulted before the mining contracts were signed. For the exploration phase, consultation was carried out by the Working Group on Prior Consultation of the Ministry of the Interior and Justice and the procedure was challenged by the indigenous and Afro-Colombian authorities on the grounds that the persons with whom the consultation was planned, agreed on and endorsed, were not legitimate representatives of the communities. Furthermore, it was when the activities to implement the project began that military personnel started to move in to the River Jiguamiandó Basin. According to SINTRAMINERCOL, since January 2009, the licence holder has been engaged in a campaign to discredit the communities and their leaders and support organizations and to invalidate their legitimacy. The Committee notes that the USO's communication of 2009 makes the same allegations regarding the Afro-Colombian community of Jiguamiandó, which is likewise affected by the project.

The Committee points out that the principle of representativeness is an essential component of the requirement to consult laid down in *Article 6* of the Convention. As the Governing Body noted in another case, if an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the communities affected, the resulting consultations will not comply with the requirements of the Convention (document GB.282/14/2, paragraph 44). The Government is therefore bound to ascertain that the consultations are held with the institutions that truly represent the peoples concerned before any programme for prospecting or exploiting their lands is undertaken. The Committee further observes that a climate of mutual trust is essential to any consultations if a genuine dialogue between the parties is to be established so that appropriate solutions can be sought to the problems at hand, as the Convention requires. The Committee further considers that the militarization of the area where the project is being carried out and the campaigns to discredit and deny the legitimacy of the communities, their leaders and support organizations are not consistent with the basic requirement that consultations must be genuine. It points out that the obligation to consult should be viewed in the light of the fundamental principle of participation set forth in *Article 7(1) and (3)* of the Convention. ***The Committee urges the Government to:***

- (i) suspend activities related to the implementation of the Mandé Norte project until it has ensured the participation and consultation of the peoples affected through their representative institutions in a climate of full respect and trust, in accordance with Articles 6, 7 and 15 of the Convention;***
- (ii) take the necessary steps to put an end to the climate of intimidation; and***
- (iii) conduct studies, in cooperation with the peoples concerned, to assess the impact of the abovementioned project, in accordance with Articles 7(3) and 15(2), of the Convention, bearing in mind the obligation to protect the social, cultural and economic integrity of the peoples, in accordance with the spirit of the Convention.***

Please provide full information on the measures taken to these ends.

***The Awa people.* Noting the Ombudsperson's Resolution No. 53 of 2008 which refers to threats, harassment, disappearances and killings of members of the Awa people, as well as the recent statement by the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, condemning the killings of members of the Awa people on the morning of 25 August 2009 in the department of Nariño, the Committee requests the Government to provide full information on the situation of the Awa people and the measures taken in response to the Committee's previous comments.**

Consultations. Legislation. The Committee recalls that in two reports it issued on representations in 2001, the Governing Body found Decree No. 1320 of 1998 to be inconsistent with the Convention in terms both of the adoption process, which did not involve consultations, and of its content, and accordingly asked the Government to amend it in order to align it with the Convention, in consultation with and with the active participation of the representatives of the indigenous peoples of Colombia (documents GB.282/14/3 and GB.282/14/4). The Committee also recalls that the Constitutional Court of Colombia, in judgement No. T-652 of 1998, suspended application of the abovementioned Decree in the specific case of the indigenous communities of Embera Katio of Alto Sinú because the Decree was inconsistent with the Constitution of Colombia and the Convention. The Committee further notes that on several occasions the Constitutional Court has been exemplary in identifying problems regarding the holding of prior consultations with the communities concerned, on the latest occasion in judgement C-175/09 of 18 March 2009 on the adoption of Act No. 1152 of 2007 (Rural Development Statute), which the Court found to be unenforceable on grounds of non-compliance with the requirement for prior consultation. The Committee notes from the information supplied by the Government in its report that the Working Party on Prior Consultation of the Ministry of the Interior and Justice, established by Resolution No. 3598 of 2009, has drafted a statute to regulate the consultation process. The Committee notes with ***regret*** that this bill was not the subject of any consultations or process of participation with the indigenous and tribal peoples. It further notes with ***concern*** that, according to the abovementioned communication, the content of the bill has not eliminated the problems of Decree No. 1320 and does not envisage consultation as a process of genuine negotiation between the parties involved.

The Committee urges the Government to ensure that the participation and consultation of indigenous peoples is established in the abovementioned provisions that are to regulate the consultation process and refers the Government to the recommendations made by the Governing Body in the two reports mentioned above regarding the fundamental requirements to be observed as to content. The Committee encourages the Government to seek technical assistance from the Office on this matter and asks it to provide a copy of the abovementioned draft regulations.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2010.]

Costa Rica

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)

Articles 2, 6 and 7 of the Convention. Indigenous legislation and consultation. The Committee notes that, according to the Government's report, Bill No. 12032 for the autonomous development of indigenous peoples has been shelved and replaced by Bill No. 14352 on the same subject which is still before the Legislative Assembly. The Government states that the current Bill seeks the consolidation of self-determination rights entailing the right of indigenous peoples to negotiate with States on equal terms. The Government indicates that Bill No. 14352 was submitted for consultation with the indigenous peoples between 22 July and 9 September 2006 in the 24 indigenous territories and on 11 September 2007 it obtained the majority approval of the Standing Committee on Social Affairs of the Legislative Assembly. The Committee notes that the Government reiterates the political will and support for keeping this initiative alive in the Legislative Assembly. ***The Committee requests the Government to provide information on the manner in which consultations were undertaken, regarding the Autonomous Development of Indigenous Peoples Bill (No. 14352) including information on the representative institutions of the indigenous peoples which were consulted and the other requirements laid down in Article 6 of the Convention in the light of its general observation of 2008, and on the outcome of these consultations.***

Article 14. Lands. The Committee notes sections 5, 6, 11, 12, 13 and 14 of Bill No. 14352 and that these sections govern a summary procedure for the reclaiming of lands. It notes that these sections provide that: (i) within this rapid procedure, if the lands being reclaimed were occupied by a party purchasing indigenous lands in good faith, the State will finance the recovery of such lands (section 12); (ii) as regards the possession of lands by indigenous peoples since time immemorial, the prevailing criterion will be that the burden of proof regarding legitimate possession will fall exclusively on non-indigenous parties claiming possession, who will be entitled to the payments to be made by the State (section 13(d)); and (iii) the corresponding Indigenous Territorial Council may participate and become involved at any time in the procedure, and the requirements regarding identification and written documentation are simplified, these being acceptable even in handwritten form. ***The Committee hopes that Bill No. 14352 will be adopted in the near future and requests the Government to provide information regarding the status of its adoption. In the absence of the adoption of the Bill, the Committee requests the Government to supply detailed information on the manner in which such matters are currently regulated, particularly the issue of lands reclaimed by indigenous persons which are owned or occupied by non-indigenous persons.***

The Committee further notes that, according to data from the National Commission for Indigenous Affairs (CONAI) sent by the Government, the total surface area of indigenous territories in Costa Rica is 334,447 hectares, 38 per cent of which are still in non-indigenous hands. The Committee notes the information to the effect that lands have been bought by the Institute of Agrarian Development with a view to returning them to indigenous peoples. ***Taking account of the fact that indigenous peoples are currently in possession of 62 per cent of their lands, the Committee requests the Government to supply information in its next report on the increase in the percentage of indigenous lands resulting from the new initiatives for reclaiming land, in order to be able to evaluate developments in the recovery of traditionally occupied lands.***

Articles 7 and 16. Development projects, participation, consultation and relocation. With regard to its previous observation and the issues relating to the Boruca hydroelectric project, which might give rise to the relocation of indigenous peoples, the Committee notes that the project has not yet been implemented and that its characteristics and name have changed, now being known as the "El Diquís" hydroelectric project. The Government indicates that the population has been kept informed but at the current stage of the project no formal consultation has yet been undertaken because the project is still in the feasibility study phase. The Government indicates that, according to Executive Decree 32966-MINAE, for projects involving indigenous peoples or any possibilities of dispute, a participatory and interactive process must be launched. The Electricity Institute of Costa Rica (ICE) has so far maintained a relationship of mutual respect with the communities, which in turn have remained open to dialogue and participation. In its previous comments the Committee noted that it was estimated that 3,000 persons of the Teribe and Brunca indigenous peoples would be affected by the flooding of 14.7 per cent of the total surface area of their lands.

The Committee notes that, according to information from CONAI attached to the Government's report, the ICE initially approached the community of the indigenous territory of Térraba with a view to obtaining the community's consent for conducting preliminary studies. The community gave its consent on condition that an agreement was signed between the ICE and the community setting out in detail the terms and conditions under which their permission was given. When no such agreement was forthcoming, the community launched a series of actions, including in the courts, to expel the ICE until such time as an agreement was reached in which the community would benefit from any implementation of the project. CONAI asserts that the Government issued a statement supporting the ICE, declaring that the construction of

the dam was in the national interest. The community challenged this decision in the Supreme Court of Justice on the grounds that it violated their ownership and consultation rights.

Recalling that, with regard to development activities, the consultation and participation provided for in the Convention are closely linked and that Article 7 of the Convention provides that indigenous peoples must participate in the formulation of development plans (paragraph 1) and in studies which assess the social, spiritual, cultural and environmental impact on them of planned development activities (paragraph 3), the Committee requests the Government to ensure as soon as possible that the indigenous peoples concerned enjoy the right of participation provided for in this Article and to keep it informed in this respect. Furthermore, recalling that the results of these studies must be considered as fundamental criteria for the implementation of these activities, the Committee requests the Government to keep it informed of the results of such studies and on the consideration which has been given to them. Should provision be made for relocations, the Government is asked to ensure that this issue is the subject of further consultation pursuant to Article 16 of the Convention and the Committee requests the Government to keep it informed in this regard.

Article 28. Indigenous languages. The Committee notes the Government's statement that Act No. 7878 of 2003 implies that the State has the obligation to guarantee the preservation of indigenous languages. It notes a 2007 decision of the Constitutional Chamber of the Supreme Court of Justice, according to which the protection of the aboriginal languages of Costa Rica not only helps to preserve the right of indigenous peoples to express themselves in their own language but also contributes to maintaining the cultural heritage of the nation. *The Committee requests the Government to keep it informed of any educational measures adopted to preserve these languages, including the provision of bilingual education.*

The Committee is raising other points in a request addressed directly to the Government.

Ecuador

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1998)

The Committee notes the detailed report supplied by the Government of Ecuador and the comments sent by the Ecuadorian Confederation of Free Trade Unions (CEOSL), including an alternative report on the application of the Convention in Ecuador. The alternative report analyses the situation of the indigenous peoples from the ratification of the Convention in 1999 until July 2006 and was drawn up by the "Observatory for the Monitoring of Convention No. 169", with the support and participation of various civil society groups, indigenous organizations, academic institutions, etc. The alternative report refers to problems regarding the criteria used for censuses, a greater incidence of poverty among indigenous peoples compared with non-indigenous peoples, a lack of consultation and participation particularly with regard to natural resources, and the violation of territorial rights. As regards the greater incidence of poverty, the alternative report indicates that, according to the sixth Population and Housing Census, nine out of ten persons self-defined as indigenous and seven out of ten persons self-defined as black are poor, whereas slightly less than five out of ten persons self-defined as white are poor. The Committee notes that the Government did not make any comments on this report but that, according to the Secretariat of Peoples, Social Movements and Civic Participation in official letter No. 0767-DM-SPPC-08, the alternative report could be very useful for drawing up the Government's report on the application of the Convention.

Legislation and changes. The Committee notes the Government's indications in various paragraphs of its report that information is provisional since, at the time the report was drafted, the adoption of the new Constitution was pending. The Committee notes that the Constitution of Ecuador came into force in October 2008 at the time of its publication in the Official Register (RO). The Government states repeatedly that changes will be made in law and in practice on the basis of the new Constitution, and that the new Constitution represents progress with regard to the indigenous peoples. The Committee notes with interest that the new Constitution establishes rights which are laid down by the Convention, including rights regarding lands, consultation, participation, cross-border cooperation, and protection and preservation of the environment. In order to have a fuller idea of the changes arising from the Constitution, the Committee requires more information on the changes made in law and in practice on the basis of the new Constitution. *The Committee therefore requests the Government to supply information on the main changes in law and in practice relating to the Convention, resulting from the adoption of the 2008 Constitution.*

Articles 2 and 33 of the Convention. Coordinated and systematic action. Agencies or other appropriate mechanisms. The Committee notes that, by means of Decree No. 133 of 13 February 2007, published in RO No. 35 of 7 March 2007, the Secretariat of Peoples, Social Movements and Civic Participation was established, which, with the support of the Ministry of Labour, will safeguard and coordinate the rights of indigenous peoples and communities. The Government states that in order to ensure coordinated and systematic action via the abovementioned Secretariat, three institutions were set up: the Council for the Development of Afro-Ecuadorian Peoples (CODAE), the Council for the Development of Indigenous Peoples and Nationalities (CODENPE) and the Council for the Development of the Montubio People of the Ecuadorian Coast and Sub-tropical Zones of the Coastal Region (CODEPMOC). The "Project for the development of indigenous and black peoples of Ecuador (PRODEPINE)", to which the Committee referred in previous

comments, was cancelled and taken over by CODENPE. In addition, CODENPE became an autonomous entity on the basis of the Organic Act concerning the institutions of the indigenous peoples of Ecuador (RO No. 175 of 21 September 2007). ***The Committee requests the Government to institutionalize and reinforce the bodies responsible for indigenous policy and also indigenous participation in those bodies, and to provide information on the measures taken in this regard, as well as information on the following:***

- (i) *the activities of those bodies; and*
- (ii) *the form that indigenous participation in those bodies takes, with reference to Articles 2 and 33 of the Convention.*

Articles 6, 7 and 15. Consultation, oil activities and monitoring of the implementation of the recommendations made in document GB.282/14/2. The Government stated recently that it would be in a position in its next report to provide information on mechanisms for consultation with the indigenous and Afro-Ecuadorian peoples, once the Secretariat referred to above had the relevant data and results and also in relation to the 2008 Constitution. The Committee also notes the Government's statement that as part of the procedures undertaken at the Ministry of Mining and Petroleum for obtaining an oil concession, the indigenous communities who would be affected by such a concession are consulted. The Committee notes that, according to the alternative report sent by the CEOSL, serious problems exist in relation to consultation, participation and oil exploitation, and particular emphasis is placed on the serious problems which the Sarayacu community has been facing since 1996 until the present day. Reference is also made to other situations in which serious shortcomings are alleged with regard to consultation, failure to comply with rulings, problems of representation, violence and other problems, with particular reference to "Block 31" in the province of Orellana and "Blocks 18 and 24" in Ecuadorian Amazonia. With regard to Block 24, the Committee notes that, in 2001, the Governing Body adopted a report concerning a representation made by the CEOSL (see GB.282/14/2). In its previous comments the Committee asked the Government to provide information on the application of the recommendations of the Governing Body contained in paragraph 45 of its report. The Committee notes the Government's statement that it is the new Secretariat of Peoples, Social Movements and Civic Participation which will be responsible for follow-up action on this matter. The Committee expresses its **concern** at the time which has elapsed and at the lack of information concerning action taken to comply with the recommendations of the Governing Body. ***The Committee requests the Government to intensify its efforts to resolve the disputes referred to above by means of consultation and participation and requests it to provide information on the cases referred to, particularly regarding action taken to comply with the recommendations of the Governing Body in the case of Block 24.***

With reference to its general observation of 2008, the Committee requests the Government to supply information on the measures taken with regard to the following:

- (i) *including the requirement of prior consultation in legislation regarding the exploration and exploitation of natural resources;*
- (ii) *engaging in systematic consultation on the legislative and administrative measures referred to in Article 6 of the Convention; and*
- (iii) *establishing effective consultation mechanisms that take into account the vision of governments and indigenous and tribal peoples concerning the procedures to be followed.*

Part VIII of the report form. Noting: (1) the imminent changes to be made on the basis of the new Constitution; (2) the Government's stated intention to make progress as regards consultation and participation; (3) the alternative report sent by the CEOSL; and (4) the fact that the Secretariat of Peoples, Social Movements and Civic Participation considers that the alternative report is extremely useful, the Committee considers that it would be extremely beneficial for the Government to consult the principal indigenous organizations with a view to the preparation of its next report, as this would enable it to conduct an analysis, with the participation of the peoples concerned, of the situation regarding the application of the Convention and the corresponding proposals for improving its application. ***The Committee requests the Government to supply information in this respect.***

The Committee is raising other points in a request addressed directly to the Government.

Guatemala

Indigenous and Tribal Peoples Convention, 1989 (No. 169) ***(ratification: 1996)***

The Committee notes the communication from the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG), of which the following are members: the General Confederation of Workers of Guatemala (CGTG); the Single Trade Union Confederation of Guatemala (CUSG); the National Trade Union and People's Coordinating Body (CNSP); the Committee of Rural Workers of the *Altiplano* (CCDA); the National Indigenous, Rural Workers and People's Council (CNAICP); the National Front for the Defence of Public Services and Natural Resources (FNL); and the Trade Union Confederation of Guatemala (UNSITRAGUA). The communication was dated 28 August 2009, and was forwarded to the Government on 19 October 2009. The Committee will examine the communication in 2010, together with any observations of the Government in this regard. The Committee also recalls that

in its previous observation it did not examine the Government's report of 2008, as it was received late, and will therefore examine it in the present observation, together with the report of 2009.

Sacatepequez and cement company. State of emergency. In its previous observation, the Committee noted the communication from the MSICG, received on 31 August 2008. The communication referred to the award of a permit in the Sacatepequez case and the implementation of a mining project by force, despite the fact that the proposal for exploitation by mining was totally rejected by the community, with 8,936 votes against and four in favour. It added that a state of emergency was declared with a view to imposing the establishment of the cement company without consultation. The Committee notes the information provided by the Government concerning Government Decree No. 3-2008 introducing the state of prevention. However, it notes that no information has been provided on the special measures adopted, as requested by the Committee, to safeguard the persons, institutions, property, labour, cultures and environment of the peoples concerned, in accordance with *Article 4 of the Convention*.

With regard to the application of *Articles 6, 7 and 15* of the Convention in the present case, the Committee notes the indication by the Ministry of Energy and Mining that it is impossible for it to hold consultations in accordance with the Convention due to the absence of specific regulations on this subject. It adds that, in view of the absence of such provisions, the Ministry has to comply with the Mining Act that is currently in force, which establishes a series of requirements that have to be met by the party concerned to obtain a mining permit and, once they have been fulfilled, requires the administration to grant the permit without giving it any option to do otherwise. It further notes that the Ministry urged those interested in obtaining permits to approach the indigenous communities and inform them fully concerning their projects. The Committee notes that, according to the Government's report, a forum for dialogue was established for the Government and the representatives of the communities concerned with a view to assessing the situation.

The Committee wishes to draw the Government's attention to the fact that the right of indigenous peoples to be consulted on each occasion that measures are envisaged which are likely to affect them directly is derived directly from the Convention, irrespective of whether or not consideration has been given to the adoption of specific national legislation. It also wishes to note that the obligation to ensure that indigenous peoples are consulted in accordance with the Convention rests with the Government, and not with private individuals or enterprises. Furthermore, the provisions of the Convention relating to consultations have to be read in conjunction with *Article 7*, which sets out the right of indigenous peoples to decide their own priorities for the process of development and to participate in the formulation, implementation and evaluation of plans and programmes for development which may affect them directly. In this respect, it recalls that in its 2008 general observation on the Convention, the Committee emphasized that "[d]isregard for such consultation and participation has serious repercussions for the implementation and success of specific development programmes and projects, as they are unlikely to reflect the aspirations and needs of indigenous and tribal peoples". It also emphasizes that *Article 7(3)* of Convention provides that governments shall ensure that studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities, and that *Article 15(2)* establishes that consultations have to be held with a view to ascertaining whether and to what degree the interests of indigenous peoples would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands. Furthermore, in accordance with *Article 7(4)*, governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

The Committee therefore urges the Government to:

- (i) *bring existing legislation, such as the Mining Act, into conformity with Articles 6, 7 and 15 of the Convention;*
- (ii) *adopt without delay all the necessary measures to hold constructive dialogue in good faith between all the parties concerned in accordance with the requirements set out in Article 6 of the Convention to seek appropriate solutions to the situation in a climate of mutual trust and respect, taking into account the Government's obligation to safeguard the social, cultural and economic integrity of indigenous peoples in accordance with the spirit of the Convention; and*
- (iii) *immediately suspend the alleged activities while such dialogue is being held and assess, in cooperation with the peoples concerned, the social, spiritual, cultural and environmental impact of the envisaged activities and the extent to which the interests of indigenous peoples would be prejudiced, in accordance with Articles 7 and 15 of the Convention.*

Please provide detailed information on the measures adopted regarding these matters.

Articles 14 and 20. Land and wages. In its previous observation, the Committee noted that the communication referred to above indicated that the rights to lands recognized in the Convention were being violated and mentioned the following cases: Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guaquitim. It added that indigenous peoples are not recognized as the traditional occupants and that, having been employed on their own lands, their wages were not paid and they were violently removed and their ranches burned. With reference to the June 2007 report of the Governing Body (GB.299/6/1), the Committee recalled that, although the regularization of lands takes time, indigenous peoples should not be adversely affected by the duration of this process and it requested the Government to adopt

transitional measures in order to protect the land rights referred to in *Article 14* of the Convention and to provide detailed information on the wages due.

The Committee notes the Government's indication that a National Policy for Integral Rural Development has been formulated which, according to the report, is intended, among other objectives, to "reform and democratize the system for the use, holding and ownership of lands", "promote laws for the recognition of the rights of possession, ownership and allocation of lands to persons belonging to rural indigenous peoples" and "promote decent work in rural areas in general". However, the Committee notes that information is not provided on the cases referred to previously, in which the allegations concern violations of the rights of indigenous peoples to their lands, nor is information provided on the transitional measures requested by the Committee. ***The Committee once again requests the Government to provide information on the transitional measures adopted to protect the land rights of indigenous peoples until progress is made in the regularization of lands. It requests the Government to provide information on the situation with regard to the Finca Termal Xauch, Finca Sataña Saquimo and Finca Secacnab Guaquitim and to indicate the measures adopted to ensure that indigenous peoples enjoy the full benefit of the rights set out in the labour legislation, in accordance with Article 20 of the Convention. It invites the Government to provide a copy of the National Policy for Integral Rural Development and to supply information on its implementation in relation to the peoples covered by the Convention. It also refers to the additional comments on this subject contained in the direct request on the Convention.***

Articles 2 and 33. Coordinated and systematic action with the participation of indigenous peoples. The Committee notes that, according to the Government, multi- and intercultural public policies, formulated by presidential committees with representation of the Maya, Garífuna and Xinca peoples, have been implemented. The Government cites as an example its public policy on living in harmony and eliminating racism and racial discrimination. The Government also refers to a Bill on sacred sites and a preliminary draft of legislation to regularize land occupancy. The Government states that progress is being made, but recognizes that there is still some way to go towards effective implementation, which involves a gradual process of establishing the appropriate bodies and mechanisms. In its previous comments, the Committee noted the creation of the State Inter-Institutional Coordination Unit on Indigenous Issues (CIIE), comprising 29 state institutions involved in indigenous issues, and the establishment in 2005 of the Indigenous Advisory Council (CAI). It also noted that, according to comments by the Council of Mayan Organizations of Guatemala (COMG), sent by the General Confederation of Guatemalan Workers (CGTG), there was still only token participation by indigenous peoples.

The Committee recalls that in the report of June 2007 on the representation made under article 24 of the ILO Constitution by the Federation of Country and City Workers (FTCC) alleging the non-observance of certain provisions of the Convention (GB.299/6/1), the Governing Body called on the Government to develop coordinated and systematic action, within the meaning of *Articles 2 and 33* of the Convention, with the participation of indigenous peoples, when applying its provisions. The Committee also draws the Government's attention to its 2008 general observation, in which it notes that *Articles 2 and 33* provide that governments are under an obligation to develop, with the participation of indigenous and tribal peoples, coordinated and systematic action to protect the rights and to guarantee the integrity of these peoples. In this regard, the Convention calls for the establishment of agencies and other appropriate mechanisms to administer programmes, in cooperation with indigenous peoples, including all stages from the planning to the evaluation of the measures proposed in the Convention. While the Committee understands that ensuring full application of the Convention is a continuing process, it notes that the information provided does not appear to suggest that the Government's action is either coordinated or systematic, nor does it show the existence of agencies or mechanisms that would allow indigenous peoples to participate effectively in the development and implementation of such action. ***The Committee therefore urges the Government, in cooperation with the peoples concerned, to take the measures and establish the mechanisms provided for in Articles 2 and 33, which should allow for coordinated and systematic action to implement the Convention, and to provide detailed information in this respect.***

Legislation on consultation and participation. For several years, the Committee has been following the issue of the establishment of institutional mechanisms for consultation and participation as envisaged by the Convention. The Committee notes that in its most recent report, the Government refers to a draft General Act on the rights of indigenous peoples of Guatemala (registered as No. 40-47), which was tabled in the Plenary of the Congress on 11 August 2009 and is awaiting the opinion of the Committee on Legislation and Constitutional Matters and the Committee on Indigenous Peoples. Reference is also made to the Bill on the consultation of indigenous peoples (registered as No. 36-84), which was tabled in the Plenary of the Congress on 25 July 2007 and is still awaiting the opinion of the Committee on Legislation and Constitutional Matters and the Committee on the Economy and External Trade. The Committee also understands that there is another Bill on consultation, under No. 40-51, which received a favourable opinion in the Committee on Indigenous Peoples on 27 September 2009. It further notes that the Ministry of Energy and Mining refers to a third legislative initiative on the subject, under No. 34-13. The Committee also notes that, in accordance with section 26 of the Act respecting urban and rural development councils (Decree No. 11-2002), "until the Act is issued governing the consultation of indigenous peoples, the consultations with the Maya, Xinca and Garífuna peoples on development measures promoted by the executive authorities and which directly affect these peoples may be held through their representatives in the development councils".

In its previous comments, the Committee noted that, according to the Government, the High-level Committee of the Ministry of Energy and Mines submitted a proposal to amend the Mining Act to the President of the Republic, focusing on “information, participation and consultation of the peoples concerned”. The Committee notes that, according to the Government’s report, this draft has not been transmitted to the Legislative Department, which is consequently unaware of its contents.

The Committee recalls that it has been following these matters since the ratification of the Convention; that the lack of appropriate consultation mechanisms was the subject of a report and recommendations by the Governing Body in response to a representation; that on various occasions it has examined comments by trade unions on serious situations relating to the lack of consultation and the exploitation of natural resources; and that in 2005 it noted the fact that the Office of the Human Rights Ombudsperson had expressed concern about the award by the Government, without prior consultation, of 395 exploration and exploitation permits. The Committee also refers to its 2008 general observation on the application of the Convention, in which it considered it important that governments, with the participation of indigenous and tribal peoples, as a matter of priority, establish appropriate consultation mechanisms with the representative institutions of those peoples. The Committee expresses its **concern** at the lack of measures to this end. In its previous comments, the Committee noted that the Bill on consultation would be finalized shortly and that a High-level Committee was working on amendments for the inclusion of prior consultation in the mining legislation. However, regrettably no progress appears to have been made concerning these initiatives. Moreover, legislative initiatives appear to have multiplied in a seemingly uncoordinated manner. While the Committee understands that measures to ensure consultation and participation take time, it emphasizes that the steps required in the short, medium and long term need to be clearly established so that the results required under the Convention can be achieved. ***The Committee therefore urges the Government to take all the necessary measures to ensure the establishment of appropriate machinery for consultation and participation as provided for in the Convention, taking into consideration its general observation of 2008, and to provide detailed information in this regard. The Committee reminds the Government that it can request technical assistance from the Office and asks it to provide detailed information on the measures envisaged with a view to adopting and implementing legislation on consultation and participation. Please provide information on the effect given in practice to section 26 of the Act on urban and rural development councils.***

Follow-up of a communication from the Trade Union Confederation of Guatemala (UNSITRAGUA) alleging lack of consultation and participation in relation to the granting of a permit to Montana-Glamis Gold. For several years, the Committee has been following up comments from UNSITRAGUA relating to the permit for mining exploration and exploitation granted to Montana-Glamis in the departments of San Marcos and Izábal, which would extend over an area covering lakes Atitlán and Izábal. The Committee reiterated its invitation to the Government to continue making efforts to hold consultations with the peoples concerned, taking into account the procedure laid down in *Article 6* of the Convention, to ascertain whether and to what degree their interests will be prejudiced, as required by *Article 15(2)* of the Convention. The Committee repeatedly invited the Government to examine whether, with the continuation of exploration and exploitation by Montana-Glamis, it would be possible to carry out the studies provided for in *Article 7(3)* of the Convention in cooperation with the peoples concerned before the potentially harmful effects of these activities become irreversible. Furthermore, the Committee invited the Government to redouble its efforts to shed light on the incident in which a villager died in the course of a demonstration against the installation of a cylinder for the mine and has requested it to provide detailed information in this respect.

The Committee notes that the Government reiterates that no permit of any kind has been granted for Lake Izábal and that discharges of any kind into any body of water have been prohibited. The Committee notes with **regret** that the Government has not provided new information in this regard. The Committee recalls that, in its previous comments, it observed that the Government did not deny the alleged lack of consultation, but stated that the enterprise had undertaken an environmental impact study that was approved by the relevant government office. Furthermore, the Committee noted the concerns expressed by the Office of the Human Rights Ombudsperson in its May 2005 report on mining activity. The above Office expressly referred to the project to which the UNSITRAGUA objected and expressed its concern regarding the risks of open-cast mining, and particularly the procedure used in this case, i.e. cyanide leaching. According to the above Office, this type of procedure has had damaging effects on the environment and health in other countries and has been prohibited in other regions of the world, and its potential impact would affect: (1) water sources; (2) air quality, through the release of particles; and (3) the useful and fertile life of the soil, permeated by cyanide solutions. The Committee drew the Government’s attention to the fact that these risks should be subject to prior consultation under *Article 15(2)* of the Convention, as well as the studies provided for in *Article 7(3)* of the Convention. ***Consequently, the Committee, noting that the Government’s report reiterates the information provided previously, expresses its concern regarding the lack of progress in the case under examination and urges the Government to suspend the exploitation in question until the studies provided for in Article 7(3) of the Convention and the prior consultation provided for in Article 15(2) of the Convention can be carried out, and to provide detailed information in this regard. Furthermore, the Committee asks the Government to take the measures necessary to shed light on the incident in which a villager died in the course of a demonstration against the installation of a cylinder for the mine and requests it to provide detailed information in this respect.***

Follow-up of the 2007 recommendations of the Governing Body. The Committee notes with **regret** to note that the Government's report does not contain information on the matters raised in its 2007 observation as a follow-up to the recommendations adopted by the Governing Body in its report of June 2007. The report concerned a representation alleging a lack of prior consultation of the peoples concerned regarding the award of a permit for mining exploration for nickel and other minerals, number LEXR-902 of 13 December 2004, to the Izábal Exploration and Mining Corporation SA (EXMIBAL) to begin exploratory mining in the territory of the indigenous Maya Q'eqchi people (GB.299/6/1). **The Committee urges the Government to provide detailed information in its next report on the action taken to give effect to the 2007 recommendations of the Governing Body (GB.299/6/1).**

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

India

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1958)

Communication dated 27 August 2009 from the International Trade Union Confederation (ITUC). The Committee notes that the ITUC's communication was forwarded to the Government on 3 September 2009 for its comment and that the Government has not yet provided any comments in reply. In their communication, the ITUC draws the Committee's attention to the situation of the Dongria Kondh indigenous community, a group of about 8,000 people living in 90 settlements scattered over and at the base of the Niyamgiri Hills, Lanjigarh, in the State of Orissa. The Dongria Kondh practice shifting cultivation in the hills, and also rely on them as a source of water, wood and traditional plants. The communication also describes the sacred nature of the hills for this indigenous community. According to the ITUC, India's Ministry of Environment and Forests gave environmental clearance on 28 April 2009 for operating a bauxite mine at the top of the Niyamgiri Hills, occupying close to 700 hectares of the traditional lands of the Dongria Kondh. Bauxite from the mine is to be processed at a refinery plant at Lanjigarh, which is at the foot of the hills. The ITUC cites reports attesting to a negative environmental and health impact of the mining project threatening the very basis of the community's existence. The ITUC states that neither the Government of India nor the Government of the State Orissa have ever consulted with the community as regards leasing of the lands or any other aspect of the mining project. While some public hearings regarding the project were held, the ITUC submits that these were inappropriate to ensure that the interests of the Dongria Kondh could be taken into account. The Committee also notes that the Supreme Court of India ordered the establishment of a "Special Purposes Vehicle (SPV)" with the State of Orissa and the companies pursuing the mining project as stakeholders, which is to provide a rehabilitation package involving, inter alia, an obligation by the companies to contribute to the development of the affected tribal areas. However, according to the ITUC, no development plans have been disclosed to the local communities nor has their participation been sought. The ITUC submits that the Government has failed to give effect to *Articles 2, 5, 11, 12, 20 and 27 of the Convention*.

The Committee requests the Government to provide detailed information in reply to all the issues raised by the ITUC. While awaiting a reply from the Government, the Committee, given the seriousness of the situation, nevertheless wishes to express concern over the reported adverse impact on the Dongria Kondh of the bauxite mining and processing activities on the lands which they traditionally occupy and which appear to be central to their very existence. The Committee expresses serious concern at the apparent lack of involvement of the tribal communities affected in matters relating to the project which affects them directly. The Committee urges the Government to take the measures necessary to ensure their rights and interests are fully respected and guaranteed, and to indicate the measures it has taken. In this regard, the Committee also requests the Government to report on the implementation of the rehabilitation and development measures ordered by the Supreme Court, and the measures the Government has taken to ensure the involvement of the communities themselves in the design and implementation of such measures.

Articles 2, 5 and 27 of the Convention. Coordinated and systematic action. The Committee notes from the Government's report that a National Tribal Policy is still under consideration, but not yet finalized. The Government indicates that the policy would aim at strengthening the legal protection and empowerment of the tribal communities, raising levels of human development, and at encouraging and protecting tribal traditions. The policy would also focus on particularly vulnerable tribal groups. The Prime Minister of India, when addressing the Chief Ministers' Conference on the Implementation of the Forest Rights Act, 2006, on 4 November 2009, welcomed the efforts made by the Ministry of Tribal Affairs towards achieving consensus on the National Tribal Policy. The Committee considers that the elaboration and implementation of such a policy would indeed provide an important opportunity to strengthen the Government's action to protect the rights and interests of India's tribal population in accordance with international standards. The Committee takes this opportunity to encourage the Government to draw on and consider ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169), which revises Convention No. 107, which is also encouraged by the Governing Body of the ILO and would be consistent with the recognition of the need for new approaches in dealing with tribal affairs as highlighted by the Prime Minister on 4 November 2009. **The Committee asks the Government to continue to provide information on the progress made in adopting the National Tribal Policy, including information on how the collaboration with and consultation of tribal groups and their representatives in the process of developing the policy is**

sought. Noting that the Government in its report, and through a request made to the ILO in May 2009, expressed interest in sharing experiences with other countries regarding strategies for the improvement of the situation of tribal groups, including through workshops and training programmes to be organized in cooperation with the ILO, the Committee looks forward to receiving information on the holding of such activities and their outcomes.

Articles 11–13. Land rights. Legislative developments. The Committee notes the enactment of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (“Forest Rights Act, 2006”). The Act recognizes individual and collective rights of tribal and other forest dwellers with regard to land they have traditionally occupied or used, as defined in section 3 of the Act. The Gram Sabha (assembly of all men and women in the village above 18 years of age) is the authority mandated to receive rights claims, to consolidate and verify them and to prepare a map delineating the area of each claim that it recommends to be accepted. A subdivisional-level committee set up by the state Government is responsible for examining resolutions passed by the Gram Sabha and for preparing a record of forest rights for final decision by a district-level committee. In addition, a state-level monitoring committee is to be established to oversee the process, which reports to the ministry of the central Government dealing with tribal affairs. The functions and procedures of these various committees are laid down in the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Rules, 2007. The Committee notes that special provision is made to ensure representation of women, scheduled tribes and other tribal groups in the Gram Sabha and the committees at the different levels.

The Committee notes that under the Forest Rights Act no member of a forest-dwelling tribe or other traditional forest dweller shall be evicted until the recognition and verification procedure is complete (section 4(5)). Once the process of recognition and vesting of rights is complete, the Act allows under certain conditions the relocation of forest dwellers from their land to create protected areas for wildlife conservation. Among the specified preconditions for such relocation, there must be no other reasonable options to avoid irreversible damage or threat to the existence of a species in its habitat. Further, a resettlement package providing for a secure livelihood must be prepared, communicated to rights holders, and receive the free and informed consent of the Gram Sabha concerned. *The Committee requests the Government to provide information on the implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, including information on the number of claims processed and title deeds issued, as well as any grievances brought against decisions made under the Act and their outcomes. The Committee also asks the Government to indicate whether any relocation has taken place and, in such cases, provide information indicating that resettlement has complied with Article 12(2) and (3) of the Convention. In addition, the Committee asks the Government to indicate whether any further legislative initiatives are envisaged to ensure that the rights of the tribal population to the land they have traditionally occupied are identified and protected to give effect to Article 11 of the Convention.*

The Sardar Sarovar Dam Project. In its previous observation, the Committee requested the Government to provide information regarding the number of persons displaced by the Sardar Sarovar Dam Project and their resettlement and compensation. In its report, the Government states that a total of 244 villages will be affected by the dam project either by total or partial submergence or otherwise, which are home to 46,606 families comprised of 127,446 persons (based on the 1991 Census). Recalling its comments over many years on this project, the Committee notes that the number of affected persons, a majority of them being belonging to the tribal population, has continued to increase. The Government, in its report, reiterates the requirements for resettlement and rehabilitation that had been established by the Narmada Water Disputes Tribunal in 1979. However, the Government states that the three states involved in the project introduced more favourable conditions since then and provides detailed information regarding the amount of land allocated and other assistance provided. According to the Government’s report, as of 31 July 2008, all 32,434 affected families at this date had been resettled. *The Committee requests the Government to continue to provide updated information on the number of persons belonging to the tribal population displaced from the land they traditionally occupy as a result of the Sardar Sarovar Dam Project and the measures taken to guarantee their resettlement and compensation in conformity with Articles 12(2) and (3) of the Convention.*

Parts III–VI of the Convention. The Committee notes the information provided by the Government on measures taken in the areas of education and training, including vocational training, and employment and social security. It also notes that, according to the comments made by the Centre of Indian Trade Unions (CITU) in their communication dated 25 August 2009, the members of the tribal population are not able to benefit from the job reservations made for them in government employment and state-owned enterprises due to the lack of education and training made available to them. The CITU suggests that the Government provide more detailed statistics on the employment situation of tribal population. *The Committee requests the Government to continue to provide updated information on the various measures taken in the areas of education, training and employment and other areas covered in Parts III–VI of the Convention to the benefit of the tribal population, including statistical information of the participation of men and women belonging to tribal groups in education and employment.*

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

Iraq

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1986)

Articles 1 and 2 of the Convention. The Committee notes the Government's indication that all parts of the population are considered to be of the same Iraqi origin. The Government also states that Iraq pursues comprehensive national policies covering the entire population, taking into account local particularities, in accordance with the Constitution. The Committee notes that article 43 of the Constitution reads as follows: "The State shall seek the advancement of the Iraqi clans and tribes and shall attend to their affairs in a manner that is consistent with religion and the law and upholds its noble human values in a way that contributes to the development of society. The State shall prohibit the tribal traditions that are in contradiction with human rights." **The Committee requests the Government to identify the tribal groups which correspond to the criteria set out in Article 1(a) of the Convention, and to provide information on the measures taken to promote their advancement, in accordance with the Constitution and the provisions of the Convention.**

Mexico

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1990)

The Committee notes the communication from the Trade Union Delegation of *Radio Educación*, section XI of the National Union of Education Workers (SNTE), dated 25 September 2009, which was sent to the Government on 5 October 2009. It also notes the communication from the Independent Union of Daily Workers (SITRAJOR), dated 7 September 2009, which was also sent to the Government on 5 October 2009. Owing to their late arrival, the Committee will examine both communications in 2010, together with the observations of the Government in this respect. With reference to its previous observation, the Committee also recalls that it was unable to examine the Government's report fully owing to its late arrival and will therefore examine it in its direct request, together with the most recent report.

Community of San Andrés de Cohamiata. Follow-up to the Governing Body report of June 1998 (GB.272/7/2). The Committee notes with **regret** that the Government's report does not contain any information in reply to its previous observation in which it examined the case of the Community of San Andrés de Cohamiata on the basis of a communication received from the SNTE, dated 7 November 2007. In this communication, the SNTE alleged that the Government of Mexico had not complied with the recommendations made by the Governing Body in a 1998 report on the representation submitted by the abovementioned trade union years earlier (GB.272/7/2).

The Committee recalls that the subject of the representation was the claim made by the Union of Huichol Indigenous Communities of Jalisco, through union delegation D-III-57 of the SNTE, for the return to the Huichol community of San Andrés de Cohamiata of 22,000 hectares awarded by the Federal Government to agrarian groups in the 1960s. The land claimed included Tierra Blanca, El Saucito, in the State of Nayarit (which includes the villages of El Arrayán, Mojaras, Corpos, Tonalisco, Saucito, Barbechito and Campatehuala) and Bancos de San Hipólito, in the State of Durango.

The Committee also recalls that it re-examined the case of the community of San Andrés de Cohamiata in its direct request of 2001 and its observation of 2006, in connection with the receipt of communications from the SNTE which referred in particular to the situation of the community of Tierra Blanca and the community of Bancos de San Hipólito or Cohamiata.

In its observation of 2008, the Committee noted that the Government, according to the 2007 communication from the SNTE, was still failing to take the necessary action to rectify the situations which had given rise to the representation and that the territorial situation of the community of Bancos had seriously deteriorated since there was a real threat that what the SNTE called the "legalized dispossession" of the lands of this community might become definitive. The SNTE indicated in its communication that the agrarian tribunals had issued a ruling validating the Presidential Decision of 1981 which had been contested by the Huichol community. This Decision awarded the Bancos lands to the agrarian community of San Lucas de Jalpa. The SNTE also indicated that, on 10 August 2007, the community filed a claim for the protection of constitutional rights (*amparo*) against the ruling of the Higher Agrarian Tribunal and this is the final judicial procedure available in national law.

The SNTE alleged that, as things stand at present, the agrarian legislation does not provide for adequate procedures as referred to under *Article 14(3) of the Convention*, to recognize land traditionally occupied by indigenous peoples and that, on the contrary, the courts only recognize the validity of official documents. The union pointed out that, although there was substantial proof that the Huicholes had lived on the lands from time immemorial – as shown by the existence of titles granted by the Spanish Crown, as well as topographical, historical and anthropological studies – this was insufficient because there were no procedures in national law to establish a link between the facts as presented and international standards.

The Committee expressed its concern because the situation which had given rise to the representation remains unchanged. It observed that the key issue at stake in this case is the way in which national law and the Convention regulate land rights and remarked that, under Conventions Nos 107 and 169, "traditional occupation" is in itself a source

of rights. However, it noted that, although the Government maintains that the procedures of the agrarian tribunals give expression to *Article 14*, the SNTE asserted that these procedures failed to take account of the evidence of traditional occupation because they gave precedence to the formal validity of the titles granted to San Lucas de Jalpa over the concept of traditional occupation. The Committee also pointed out that “the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force” (GB.276/16/3, paragraph 36). In the light of the above, the Committee asked the Government to do its utmost to guarantee the application of *Article 14* in settling this case, including by means of negotiation, and to provide information in this respect. It also asked the Government to provide detailed information on the manner in which national law gives expression to *Article 14* of the Convention and especially the concept of traditional occupation as a source of ownership rights.

The Committee understands that since the communication from the SNTE in 2007, various judicial rulings were issued on the case in question, culminating in *amparo* ruling No. 46/2009 of 17 June 2009 from the Administrative Collegial Tribunal and the ruling of 11 August 2009 issued by the Higher Agrarian Tribunal in compliance with the final judgement of the Collegial Tribunal: (i) declaring the partial nullity of the Presidential Decision of 28 July 1981, solely with respect to the disputed area of land of 10,720 hectares, which was issued in the proceedings for the recognition of, and granting of title to, communal property in favour of San Lucas de Jalpa, in order to make the village of Bancos de Calitique (or Cohamiata) a party to the proceedings; (ii) declaring the nullity of the proceedings which gave rise to the negative report from the Agrarian Advisory Board dated 20 June 1985 rejecting the award of land to the village of Bancos de Calitique; and (iii) ordering the Single Agrarian Tribunal of Durango to institute the claim of Bancos de Calitique dated 8 March 1968 as proceedings for the recognition of, and granting of title to, communal property. It also adds that the Single Agrarian Tribunal must also take into consideration in both proceedings that none of the claimant agrarian groups holds titles to land.

While noting these developments, the Committee is bound to express its **concern** at the fact that, although the proceedings for the recognition of, and granting of title to, communal property are being reintroduced, the obstacle remains that, according to the allegations, there is no adequate procedure which enables land claims to be settled in conformity with the Convention. The Committee again reminds the Government that, with regard to the application of the Indigenous and Tribal Populations Convention, 1957 (No. 107), it emphasized the fact that traditional occupation confers the right to land under the terms of the Convention, regardless of whether that right has been recognized or not. Similarly, *Article 14* of Convention No. 169 provides that traditional occupation is in itself a source of rights. This means that if claims to land demonstrating traditional occupation cannot be settled, the land rights of indigenous peoples may be violated.

In particular, this implies that the procedures referred to by *Article 14(3)*, of Convention No. 169 can only be considered “adequate” if they enable indigenous peoples to assert traditional occupation as the source of their land rights and thereby settle their claims. In this respect, the Committee wishes to emphasize once again that “the Convention does currently apply with respect to the consequences of the decisions taken prior to its entry into force” (GB.276/16/3, paragraph 36) and that, in the case in question, tackling the consequences which are still felt at the present time is precisely what is necessary.

However, the Committee recalls that one of the allegations made by the SNTE is basically that judicial rulings under national law took no account of the proof of traditional occupation by the community of Bancos, such as titles granted by the Spanish Crown, and topographical, historical and anthropological studies submitted by the community, and precedence was given to the formal validity of the titles granted to the agrarian community of San Lucas de Jalpa, whereas it was precisely those titles which were contested for having been granted without taking account of the traditional occupation by the community of Bancos.

The Committee also expresses its **deep concern** at the fact that the claims in question have remained before the agrarian tribunals for decades without any solution being reached. In addition to the above the Committee considers that a criterion for determining procedures are “adequate”, in accordance with the terms of *Article 14(3)*, of the Convention, is that they enable land claims to be settled within a reasonable period of time. The Committee also recalls that, according to the terms of *Article 14(2)*, of the Convention, Governments have the obligation to take the necessary steps to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession. In this respect, the Committee also wishes to emphasize that *Article 12* of the Convention states that the peoples concerned must be able to take legal proceedings for the effective protection of their rights or, in other words, legal procedures must exist which enable the effective protection of their rights.

Moreover, the Committee cannot overemphasize the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories which they occupy or otherwise use and the obligation of governments to respect that relationship. The Committee considers that the recognition and effective protection of the rights of indigenous peoples to the lands that they traditionally occupy in accordance with *Article 14* of the Convention is of vital importance for safeguarding the integrity of these peoples and, consequently, for respecting the other rights established in the Convention.

Emphasizing the Government’s obligation to recognize the rights of the peoples concerned to the lands that they traditionally occupy and to which they have traditionally had access in accordance with Article 14 of the Convention, the Committee urges the Government to take all necessary steps without delay to ensure full compliance in practice

with this provision in resolving the case of the community of Bancos and, in particular, to ensure that account is taken of traditional occupation as a source of land rights, including through negotiations. Recalling that the claim submitted by the community of San Andrés de Cohamiata also covers the reincorporation of areas other than Bancos, the Committee also requests the Government to take the necessary steps to ensure that there are adequate procedures in accordance with the terms described above to settle the land claims which are still pending. More generally, the Committee requests the Government to contemplate the possibility, in consultation with the indigenous peoples, of modifying existing procedures relating to land claims in order to solve the problems relating to the full application of Article 14 of the Convention such as those which have arisen in the case of San Andrés de Cohamiata. The Committee also requests the Government to supply detailed information on the measures taken in this respect and also with regard to compliance with the recommendations contained in paragraph 45(a) and paragraph 45(b)(i), (ii) and (iii) of Governing Body report GB.272/7/2.

Articles 2, 3 and 7. Forced sterilization. Follow-up to the Governing Body report of March 2004 (GB.289/17/3). The Committee refers to its observations of 2006 and 2007 containing its follow-up to the Governing Body report of March 2004 (GB.289/17/3) and with regard to point (g) of paragraph 139 of the report (forced sterilization), including on the basis of a communication received from SITRAJOR.

The Committee recalls that the reports of the Commission for the Defence of Human Rights (CODDEHUM-GUERRERO) and the National Human Rights Commission sent by SITRAJOR refer to complaints, investigations, observations and recommendations regarding cases in which members of public health institutions, both state and federal, were alleged to have performed vasectomies on indigenous men and fitted indigenous women with intra-uterine devices as a method of birth control, without their free, informed consent, in the States of Guerrero and Oaxaca. The Committee also noted the report's reference to a specific local study alleging that the health system for indigenous communities is precarious, and referring to the inhumane and discriminatory treatment of indigenous persons in health-care centres, and to the practice of forced contraception of women by tying their fallopian tubes without their consent.

The Committee notes the Government's indication in its report that the health institutions of the Government of Mexico have no record of judicial or administrative complaints concerning alleged violations of the sexual and reproductive rights of the indigenous population. The Government states that, in the context of the "Opportunities" programme of the Mexican Social Security Institute (IMSS), guidance is given on family planning and the result of such activities was that more than 12,000 persons came to the medical centres to take permanent contraceptive measures, their freedom of choice being fully respected. *The Committee requests the Government to supply information on the steps taken to guarantee that the decision to take permanent contraceptive measures is indeed a free choice and to ensure that the persons concerned are fully aware of the permanent nature of the contraceptive measures concerned. The Committee also requests the Government to supply information on the extent to which indigenous peoples participate and are consulted with regard to reproductive health and family planning programmes and policies. The Committee requests the Government to carry out thorough investigations into the allegations of forced sterilization and supply information on the results of the investigations and, if applicable, the penalties imposed and the measures taken to compensate the victims. The Committee also requests the Government to provide information on the steps taken to promote community health services for indigenous peoples with their full participation.*

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

Norway

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1990)

The Committee notes the Government's report due on 1 September 2008 which was, however, only received by the ILO on 15 December 2008, after the Committee's last session. The Committee recalls the communication received from the Norwegian Sami Parliament dated 28 August 2008, and notes the additional communication from the same body dated 29 April 2009. The Committee also notes the Government's reply dated 20 October 2009, to the Sami Parliament's comments of 29 April 2009. The Committee recalls that the Sami Parliament, according to the wishes expressed by the Government upon ratification, plays a direct role in the dialogue associated with supervision of the application of the Convention.

The Committee notes that the Government's report provides an update with regard to the application of various parts of the Convention, while the comments of the Sami Parliament focus on a number of specific aspects. The Committee will highlight certain positive developments and also address some specific questions in relation to which difficulties have arisen.

Follow-up to the Committee's previous comments. In its 2003 observation, the Committee examined information provided by the Government and the Sami Parliament regarding the preparation and submission to the National Parliament (*Storting*) of draft legislation to regulate legal relationships and administration of land and natural resources in the county of Finnmark (draft "Finnmark Act"). On that occasion the Committee urged the Government and the Sami Parliament to

renew discussions on the disposition of land rights in the Finnmark, in the spirit of dialogue and consultation embodied in *Articles 6 and 7 of the Convention*. The Committee notes with **satisfaction** that following the Committee's comments, the Storting's Standing Committee on Justice held formal consultations with the Sami Parliament and the Finnmark County Council to discuss the draft legislation in question and received several rounds of written comments from these bodies. The final draft legislation prepared by the Standing Committee on Justice was unanimously endorsed by the Sami Parliament and a large majority of the Finnmark County Council and adopted by the Storting in June 2005 as the Act relating to the legal relations and management of land and natural resources in the county of Finnmark (the "Finnmark Act").

The Committee notes that with the entry into force of the Finnmark Act, state ownership of some 95 per cent of the land in Finnmark was transferred to a newly created body, the Finnmark Estate, which is managed by a board composed of six members (three members elected by the Finnmark County Council and three by the Sami Parliament). Section 5 of the Act acknowledges that through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark, and clarifies that the Act does not interfere with collective and individual rights acquired by the Sami and other people. In order to establish the scope and content of the rights held by Sami and other people living in Finnmark "on the basis of prescription or immemorial usage or on some other basis", the Act establishes a process for the investigation and recognition of existing rights to land, and, in this regard, provides for the establishment of a commission ("Finnmark Commission") and a special court (the "Uncultivated Land Tribunal for Finnmark"). The Committee notes that the Finnmark Commission was appointed by Royal Decree of 14 March 2008, while the Uncultivated Land Tribunal for Finnmark had not yet been established at the time of reporting.

The Committee notes that under section 29 of the Finnmark Act, the Commission "shall investigate rights of use and ownership to the land" taken over by the Finnmark Estate "on the basis of current national law". In this connection, the Committee also notes that section 3 clarifies that "the Act shall apply within the limits that follow from ILO Convention No. 169" and that it shall be applied "in compliance with the provisions of international law concerning indigenous peoples and minorities". The Committee trusts that the steps necessary will be taken to ensure that the process of identifying and recognizing rights of use and ownership under the Finnmark Act will be consistent with *Article 14(1)*, and also *Article 8* of the Convention which requires due regard to customs and customary law of the indigenous peoples concerned in applying national laws and regulations. ***The Committee requests the Government to provide information on further developments and progress made regarding the survey and recognition of existing rights in Finnmark county, including information on the work of the Finnmark Commission and the Uncultivated Land Tribunal for Finnmark.***

The Committee further notes that the Finnmark Act provides that the Sami Parliament may issue guidelines for assessing the effect of changes in the use of uncultivated land on Sami culture, reindeer husbandry, use of uncultivated areas, commercial activity and social life (section 4). The guidelines are to be approved by the competent Ministry. The Act requires the state, county and municipal authorities to assess the significance of such changes in the use of uncultivated land, taking into account the guidelines of the Sami Parliament. ***The Committee looks forward to receiving information on the implementation of the Finnmark Act as regards the management of the use of uncultivated land in Finnmark county and on how the rights and interests of the Sami have been taken into account in this process.***

Article 6. Consultation. Both the Government's report and the Sami Parliament's comments highlight that following the experience of putting in place the Finnmark Act, the need for an agreed framework for consultations became evident. The Committee notes with **interest** that agreement between the Government and the Sami Parliament on such a framework was reached with the establishment of the "Procedures for consultations between the state authorities and the Sami Parliament of 11 May 2005" (PCSSP). The PCSSP recognize the right of the Sami to be consulted on matters that affect them directly, set out the objective and scope of the consultation procedures in terms of subject matter and geographical area, as well as general principles and modalities regarding consultations. The Committee notes that the PCSSP are a framework agreement, which means that the state authorities and the Sami Parliament can conclude special consultation agreements concerning specific matters, as may be necessary.

With regard to the implementation of the PCSSP, the Committee notes that the Government and the Sami Parliament, in some instances, express differing views on whether or not the agreed consultation procedure has been respected. These differences appear to be related principally to the issue of whether a consultation has been initiated early enough, to uncertainties as to whether a consultation process on a specific matter has actually commenced or concluded and to whether certain announcements made by state authorities during a consultation process amount to a lack of good faith. For instance, the Sami Parliament considers that the Government prematurely announced its position on how to deal with Sami rights in the new Mining Act in March 2008, before consultations had been concluded. ***The Committee welcomes the PCSSP as a significant step towards ensuring that consultations, in accordance with the Convention, take place with regard to all matters affecting the Sami directly, and looks forward to receiving continuing information on its implementation and on any special agreements with regard to specific matters. Welcoming the apparently increasing number of consultation processes, the Committee encourages the Government and the Sami Parliament to consider ways and means to address and settle disagreements regarding the PCSSP's application, particularly with regard to the abovementioned differences, in a timely fashion. Noting that under the PCSSP, the state authorities are to inform the Sami Parliament "as early as possible" about the "commencement of relevant matters which directly affect the Sami", and emphasizing that consultations should be initiated as early as possible to ensure that indigenous***

peoples get a real opportunity to exert influence on the process and the final outcome, the Committee hopes that the Government will take the measures necessary to ensure that these requirements are applied fully and systematically.

Articles 14 and 15. Rights to land in traditional Sami areas south of Finnmark county. The Committee notes that the Sami Rights Committee was reappointed on 1 June 2001 to report on issues relating to the Sami's right to, disposition and use of land and water in traditional Sami areas other than those covered by the Finnmark Act. The Government indicates that the main report of the Sami Rights Committee was presented in December 2006, and was circulated broadly for comments which were to be received by 15 February 2009. The Committee notes that the Sami Parliament expresses concerns that the process of identifying rights takes a long time and that interventions by governmental authorities in areas where rights have not been identified was "a constantly recurring problem". ***The Committee welcomes the ongoing efforts with regard to the land rights of the Sami in their traditional areas south of Finnmark county. The Committee trusts that Articles 14 and 15 will be duly taken into account in this process and that consultation and participation in accordance with Articles 6 and 7 will take place. While acknowledging that the identification of rights under Article 14 is a process which may require considerable time, the Committee also considers that transitional measures should be adopted during the course of the process, where necessary, in order to protect the land rights of the indigenous peoples concerned, while awaiting the outcome of the process.***

The Mining Act. The Committee notes that the Mining Act was amended in 2005, in conjunction with the enactment of the Finnmark Act. The amendments, inter alia, provided that "significant emphasis" shall be placed on the due consideration of Sami interests in Finnmark when applications for licensed prospecting are being considered and that bodies representing Sami interests are to be heard with regard to such applications. The amendments also provide that in case of mines on the land owned by the Finnmark Estate, the King may determine a higher "landowner's fee". The Committee further notes that a new Mining Act was enacted on 19 June 2009, which will enter into force on 1 January 2010. The new Mining Act carries over the provisions concerning Sami interests in Finnmark, but fails to address these issues in other traditional Sami areas. The Sami Parliament describes the consultation process beginning in 2007 regarding a new Mining Act as difficult, and lacking real dialogue and good faith on the part of the Government. The Government states that the consultations had been conducted in accordance with the PCSSP; however, full agreement could not be reached and the consultation had therefore been concluded without full agreement being reached. The Committee notes the Government's statement that the follow-up to the 2006 report of the Sami Rights Committee will establish the basis for legal amendments regarding Sami rights outside Finnmark, including possible amendments to the Mining Act.

The Committee notes that the issue of benefit sharing was one of the issues on which the Government and the Sami Parliament disagreed. The Government considered that a benefit-sharing mechanism, such as the one provided for under the Finnmark Act, where the funds emanating from a higher landowner's fee is received and managed by the Finnmark Estate as the landowner, was "appropriate to fulfil the obligations under *Article 15(2)* of the Convention." The Sami Parliament considered that benefit sharing should not be limited to the landowner; in other words, indigenous peoples who are not owners of the land concerned but have traditionally used it should also participate in the benefits of exploration and exploitation of resources pertaining to the lands.

The Committee observes that *Article 15(2)*, second sentence, reads as follows: "The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities." As stated in the first sentence of *Article 15(2)* this applies in "cases where the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands". The term "lands" in *Article 15(2)* is to be understood as defined in *Article 13(2)* as including "the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use". On this basis, the Committee confirms that the Convention does not limit the participation in benefits and the receipt of compensation under *Article 15(2)* to indigenous peoples who are landowners under the national legislation. The Committee, however, considers that there is no single model for benefit sharing as envisaged under *Article 15(2)* and that appropriate systems have to be established on a case by case basis, taking into account the circumstance of the particular situation of the indigenous peoples concerned.

In the present case, the Committee notes that agreement between the Sami Parliament and the State had been reached on 95 per cent of previously state-held land to be owned by the Finnmark Estate in the management of which Sami representatives participate on an equal footing with other representatives. The Committee also notes that the Finnmark Estate receives the funds emanating from the landowner's fee and is competent to decide on how these funds are to be used. Based on the information before it, the Committee is not in a position to assess how this mechanism has functioned in practice with a view to allowing the Sami to participate in the benefits of mining activities in Finnmark. ***The Committee asks the Government to send information in this regard. In any event, the Committee recommends that the functioning of the mechanisms intended to ensure that the Sami, as the indigenous people concerned, participate in the benefits of mining activities as envisaged in Article 15(2) be reviewed jointly by the State authorities and the bodies representing Sami interests, from time to time. More generally, the Committee considers it of importance that the national mining legislation is amended as soon as possible to ensure the effective application of Articles 14 and 15 in traditional Sami areas south of Finnmark county, and urges the Government and the Sami Parliament to renew discussions on this matter. It calls on the Government to ensure that until such legislation has been enacted, the Sami rights in the areas concerned are safeguarded by other appropriate means.***

Pakistan

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1960)

Article 2 of the Convention. The Committee notes from the Government's report that the development of the Federally Administered Tribal Areas (FATA) is pursued under the FATA Sustainable Development Plan 2006–15 (SDP) which covers a wide range of sectors, including education, health, infrastructure, rural development, agriculture, industry and mining, and skills development. The Committee also notes the list of projects prepared by the FATA secretariat contained in the Government's report. However, the Committee notes with **concern** the Government's indications that the recent conflict in FATA have severely impacted on the implementation of the SDP. In this context, the Committee also notes that the Pakistan Workers' Federation (PWF), in a communication of 21 September 2008, stressed the need for further action by the Government to promote the welfare of the tribal population which continues to be affected by poverty and unemployment. **Recalling that under Article 2 of the Convention, the Government has the primary responsibility for developing coordinated and systematic action for the protection of the tribal population concerned, including action to promote the social, economic and cultural development of the population concerned and to raise their standard of living, the Committee urges the Government, in cooperation with its international partners, to take the necessary steps to address the consequences of the conflict in the tribal areas, including through appropriate recovery and rehabilitation measures, and to ensure the full implementation of the SDP. The Committee requests the Government to provide detailed information on the measures taken and the results achieved in this regard. While noting the Government's indication that the administration of the Provincially Administered Tribal Areas (PATA) of the North–West Frontier Province (NWFP) and of Baluchistan is under the direct responsibility of these two provinces, the Committee reiterates its request for information on the measures taken to apply the Convention to the population concerned in these areas.**

The Committee is raising other points in a request addressed directly to the Government.

Panama

Indigenous and Tribal Populations Convention, 1957 (No. 107) (ratification: 1971)

Chan 75 hydroelectric project. The Committee notes that, according to the observations on the situation of the Charco la Pava community presented to the Human Rights Council by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/12/34/Add.5, 7 September 2009), in January 2008, construction work began on the Chan 75 hydroelectric dam in the district of Changuinola (Bocas del Toro). It noted that this project would entail the flooding of the lands of various communities of the Ngöbe indigenous people, including Charco la Pava, Valle del Rey, Guayabal and Changuinola Arriba, with a population of approximately 1,000 persons, and that another 4,000 indigenous persons would also be affected. It also notes that, according to the Special Rapporteur (ibid.), the start of the construction work was accompanied by protests by members of the communities and these protests were suppressed by the national police. It further notes the allegations in the report concerning the permanent presence of officers of the national police who have been assigned the task of ensuring the further progress of the work.

The Committee understands that the communities affected were not consulted in relation to the decision to implement the hydroelectric project. The Committee also notes that the current situation arose from the failure to recognize the rights of the abovementioned indigenous communities relating to their traditional lands and the consequent consideration of those lands as state land. The Committee further notes the precautionary measures adopted by the Inter-American Commission on Human Rights in June 2009, requesting the State of Panama to suspend the construction work in order to avoid irreparable damage to the ownership rights of the Ngöbe indigenous people.

The Committee notes the information supplied by the Government to the effect that on 10 August 2009 a high-level round table was established to conduct a dialogue on the issues affecting the indigenous communities as a consequence of the construction of the Chan 75 hydroelectric dam. The Committee notes that the round table comprised the Deputy Minister for Governance and Justice, the Minister for External Relations, the Minister for Social Development, the Administrator-General of the National Environment Authority, the Governor of Bocas del Toro province, the mayor of the district of Changuinola, the National Assembly deputy for the area, two representatives of each of the communities affected by the project with their legal adviser, and two representatives of the company responsible for the project (AES) with their legal advisor.

The Committee recalls that under the terms of *Article 11 of the Convention*, governments have the obligation to recognize the right of ownership of indigenous populations over the lands traditionally occupied by them. The Committee also wishes to emphasize that consideration must be given, in defining the rights of these populations, to their customary laws in accordance with *Article 7*. Furthermore, the Committee draws the Government's attention to *Article 5*, which states that, in applying the provisions of the Convention, governments must seek the collaboration of the indigenous populations and their representatives with regard to the formulation and implementation of the relevant measures.

The Committee notes that in his statement of 25 November 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed his “extreme concern about the forced eviction and the destruction of their housing suffered on 20 November 2009 by the Naso communities of San San and San San Druy, in Changuinola, Bocas del Toro province”. According to the statement, “about 150 riot policemen evacuated with tear gas bombs more than 200 indigenous Naso living in the communities of San San and San San Druy. After they were taken out of the area, employees of the Ganadera Bocas company entered the area with machinery and proceeded to demolish indigenous people houses” (UN Press Release, 25 November 2009).

The Committee expresses its *serious concern* in the face of these events and recalls that, according to the principle set out in *Article 12* of the Convention, the groups affected cannot be removed from their territories without their free consent, subject to certain specific exceptions.

The Committee urges the Government to take all necessary steps, in collaboration with the representatives of the indigenous communities affected by the Chan 75 project, to recognize the rights of these communities over the lands traditionally occupied by them. It urges the Government to seek agreed solutions between all the parties concerned to remedy the current situation and provide information on all progress achieved in this respect, including information on any agreements reached by the abovementioned round table for dialogue. The Committee asks the Government to ensure that measures are adopted to protect the institutions, persons, property and labour of the communities affected until a solution of the issue is reached.

Land rights. The Committee notes the draft Act No. 411 of 2008, which establishes a special procedure for awarding collective ownership of lands of indigenous peoples and prescribes other provisions. It notes that this draft Act is before the Committee for Indigenous Affairs of the National Assembly of Deputies. The Committee understands that the draft Act will encompass draft Act No. 17 concerning the rights of the Emberá and Wounaan peoples and will enable examination of the issue of the recognition of the Bri-bri territory and the creation of the *comarca* (indigenous region) of Pueblo Naso. ***The Committee requests the Government to send a copy of draft Act No. 411 of 2008 and indicate to what extent the indigenous peoples were consulted with regard to the preparation of this legislative text. The Committee also requests the Government to supply information on any progress made with regard to the adoption of the draft Act.***

The Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Committee notes the Government’s indication to the effect that it has examined the possibility of ratifying Convention No. 169, although no major progress has been achieved owing to the complexity of the matters covered by the Convention and the discrepancies which exist in relation to national law and practice. The Committee recalls that, in its general observation of 1992 on the Convention, it emphasized the fact that Convention No. 169 is more oriented than Convention No. 107 towards respect for and protection of the cultures, ways of life and traditional institutions of indigenous and tribal peoples. It therefore encouraged governments which had ratified Convention No. 107 to give serious consideration to ratifying Convention No. 169. ***The Committee hopes that the Government will continue to consider ratifying Convention No. 169 and encourages it to seek technical assistance from the Office in order to address any difficulties which might arise in connection with ratification. It requests the Government to provide information on any progress made on this matter.***

Socio-economic situation of indigenous peoples. The Committee notes that according to the fourth National Report on the Situation of Women in Panama (2002–07), in indigenous areas, 98.5 per cent of the population lives in poverty and 89.7 per cent lives in extreme poverty. The Committee notes with *interest* the numerous programmes implemented by the Government in the areas of health, education, vocational training and support for indigenous enterprise development with a view to eliminating extreme poverty and improving the social, economic and cultural situation of the indigenous peoples. ***The Committee requests the Government to supply information on the implementation of these programmes and their impact, also indicating the manner in which the participation of indigenous peoples and their representatives in the formulation and implementation of programmes is ensured.***

The Committee is raising other points in a request addressed directly to the Government.

Paraguay

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 1993)

The Committee recalls that in 2006 the Conference Committee on the Application of Standards urged the Government to take measures to enable it to send full information on the questions raised by the Committee of Experts on a regular basis. In 2008 the Committee noted with regret that the Government’s report had not been received and therefore repeated its previous comments. ***Noting that the Government’s report was received in September 2009, the Committee hopes that the Government will continue its efforts to provide regular reports.***

Article 20 of the Convention. Recruitment and conditions of employment. The Committee refers to its previous comments concerning discrimination relating to wages and treatment based on the indigenous origin of workers, particularly those working on ranches within the country and for Mennonite communities, which in certain cases constitute situations of forced labour. The Committee notes the conclusions of the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues in 2009 that a system of servitude and forced labour exists in

the Chaco region. It notes the Government's indication that the Ministry of Justice and Labour has established, under Resolution No. 230 of 2009, a tripartite committee, the Committee on Fundamental Rights at Work and the Prevention of Forced Labour, which has been entrusted with the task of drawing up an action plan on fundamental rights at work and the prevention of forced labour involving the participation of the Paraguayan Indigenous Institute (INDI). Furthermore, it notes that in September 2008, the Regional Labour Directorate opened an office in the town of Teniente Irala Fernández (Chaco region). It also notes that the eradication of forced labour is one of the priorities of the 2009 Decent Work Country Programme and that the Decent Work Country Programme includes the promotion of the Convention. ***The Committee requests the Government to provide further information on the implementation of the above action plan and its impact on the eradication of forced labour involving indigenous peoples, including information on the extent to which the indigenous peoples concerned were consulted and participated in the development of that plan. Furthermore, the Committee requests the Government to provide information on the results of the inspections carried out by the Office of the Regional Labour Directorate for the Chaco region, the action taken and penalties imposed, and on any other initiatives undertaken by that Office with the aim of eradicating forced labour of, and discrimination against, indigenous peoples, particularly those working on ranches or in Mennonite communities. The Committee also refers to its comments under the Forced Labour Convention, 1930 (No. 29).***

Articles 2, 6, and 33. Coordinated and systematic action and consultation. The Committee notes that, according to the Government's report, the INDI can rely on the collaboration of a series of indigenous organizations and the support of several coordinating bodies, such as the Coordinating Committee for the Self-Determination of Indigenous Peoples (CAPI). In this regard, the Committee notes that in April 2009, the CAPI drew up, with the participation of 15 indigenous organizations, a series of "proposals for public policies on indigenous peoples". It also notes the creation under Decree No. 1945 of the National Programme on Indigenous Peoples (PRONAPI) coordinated by the INDI, under which, according to the report, consultations will be held with indigenous peoples so that they can define their own needs. The Committee understands that based on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative, an indigenous policy could be defined and a legislative reform carried out which includes the creation of a State body on indigenous affairs with the participation of indigenous peoples with regard to both its definition and composition. Noting the various organizations which collaborate with the INDI and its different coordinating bodies, the Committee emphasizes the importance of institutionalizing the participation of the peoples covered by the Convention in devising, implementing and overseeing the public policies which affect them, in accordance with *Articles 2 and 33* of the Convention. ***The Committee requests the Government to provide information on the outcome of the consultations held in the context of the PRONAPI and on the CAPI initiative and on any resulting initiatives relating to legislative reform, including with regard to the institutionalization of indigenous participation. Noting that the Executive Authority's Human Rights Network, created in June 2009, is competent to draw up a schedule of proposed measures, such as laws incorporating the international instruments ratified by the State, the Committee requests the Government to provide information on the initiatives undertaken by the Network in relation to the Convention and on the measures taken to ensure coordination with the INDI and the participation of the peoples concerned.***

Article 14. Rights to land. The Committee notes that, according to the report on the Mission to Paraguay by the United Nations Permanent Forum on Indigenous Issues, 40 per cent of the indigenous communities in Paraguay still have no legal title to their lands. The Committee also notes that in July 2009, the Inter-American Commission on Human Rights filed an application with the Inter-American Court under Case No. 12420 concerning the land rights of the indigenous community Xákmok Kásek of the Enxet-Lengua People whose land claim has been pending since 1990. The Committee notes the information provided by the Government concerning the legislation in force with regard to land claims by indigenous communities and the difficulties encountered in practice due to their geographical dispersion and creation of new communities. The Committee also notes the indigenous land regularization project, which is based on an agreement signed between the INDI and the World Bank; implementation of which began in 2008. ***The Committee requests the Government to take all the necessary measures, including measures of a procedural nature, to make rapid progress, in consultation with the peoples concerned, with regard to the regularization of indigenous lands and requests it to provide information on the following:***

- (i) the progress made in the context of the INDI/World Bank project in that regard;***
- (ii) the initiatives undertaken by the Inter-Institutional Committee responsible for the implementation of the measures necessary to carry out international rulings (CICSI);***
- (iii) the particulars and the percentage of indigenous communities whose lands have still not been regularized.***

The Committee also refers to its previous comments and requests the Government to provide information on the application of Acts Nos 1372/88 and 43/89 establishing a procedure for the regularization of settlements of indigenous communities, in particular with regard to resolving cases in which the land occupied is insufficient given the number of indigenous claims, and on the establishment of adequate procedures within the national legal system, in accordance with Article 14(3).

Article 15. Natural resources. With regard to the exploitation of forestry resources, the Committee notes that under Resolution No. 1324 of 2008, the INDI suspended indefinitely the application of Resolution No. 139/07 on environmental and forestry management in relation to lands assigned to indigenous communities until adequate consultations with indigenous peoples determine whether the Resolution concerned will be amended or repealed. The

Committee notes that Resolution No. 139/07 was adopted with the aim of “curbing the obvious plundering taking place in several communities” and that it was suspended because “in many circles there is a confusion between the authorization to implement management plans and the plundering of forest resources”. ***The Committee requests the Government to provide information on the consultations held for the purpose of amending Resolution No. 139/07 in relation to lands assigned to indigenous communities and their outcome, and on the measures taken to protect the rights of indigenous peoples to the natural resources existing on their lands, including their rights to participate in the use, management and conservation of those resources. The Committee once again requests the Government to provide information on the penalties imposed by the Office of the Environmental Prosecutor at the request of the INDI in cases of ecological offences, and on applications submitted to the INDI by exploration companies seeking information on the existence of indigenous communities in certain areas of the country.***

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2011.]

Peru

Indigenous and Tribal Peoples Convention, 1989 (No. 169) ***(ratification: 1994)***

The Committee takes note of the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the conclusions of the Conference Committee. It also notes the observations of 23 July 2009 by the General Confederation of Workers of Peru (CGTP), which were sent to the Government on 31 August 2009. The CGTP's observations were prepared with input from the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDSEP), the National Coordinating Committee for Communities Affected by Mining (CONACAMI), the National Agrarian Confederation (CNA), the Peasant Farmers' Confederation of Peru (CCP), and non-governmental organizations belonging to the Indigenous Peoples Working Group of the National Coordinating Committee on Human Rights. The Committee further recalls that in its previous observation it did not address the whole of the Government's report because of its late arrival. It will accordingly examine it as appropriate in this observation, together with the latest report.

The Committee notes that the Conference Committee indicated that the Committee has raised concerns in comments it has been making for years about persistent problems in applying the Convention in a number of areas, and went on to express grave concern at the incidents in Bagua and urge all parties to refrain from violence. It observed that the present situation in the country was linked to the adoption of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples, and urged the Government immediately to establish a dialogue with indigenous peoples' representative institutions in a climate of mutual trust and respect. It called on the Government to establish mechanisms for dialogue as required by the Convention in order to ensure systematic and effective consultation and participation. It further urged the Government to remove the ambiguities in the legislation as to the identification of the peoples covered by it, and to take the necessary steps to bring national law and practice into line with the Convention. In this connection, the Conference Committee asked the Government to elaborate a plan of action in consultation with the representative institutions of the indigenous peoples.

The Committee shares the ***grave concerns*** of the Conference Committee about the incidents in Bagua in June 2009 and considers that they are related to the adoption, without consultation or participation, of decrees affecting the rights of peoples covered by the Convention to their lands and natural resources. The Committee notes that both the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the United Nations Committee on the Elimination of Racial Discrimination have likewise expressed such concern at the situation of the indigenous peoples in Peru (see respectively, A/HRC/12/34/Add.8, 18 August 2009, and CERD/C/PER/CO/14-17, 31 August 2009). The Committee recalls that the Conference Committee called on the Government to make further efforts to guarantee indigenous peoples' human rights and fundamental freedoms without discrimination in accordance with its obligations under the Convention. The Committee is of the view that a prompt and impartial inquiry into the events in Bagua is essential to ensuring a climate of mutual trust and respect between the parties, a prerequisite for establishing genuine dialogue in the search for agreed solutions, as the Convention requires. ***The Committee accordingly urges the Government to take the necessary steps to have the incidents of June 2009 in Bagua effectively and impartially investigated, and to provide specific information on the matter.***

Article 1 of the Convention. Peoples covered by the Convention. The Committee notes that in its report the Government states, as it did during the discussion in the Conference Committee, that a draft Framework Act on Indigenous or Original Peoples of Peru has been prepared, which sets out a definition of indigenous or original peoples, with a view to removing ambiguities from the national legislation regarding identification of the peoples covered. The Committee notes that section 3 of the draft contains such a definition, whereas section 2 states that indigenous or original peoples of Peru include “the so-called peasant communities and native communities; as well as indigenous people in a situation of isolation and a situation of initial contact; it likewise applies to those who identify themselves as descendants of the ancestral cultures settled in Peru's coastal, mountain and rainforest areas”. The Committee notes that, although the definition in section 3 of the draft reproduces the objective elements of the Convention's definition, it makes no reference,

unlike section 2, to the fundamental criterion of self-identification. The Committee also notes that the objective elements of the definition in the abovementioned draft include the criterion that these peoples “are in possession of an area of land”, which does not appear in the Convention. The Committee would point out in this connection that *Article 13* of the Convention stresses the special importance for these peoples of the cultures and spiritual values of “their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use”. The Committee also draws the Government’s attention to the fact that *Article 14(1)* of the Convention, and in particular the expression “the lands which they traditionally occupy”, has to be read in conjunction with *Article 14(3)* on land claims, in that the Convention likewise covers situations in which indigenous and tribal peoples have recently lost occupation of their lands or have been recently expelled from them. ***The Committee accordingly urges the Government, in consultation with the indigenous peoples, to align the definition in the draft Framework Law on Indigenous or Original Peoples of Peru with the Convention. Please also supply information on the manner in which effective consultation and participation is ensured with indigenous peoples in the preparation of the abovementioned draft. Furthermore, the Committee again asks the Government to provide information on the measures taken to ensure that all those covered by Article 1 of the Convention are likewise covered by all provisions of the new legislation and enjoy the rights set forth therein on an equal footing.***

Articles 2 and 6. Coordinated and systematic action and consultation. Plan of action. With regard to the Conference Committee’s request for a plan of action to be drawn up in consultation with the representative institutions of indigenous peoples, the Committee notes the Government’s statement that proposed guidelines have been submitted for the development of a plan of action aimed at responding to the main observations put forward by the ILO’s supervisory bodies. Although the report affirms that the plan of action must be formulated in collaboration with the representatives of indigenous peoples, the Committee notes that there is no information on the manner in which participation of the indigenous peoples in this process is to be established, and that a “meeting with the representatives of the indigenous organizations” is envisaged with regard to the implementation phase of the abovementioned plan.

The Committee also notes that several bodies have been set up whose purpose, according to the Government’s report, is to establish dialogue with the indigenous peoples of the Amazonian and Andean areas. The Committee notes that, in March 2009, a Bureau for Ongoing Dialogue between the State and the Indigenous Peoples of the Amazonian Area of Peru was established and that, according to section 2 of Supreme Decree No. 002-2009-MIMBES establishing the Bureau, it “may” (*podrá*) include representatives of indigenous peoples. It also notes the Multisectoral Committee to deal with indigenous problems in the Amazonian area (Supreme Decree No. 031-2009-PCM of 19 May 2009), and observes that the minutes of the opening and first ordinary session of the Committee make no mention of indigenous representatives. It further notes the Bureau for Comprehensive Development of Andean Peoples (RS 133-2009-PCM, of 24 June 2009), the Bureau for Dialogue on the Comprehensive Development of Andean Peoples in Extreme Poverty (RS 135-2009-PCM of 26 June 2009) and the National Coordinating Group for the Development of Amazonian Peoples, which is responsible for formulating a comprehensive sustainable development plan for these peoples (Supreme Resolution No. 117-2009-PCM of 26 June 2009). With regard to the latter body, the Committee notes that it set up four working group to work on the composition of the Commission of Inquiry into the Bagua incidents, the revision of the legislative decrees, mechanisms for consultation and a national development plan for the Amazon region. The Committee likewise notes the concern expressed by the People’s Ombudsperson about the status of the dialogue process established within the abovementioned Group.

The Committee has insufficient information to assess the level of participation ensured for indigenous peoples in the various bodies mentioned above. It nonetheless considers that the information supplied appears to indicate that, at least in some cases, the participation of indigenous peoples through their legitimate representatives and dialogue between the parties is not effective. The Committee also expresses **concern** that the proliferation of bodies with mandates that sometimes overlap may hamper the development of a coordinated and systematic response to the problems of protecting and ensuring the rights of indigenous peoples established in the Convention. ***The Committee urges the Government to ensure full and effective participation and consultation of the indigenous peoples through their representative institutions in the preparation of the abovementioned plan of action, in accordance with Articles 2 and 6 of the Convention, so as to address in a coordinated and systematic manner outstanding problems concerning the protection of the rights of the peoples covered by the Convention, and to align law and practice with the Convention. It also asks the Government to provide information on this matter and on the work of the various bodies mentioned above, indicating how the participation of the peoples concerned and the coordination of the activities of these bodies are ensured, as well as coordination between the work of these bodies and the preparation of the plan of action. Please provide a copy of the plan of action as soon as it is finalized.***

Articles 2 and 33. INDEPA. The Committee refers to its previous observation, in which it noted the CGTP’s assertion that the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) lacked real authority. The Committee notes from the CGTP’s 2009 communication that although the administrative autonomy of INDEPA has been restored, indigenous participation in its Governing Council has not been re-established and no concerted policies have been developed on any issues affecting the indigenous peoples. The CGTP further asserts that there is no forum for cooperation on such policies. The Committee notes the Government’s statement that Ministerial Resolution No. 277-2009-MIMDES establishes a sectoral committee responsible for drafting new “regulations on the organization

and functions of INDEPA". The Committee notes that the sectoral committee is composed of the Vice-Minister for Social Development of the Ministry for Women and Social Development (MIMDES), the Executive President of INDEPA and the Director-General of the General Office of Planning and Budget of MIMDES, and that it has the authority to invite specialists and representatives from various institutions in the public and the private sectors. The Committee notes that the abovementioned Resolution contains no express reference to the participation of indigenous peoples. It further notes that the reform of INDEPA is likewise envisaged in the guiding framework for development of the abovementioned plan of action. The Committee reminds the Government that indigenous peoples must participate in designing mechanisms for dialogue and recalls the concerns raised previously about coordination between the various bodies and activities. ***The Committee urges the Government to ensure effective participation by the representative institutions of indigenous peoples in the design and implementation of mechanisms for dialogue and the other mechanisms needed for the coordinated and systematic administration of programmes affecting indigenous peoples, including the reform of INDEPA. It also asks the Government to ensure that such mechanisms have the necessary resources to perform their functions properly and have independence and real influence in the decision-making process. Please provide information on the measures taken in this regard.***

Articles 6 and 17. Consultation and legislation. In its previous observation, noting that Legislative Decrees Nos 1015 and 1073 were adopted without consultation, the Committee expressed concern that communications are still being received alleging a lack of prior consultation on the measures provided for in *Articles 6 and 17(2)* of the Convention, and urged the Government to take steps without further delay, with the participation of the indigenous peoples, to devise appropriate mechanisms for participation and consultation. The Committee notes that in its communication of 2009 the CGTP states that no mechanisms have been established for prior consultation, so the indigenous peoples are unable to have a say in specific decisions that affect them. The Committee notes that Legislative Decrees Nos 1015 and 1073 setting conditions for disposing of communal land were repealed by Act No. 29261 of September 2008, and that Legislative Decrees Nos 1090 and 1064 approving, respectively, the Forests and Wild Fauna Act and the Legal Regime for the Exploitation of Lands for Agrarian Use were repealed by Act No. 29382 of June 2009. The Committee notes that, according to the Government, the working groups set up within the National Coordinating Group for the Development of Amazonian Peoples have responsibility for revising the legislative decrees and dealing with the issue of prior consultation. The Committee understands, however, that the issue of consultation is likewise addressed in the draft Framework Act on Indigenous or Original Peoples of Peru. It also takes note of a Bill on consultation, No. 3370/2008-DP of 6 July 2009, submitted to Congress by the People's Ombudsperson. ***The Committee stresses the need for indigenous and tribal peoples to participate and be consulted before the adoption of legislative or administrative measures likely to affect them directly, including in the drafting of provisions on consultation processes, as well as the need for provisions on consultation to reflect among other things the elements set forth in Articles 6, 7, 15 and 17(2), of the Convention. The Committee also refers the Government to its previous comments on the need for a coordinated and systematic approach. It urges the Government to establish, with the participation of the peoples concerned, the mechanisms for participation and consultation required by the Convention. It also asks it to send information on the manner in which it ensures that the peoples concerned participate in and are consulted about the formulation of provisions governing consultation. It requests the Government to provide information on any progress made in this regard. The Committee reminds the Government that the Conference Committee welcomed the Government's request for technical assistance and encourages it to pursue this course.***

Articles 2, 6, 7, 15 and 33. In its previous observation, the Committee noted that the communications received referred to many serious situations of conflict connected with a dramatic increase in the exploitation of natural resources on lands traditionally occupied by indigenous peoples, without participation or consultation. The Committee notes that, in its communication of 2009, the CGTP refers to a statement by the People's Ombudsperson to the effect that there has been an increase in social and environmental conflicts in the country and that they are concentrated in indigenous areas and are related to access and control of natural resources. The CGTP asserts that the Peruvian State persists with a "top-down" approach, imposing its projects in the Amazonian and Andean areas. It asserts that development policies lack sufficient guarantees to protect the environment for the indigenous peoples and that the Ministry of Environment lacks the authority to intervene in energy and mining policies. It refers to a ruling by the Constitutional Court (file No. 03343-2007-PA-TC), in proceedings brought by the regional government of San Martín against various petroleum enterprises and the Ministry of Energy and Mines regarding hydrocarbon projects being carried out in a regional conservation area. In its ruling, taking account of the provisions of the Convention, the Court reaffirmed the right of indigenous peoples to be consulted before the start-up of any project that might affect them, and also referred to article 2(19) of the Constitution which requires the State to protect ethnic and cultural plurality in the Nation (paragraph 28). The CGTP furthermore refers to a number of "emblematic instances" of exploration and exploitation of natural resources affecting indigenous peoples, such as the Cacataibo people, who live in voluntary isolation, the Awajun and Wampí peoples and the communities of Chumbivilcas province.

The Committee notes the Government's statement that the Peruvian State construes consultation as "processes whereby points of view are exchanged" and has held a series of socialization workshops. It also notes that the Government refers to Decree No. 012-2008-MEM (regulations on citizens' participation in hydrocarbon activities), according to which the purpose of consultation is "to reach better understanding of the scope of the project and its benefits", which is much narrower than what the Convention provides.

The Committee wishes to point out that *Article 6* of the Convention provides that the consultations shall be undertaken with the objective of achieving agreement or consent to the proposed measures. Although *Article 6* of the Convention does not require consensus in the process of prior consultation, it does require, as the Committee underlined in its general observation of 2008 on the Convention, the form and content of consultation procedures and mechanisms to allow the full expression of the viewpoints of the peoples concerned, “so that they may be able to affect the outcome and a consensus could be achieved”. The Committee wishes to underscore that the Convention requires a genuine dialogue to be established between the parties concerned to facilitate the quest for agreed solutions, and emphasizes that, if these requirements are met, consultation can play a decisive role in the prevention and settlement of disputes. The Committee further points out that meetings solely for the purpose of information or socialization do not meet the requirements of the Convention.

The Committee considers that Supreme Decree No. 020-2008-EM regulating citizens’ participation in the mining subsector has similar limitations. Noting that the Decree envisages the possibility of citizens’ participation after a mining licence has been granted, the Committee is of the view that it does not meet the requirements of the Convention. ***The Committee urges the Government to take the necessary steps to bring national law and practice into line with Articles 2, 6, 7 and 15 of the Convention, taking into account the right of the peoples covered by the Convention to decide on their own priorities and participate in national and regional development plans and programmes. Recalling that the Conference Committee welcomed the Government’s request for technical assistance, the Committee encourages the Government to pursue that course. It also asks it to:***

- (i) suspend the exploration and exploitation of natural resources which are affecting the peoples covered by the Convention until such time as the participation and consultation of the peoples concerned is ensured through their representative institutions in a climate of full respect and trust, in accordance with Articles 6, 7 and 15 of the Convention;***
- (ii) provide further information on the measures taken, in cooperation with the indigenous peoples, to protect and preserve the environment of the territories they inhabit, in accordance with Article 7(4) of the Convention, including information on coordination between the Energy and Mining Investment Supervisory Body (OSINERGMIN) of the Ministry of Energy and Mines and the Environmental Evaluation and Control Agency (OEFA) of the Ministry of Environment; and***
- (iii) provide a copy of Supreme Decree No. 002-2009-MINAM of 26 January 2009, regulating the participation and consultation of citizens in environmental matters.***

With regard to the benefits of extraction activities, the Committee notes the information supplied by the Government concerning a system of mining royalties and a mining tax. It also notes that in its communication of 2009, the CGTP indicates that this system allows the benefits to be distributed within the state apparatus with no benefits going directly to the communities affected. ***The Committee requests the Government to provide information on the specific measures taken to ensure that the peoples concerned participate in the benefits accruing from the exploitation of natural resources in their lands and receive fair compensation for any damage they may sustain as a result of such activities.***

Article 14. Legislative Decree No. 994. The Committee notes the observations made by the CGTP in its communication of 2009 concerning Legislative Decree No. 994 “which promotes private investment in irrigation projects to broaden the agricultural horizon”. The Committee notes in particular that the abovementioned Decree lays down a special regime for promoting private investment in irrigation projects on unused land (*tierras eriazas*) with agricultural potential belonging to the State. The Committee notes that section 3 of the Decree establishes as state property all *tierras eriazas* with agricultural potential other than such lands for which a title for private or communal ownership is entered in the public records. The Committee notes with **concern** that this provision does not establish the rights of indigenous peoples over traditional lands where there is no official title of ownership. The Committee recalls that, in accordance with the Convention, traditional occupation confers a right to the land regardless of whether or not such right has been recognized and that, consequently, *Article 14* of the Convention protects not only the lands over which the peoples concerned already have title of ownership but also the lands they traditionally occupy. ***The Committee urges the Government to take the necessary steps to determine the lands that the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession, including through effective access to appropriate procedures for settling their land claims. Please provide information on the measures adopted to this end.***

Article 31. Educational measures. In its previous comments, the Committee expressed its concern at a number of statements which could give rise to prejudice or misconceptions regarding indigenous peoples. In this regard, the Committee expresses **concern** at the CGTP’s statement in its communication of 2009 that a discriminatory and aggressive attitude towards indigenous peoples on the part of the public authority continues to be noted. ***The Committee urges the Government to take educational measures as a matter of urgency in all sectors of the national community so as to eliminate any prejudice there may be about the peoples covered by the Convention, in accordance with Article 31.***

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to reply in detail to the present comments in 2010.]

Bolivarian Republic of Venezuela

Indigenous and Tribal Peoples Convention, 1989 (No. 169) (ratification: 2002)

Education and means of communication. Indigenous Languages Act. The Committee notes with **interest** the Indigenous Languages Act, which came into force on the date of its publication in the *Official Gazette* No. 38981 of 28 July 2008. The purpose of the Act is to regulate, promote and reinforce the use, revival, preservation, defence and development of indigenous languages, a means of communication and cultural expression to which indigenous peoples and communities are entitled, the National Institute for Indigenous Languages being set up as the implementing body. It notes in particular that under section 17 of the Act, in order to be president or vice-president of the National Institute for Indigenous Languages, it is necessary to: (1) be indigenous; (2) speak the language of the indigenous people concerned; (3) be trained and have professional and academic experience in the use, research, development and dissemination of indigenous languages; and (4) be nominated by an indigenous people, community or organization. The Committee notes that, under section 28 of the Act, indigenous peoples and communities have the right to participate in the formulation, planning and implementation of public policies relating to indigenous languages and that other sections of the Act also establish the right to participation. ***Noting that the final transitional provision of the Act establishes that the Institute will begin to operate no later than one year following the entry into force of the Act, the Committee requests the Government to supply information on the functioning of the Institute and on the application of the Act in practice, particularly the manner in which section 17 is applied and the manner in which participation provided for in the other sections of the Act is undertaken.***

The Committee is raising other points in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 107** (Angola, India, Malawi, Pakistan, Panama); **Convention No. 169** (Argentina, Bolivia, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Guatemala, Mexico, Paraguay, Peru, Bolivarian Republic of Venezuela).

Specific categories of workers

Austria

Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172) (ratification: 1994)

Article 4 of the Convention. Working conditions in the hotel and catering sector. The Committee notes the comments of the Federal Chamber of Labour according to which recent studies show that employment in the hotel and catering sector is marked by a high degree of instability, low employment duration, high risk of unemployment and a high level of stress due to difficult working conditions and atypical forms of working time (weekend work, night work, seasonal work). Based on the findings of three recent studies carried out by the Vienna Chamber of Labour, the Federal Chamber of Labour maintains that working conditions in the hotel and catering sector have worsened in recent years and points at the increasing number of recorded accidents and the larger number of disability pensions awarded on account of mental illness. Furthermore, the Federal Chamber of Labour (BAK) draws attention to the feminization trend in the sector (approximately two-thirds of the persons employed in the sector are women) and also the increasing proportion of migrants, now amounting to almost one third of all employees in the hotel and catering trade. In this latter connection, the Committee notes that according to a study conducted by the SORA Institute for Social Research and Analysis in 2003, one out of four immigrants working in the hotel and restaurant sector complained about being discriminated against in areas such as pay, workload, appreciation of job performance, and assignment of unpleasant tasks. ***The Committee requests the Government to submit any views it may wish to express in response to the observations of the Federal Chamber of Labour.***

The Committee is raising other points in a request addressed directly to the Government.

Finland

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1979)

Article 5, paragraph 3, of the Convention. Settlement of disputes. The Committee notes the observations made by the Commission of Local Authority Employers (KT) concerning the industrial action taken by the Union of Health Professionals (TEHY) during the collective negotiations held in autumn 2007. According to these observations, the TEHY attempted to force a 25 per cent pay increase by undertaking a mass resignation that directly and critically threatened the life and health of patients. TEHY action allegedly affected emergency units and operations in complete disregard of ministerial directives and established labour practices. ***The Committee requests the Government to transmit any comments it may wish to make in reaction to the observations of KT, especially in light of Article 5(3) of the Convention which requires the settlement of collective labour disputes through independent and impartial procedures such as mediation, conciliation and voluntary arbitration with a view to making it unnecessary for the organizations of nursing personnel to have recourse to industrial action which may be disruptive of sensitive health-care operations.***

The Committee is raising other points in a request addressed directly to the Government.

France

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1984)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation, which read as follows:

Article 5, paragraph 1, of the Convention. Participation of nursing personnel in the planning of nursing services. The Committee has been commenting for the last 15 years on the method for appointing members of the nursing care committees and has been requesting information on the participation of representative organizations in these consultative bodies. The Government in successive reports has not supplied any explanations on this point, nor has it informed of any follow-up discussions concerning the modification of the method of appointing members of the nursing care committees which were to be held with trade union organizations under the terms of the protocol agreement signed in March 2000 by the Government and representative organizations of nursing personnel.

The Committee recalls once again that *Article 5(1)* of the Convention does not specify the role to be played by the representatives of nursing personnel in promoting participative and consultative practices within health care establishments, nor does it indicate any particular method of appointing representatives of the personnel. However, reference may be made to Paragraphs 19(2) and 20 of the Nursing Personnel Recommendation, 1977 (No. 157), according to which the representatives of nursing personnel should be understood within the meaning of Article 3 of the Workers' Representatives Convention, 1971 (No. 135), which sets out specific procedures for the appointment of representatives.

The Committee requests the Government once again to indicate whether the possible modification of the method of appointing members of nursing care committees by drawing lots is still under consideration and to report on any further developments in this regard.

The Committee is raising other points in a request addressed directly to the Government.

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Guatemala

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1995)

Article 2, paragraph 1, of the Convention. Formulation and implementation of a policy for nursing services and nursing personnel. The Committee notes the adoption of Decree No. 07-2007 of 20 February 2007 establishing an Act for the provision of nursing care and also its implementing regulations of 11 January 2008 (*Acuerdo Gubernativo No. 56-2008*), which establish the National Council for Nursing Care and the Nursing Services Development Unit. The Committee also notes the Government's indication that the Ministry of Public Health is responsible for managing the implementation of policies in the area of health and for coordinating the various public, private and community bodies. It further notes the Government's statement that efforts have been made to establish national policies for nursing services. These efforts have resulted in a national workplan drawn up in cooperation with the National Nursing School of Guatemala, the Guatemalan Association of Professional Nurses and also the chief nurses of public hospitals and health centres. The Committee notes that this plan – the “Integrated nursing care development plan 2008–12” – deals with the reinforcement of nursing care management capacity, professional competence, coordination of services, training and communication, and human resources.

The Committee understands that there are substantial disparities in the country regarding the distribution of human resources in the area of health care between rural and urban areas since 70 per cent of nursing personnel work exclusively in hospitals, leaving rural health centres with serious shortages of nursing staff. It notes that in 2005 a programme for the promotion of basic nursing care was launched by the National Nursing School of Cobán in five municipalities in the north of Guatemala to enable nursing personnel in rural districts to be trained by the most qualified personnel from urban areas.

Furthermore, the Committee notes that, according to a recent study by the Pan American Health Organization (PAHO), Guatemala is experiencing a shortage of nursing personnel since the ratio is only 3.6 per 10,000 inhabitants. It also notes, according to a study published in 2004, that 34 per cent of qualified nursing personnel have emigrated to the United States and auxiliary nursing staff represent 82 per cent of the workforce in this area. The Committee understands that the main causes of migration of qualified nursing personnel abroad are low wages, the economic situation, the low standard of living, family needs, poor career prospects and the lack of public policies in this area. It wishes to refer to the Code of practice currently being drafted by the WHO concerning the international recruitment of health personnel, which encourages member States to conclude bilateral and multilateral agreements to promote cooperation and coordination relating to migrant health personnel in the recruitment process, in order to optimize the advantages and reduce the potentially negative impact of the international recruitment of health personnel, and which also calls for measures to conserve and maintain a qualified national workforce of health personnel by improving their economic and social situation, living and working conditions, possibilities of employment and career prospects. ***While noting the efforts made by the Government and also the need to collect up to date information in this area, the Committee requests the Government to supply detailed information on (i) the application of the “Integrated nursing care development plan 2008–12” and the “Programme for the promotion of nursing care 2005” and also the results achieved, and (ii) any developments in the situation of nursing personnel and, if applicable, information on any additional measures taken or contemplated to contain the phenomenon of migration of qualified nursing personnel abroad.***

Article 2, paragraphs 2(b) and 3. Pay for nursing personnel. Consultation with employers' and workers' organizations. Further to its previous comment, the Committee notes that the Government's report does not contain any specific reply to the comments made by the Trade Union Confederation of Guatemala (UNSITRAGUA) dated 25 August 2003 and sent to the Government on 8 October 2003. Specifically, UNSITRAGUA indicated that: (i) overtime worked by nursing personnel was not paid and there was no adequate procedure for the compensation of hours worked in the event of changes in terms of duty; and (ii) there was no collective agreement concerning conditions of work which applied specifically to nursing personnel, the nursing trade unions not having been consulted. The Committee recalls that, in accordance with the provisions of the Convention, each Member must take the necessary measures to provide nursing personnel with employment and working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. In addition, the policy concerning nursing services and nursing personnel must be formulated in consultation with the employers' and workers' organizations concerned. ***The Committee requests the Government to provide detailed information on the matters raised by UNSITRAGUA.***

Article 5. Participation of nursing personnel in the planning of nursing services and consultation of personnel on decisions concerning them. The Committee recalls that UNSITRAGUA also indicated that nursing personnel did not participate in the planning of nursing services, decisions on this subject being taken unilaterally by the directors and heads of assistance centres. ***While recalling that Article 5 of the Convention requires the adoption of measures to promote the participation of nursing personnel in the planning of nursing services and consultation with such personnel on decisions concerning them, the Committee requests the Government to send its comments in reply to the allegations made by UNSITRAGUA.***

Article 7. Occupational safety and health. With regard to the conditions of employment and protection of nursing personnel, the Committee recalls that UNSITRAGUA emphasized that there was no health and safety policy for nursing personnel, particularly as regards the risk of contamination by HIV/AIDS owing to the lack of suitable protective equipment in national hospitals, thus obliging nursing personnel to work under dangerous conditions. In this regard, the Committee wishes to draw the Government's attention to the "Joint ILO/WHO guidelines on health services and HIV/AIDS", published in 2005, with a view to helping health services to strengthen their capacity for providing workers with a healthy and decent working environment, this being the most effective means of reducing the transmission of HIV and improving the provision of care for patients. The Committee would also like to refer to the discussion held at the June 2009 session of the International Labour Conference on "HIV/AIDS and the world of work", with a view to the adoption of an international labour Recommendation, in particular paragraph 37 of the draft conclusions (see ILC, 98th Session, 2009, Report IV(2), page 310), which states that public health systems should be strengthened, where appropriate, in order to ensure greater access to prevention, treatment, care and support and to reduce the additional strain on public services, particularly on health workers, caused by HIV/AIDS. **The Committee requests the Government to keep the Office informed of any new measure taken or contemplated in order to improve the protection of nursing personnel against infectious diseases, including HIV/AIDS.**

Guinea

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1982)

The Committee notes with *regret* that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

Articles 2 to 7 of the Convention. Employment and conditions of work and life of nursing personnel. The Committee notes that the information provided by the Government in its last report remains fragmentary, and estimates that, in the interest of maintaining a meaningful dialogue on the application of the Convention in law and practice, the Government should make a genuine effort to collect and transmit all relevant information, including legislative texts or other official documents, dealing with health care policy and nursing services. For instance, despite repeated requests in the last ten years, the Committee has still not received a copy of Decree No. 93/043/PRG/SGG of 26 March 1993, establishing general regimes for hospitals; nor has it received copies of the statutory texts and collective agreements applicable to nursing staff, particularly as regards remuneration and hours of work. Moreover, the Government has been referring since 1992 to ongoing negotiations on two sets of general regulations, one for medical and paramedical staff and another for nurses, without any indication as to the time frame for the possible conclusion of those negotiations. In addition, the Committee notes with *concern* the Government's last statement to the effect that there is no specific policy concerning nursing services and that accordingly there are no particular texts or provisions addressing the special nature of nursing work.

Under the circumstances, the Committee asks the Government to prepare a detailed and fully documented report on the effect given to the main requirements of the Convention, particularly as regards: (i) the formulation of a national policy on nursing services designed to improve the quality standards of public health care but also to create a stimulating environment for the exercise of the nursing profession (Article 2(1)); (ii) measures relating to nursing education and training as may be taken in consultation with the National Nurses Association (ANIGUI) (Article 2(2)(a) and Article 3); (iii) the institutional framework and practical modalities of the process of consultation with employers' and workers' organizations in matters of nursing policy (Article 2(3) and Article 5(1)); (iv) sufficient protection for nursing personnel, in light of the constraints and hazards inherent in the profession, especially in terms of hours of work and rest periods, paid absence and social security benefits (Article 6); and (v) measures to improve the occupational safety and health conditions of health workers, including any specific initiative aimed at protecting nursing personnel from HIV/AIDS infection (Article 7).

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.

Kyrgyzstan

Nursing Personnel Convention, 1977 (No. 149) (ratification: 1992)

Article 2 of the Convention. Policy concerning nursing services and personnel. The Committee notes with *regret* that the Government has not communicated a report on the application of the Convention for more than ten years. **It once again requests the Government to provide detailed information concerning the application of all the provisions of the Convention, especially in the light of the new Labour Code (Act No. 106 of 4 August 2004) and of Act No. 6 of 9 January 2005 on the protection of citizens' health.**

Netherlands

Home Work Convention, 1996 (No. 177) (ratification: 2002)

Articles 3 and 4 of the Convention. National policy on home work and equality of treatment between homeworkers and other wage earners. The Committee notes the observations of the Netherlands Trade Union Confederation (FNV) which essentially reiterate views expressed in earlier communications. According to the FNV, the position of homeworkers is not as positive as the Government attempts to describe it in its report; whereas higher-educated workers performing telework may well be protected by labour contracts, workers performing low-skilled jobs very often do not enjoy such protection as they are engaged on a task contract and are remunerated on piece-rate or performance-based. The

FNV adds that even when a labour contract exists, many homeworkers do not fulfil the criteria for health, disability and unemployment insurance (i.e. work at least on two days per week, contract at least for 30 days and earnings representing at least 40 per cent of the minimum wage), while many collective agreements specifically exclude homeworkers from their scope. The FNV considers that the number of teleworkers and homeworkers is increasing, and that given such developments in the labour market a specific policy on telework and homework is required, especially for the protection of low-skilled homeworkers.

In addition, the Committee notes the comments of the National Federation of Christian Trade Unions (CNV) according to which the Government has not produced any solid arguments or facts to support its conclusion that the situation of homeworkers does not call for further measures. The CNV accordingly considers that more information is necessary.

Finally, the Committee notes the comments made by the Trade Union Federation for Middle and Higher Level Employees (MHP) which basically draw attention to the problem of enforcement of homeworkers' rights. Recalling that the Government openly admits that labour inspection services do not actively inspect homeworkers because they are difficult to identify, the MHP maintains that labour law must be so structured as to provide effective protection to homeworkers, who in most cases are not assertive, do not want to draw attention to themselves by starting procedures against their employer, and have become too disengaged from the regular labour market. The MHP also indicates that the situation should be kept under review since the increase in flexible working goes hand in hand with new forms of homeworking, and in this connection the MHP regrets that the Government's report does not elaborate on the second evaluation of the Flexibility and Security Act which has shown that many people do not dare to take action to assert their rights. *The Committee requests the Government to submit any views it may wish to express in response to the observations of the FNV, the CNV and the MHP.*

The Committee is raising other points in a request addressed directly to the Government.

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: **Convention No. 110** (Côte d'Ivoire, Cuba, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Philippines, Sri Lanka, Uruguay); **Convention No. 149** (Azerbaijan, Bangladesh, Belarus, Belgium, Congo, Denmark, Ecuador, Egypt, Finland, France, Ghana, Greece, Guyana, Iraq, Italy, Jamaica, Kenya, Latvia, Lithuania, Malawi, Malta, Norway, Philippines, Poland, Portugal, Seychelles, Slovenia, Sweden, United Republic of Tanzania, Ukraine, Uruguay, Bolivarian Republic of Venezuela, Zambia); **Convention No. 172** (Austria, Barbados, Cyprus, Dominican Republic, Germany, Guyana, Iraq, Ireland, Lebanon, Luxembourg, Mexico, Netherlands: Netherlands Antilles, Switzerland, Uruguay); **Convention No. 177** (Albania, Argentina, Finland, Ireland, Netherlands).

II. Observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Angola

The Committee notes the communications received in June and October 2009 in which the Government indicates that it is experiencing difficulties in complying with the obligation to submit instruments to the competent authorities. *The Committee hopes that the Government will redouble its efforts to be in a position to provide information as soon as possible on the submission to the National Assembly of the instruments adopted at the 91st, 92nd, 94th, 95th and 96th Sessions of the Conference (2003–07).* The Committee recalls that information also needs to be provided on the submission to the National Assembly of the Protection of Workers' Claims (Employer's Insolvency) Recommendation, 1992 (No. 180) (79th Session, 1992), the 1995 Protocol to the Labour Inspection Convention, 1947 (82nd Session, 1995) and the Job Creation on Small and Medium-sized Enterprises Recommendation, 1998 (No. 189) (86th Session, 1998).

Antigua and Barbuda

Serious failure to submit. The Committee notes with *regret* that the Government has not replied to its previous observations. *It asks the Government to supply the relevant information concerning the submission to the Parliament of Antigua and Barbuda of the instruments adopted by the Conference during the 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Azerbaijan

The Committee refers to its previous observations and requests the Government to provide information with regard to the submission to the *Mili Mejlis* (National Assembly) of Recommendation No. 180 (79th Session), and the instruments adopted at the 83rd, 84th, 88th, 89th, 90th, 94th, 95th and 96th Sessions of the Conference. Please also indicate the date of submission of Recommendation No. 195 to the National Assembly.

Bahamas

The Committee recalls that the ratification of the Maritime Labour Convention, 2006, was registered on 11 February 2008. *The Committee asks the Government to supply information on the submission to Parliament of the remaining 16 instruments adopted by the Conference between 1997 and 2007 (85th, 86th, 88th, 89th, 90th, 92nd, 95th and 96th Sessions).*

Bahrain

Serious failure to submit. The Committee notes the statement made by the Government representative at the Conference Committee in June 2009 and a written communication received in August 2009. The Government indicated

that Conventions envisaged for ratification were usually submitted to the Council of Ministers for examination and for the formulation of proposals, which would then be forwarded to the National Assembly. The Government also indicated that the Work in Fishing Convention, 2007 (No. 188), and the Maternity Protection Convention, 2000 (No. 183), have been submitted to the competent authorities. The Committee refers to its previous comments and recalls that under article 19 of the ILO Constitution, the competent national authority shall normally be the legislature, in the case of Bahrain, the National Assembly. *The Committee therefore reiterates its hope that the Government will be soon in a position to provide the relevant information indicating that all the instruments adopted by the Conference at the seven sessions held between 2000 and 2007, were submitted to the National Assembly.*

Bangladesh

Serious failure to submit. The Committee notes the statement by the Government representative of Bangladesh at the Conference Committee in June 2009, indicating that the instruments adopted by the Conference had passed through the various stages of the process for submission. The Ministry of Labour and Employment is in contact with different governmental agencies to expedite the process of submission and to report to the relevant Parliamentary Standing Committee. *The Committee therefore asks the Government to provide information on the submission to Parliament of the remaining instruments adopted at the 77th Session (Convention No. 170 and Recommendation No. 177), the 79th Session (Convention No. 173 and Recommendation No. 180), the 84th Session (Convention No. 179 and Recommendations Nos 185, 186 and 187), and the 85th Session (Recommendation No. 188), as well as all the instruments adopted at the 81st, 82nd, 83rd, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.*

Belize

Serious failure to submit. The Committee notes the Government's communication received in September 2009 indicating that the recently appointed Labour Advisory Board will review all unratified Conventions and make recommendations to the Ministry of Labour for onward submission to the National Assembly. *The Committee refers to its previous observations and asks the Government to provide information on the submission to the National Assembly of the 40 instruments adopted by the Conference at its 84th (Maritime) Session (October 1996), and during the other 17 sessions held between 1990 and 2007.*

Bolivia

In its previous observations, the Committee noted that the international labour Conventions adopted by the Conference from 1990 to 2003 were submitted to the National Congress on 26 April 2005. *The Committee asks the Government to report on the decision taken by the National Congress with regard to the Conventions submitted. It also requests the Government to indicate the representative organizations of employers and workers to which the information forwarded to the Director-General concerning the submission of the abovementioned Conventions was communicated. The Committee asks the Government to provide all the information required on the submission to the National Congress of all the remaining Conventions, Recommendations and Protocols adopted by the Conference between 1990 and 2007.*

Bosnia and Herzegovina

Serious failure to submit. In its previous observations, the Committee noted that the instruments pending submission have been forwarded to the relevant authorities in Bosnia and Herzegovina for their consideration and possible ratification. With the assistance of the Office, 32 instruments adopted by the Conference since 1993 were translated and sent to the entities. The entities – the Federation of Bosnia and Herzegovina and the Republika Srpska – were encouraged to involve the social partners at the entity level in the consultation process. In November 2007, the Government confirmed that the instruments adopted by the Conference between its 80th and 95th Sessions were sent to the authorities concerned and to the social partners of the entities and of the Brijuni District for their examination with a view to an eventual ratification. *The Committee hopes that it will soon be possible to examine all the required information concerning the submission to the Parliamentary Assembly of the instruments adopted by the Conference between 1993 and 2007.*

Brazil

The Committee recalls that Conventions Nos 128 to 130, 149 to 151, 156 and 157 and the other instruments adopted at the 52nd, 78th, 79th, 81st, 82nd (1995 Protocol), 83rd, 84th (Conventions Nos 179 and 180; 1996 Protocol, Recommendations Nos 186 and 187), 85th, 86th, 88th, 90th, 92nd, 94th, 95th and 96th Sessions of the Conference are still waiting to be submitted to the National Congress. *The Committee hopes that the Government will soon report on other measures that have been taken to submit all the pending instruments to the National Congress.* In this regard, the Committee recalls that the Tripartite Committee on International Relations (CTRI) requested the Ministry of External Relations in March 2006 to take the necessary steps to submit to the National Congress the Tenants and Share-croppers

Recommendation, 1968 (No. 132), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Promotion of Cooperatives Recommendation, 2002 (No. 193), the List of Occupational Diseases Recommendation, 2002 (No. 194), and the Human Resources Development Recommendation, 2004 (No. 195).

Burkina Faso

Submission to the National Assembly and ratification of Conventions. The Committee notes the communication of the Ministry of Labour and Social Security bringing to the knowledge of the Government the instruments adopted by the Conference between 2000 and 2007. The Government also indicated that, at its meeting on 25 February 2009, the Council of Ministers examined and adopted a report authorizing the ratification of five international Conventions, namely Conventions Nos 122, 142, 183, 184 and 187, and the Instrument for the Amendment of the Constitution of the Organization, 1997. At its plenary sitting on 15 June 2009, the National Assembly authorized the ratification of these five Conventions and the Instrument for the Amendment of the Constitution, 1997. The Government also indicated that other instruments for which ratification was not authorized have been brought to the knowledge of the Deputies of the National Assembly, which noted their adoption and invited the Government to use them as a source of inspiration for social and economic progress in the world of work. The Committee notes with *interest* that the ratification of Conventions Nos 122, 142 and 184 was registered on 28 October 2009. The Committee welcomes the Government's initiative of ratifying the five Conventions referred to above and the Instrument for the Amendment of the Constitution, 1997, and the submission to the National Assembly of all the instruments adopted by the Conference between 2000 and 2007.

Cameroon

Submission to the National Assembly. The Committee notes with *interest* the Government's information dated 2 November 2009 indicating that the conventions, recommendations and protocols adopted by the Conference at the 25 sessions held between 1983 and 2007 have been communicated to the competent authorities. The Government refers to the provisions of article 19 of the Constitution of the Organization and states that it will communicate, in due time, the decisions adopted by the competent authorities on the instruments concerned by the submission. *The Committee refers to its previous comments and welcomes this progress. It invites the Government to indicate the date on which the abovementioned instruments were submitted to the National Assembly and the decisions taken on the instruments submitted.*

Cape Verde

Serious failure to submit. The Committee asks the Government to provide the information required on the submission to the National Assembly of the instruments adopted by the Conference during 13 sessions held between 1995 and 2007 (82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). *It urges the Government to take steps without delay to submit the pending instruments to the National Assembly.*

Central African Republic

Serious failure to submit. ILO assistance. The Committee notes the statement by the Government representative of the Central African Republic to the Conference Committee in June 2009, indicating that his Government had considered that, once the period of 18 months following the Conference session set out in article 19 of the Constitution had elapsed, submission to the competent authorities was no longer possible for the instruments adopted between 1988 and 2007. The Government representative indicated that it had only been in 2008, during a consultation with the ILO, that his Government had understood that the expiry of this period did not result in the extinction of the obligation and that, on the contrary, the obligation was not fulfilled until the instruments had been submitted to the National Assembly. He also emphasized the importance placed on the ratification of Conventions, while indicating that the specific characteristics of the country did not facilitate certain instruments being taken into account, such as those relating to seafarers, as the country is landlocked and without expectations of developing a maritime fleet. Discussion was nevertheless under way on the interest of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169). However, the service responsible for standards had been confronted with the departure of many managerial staff responsible for these files. A tripartite committee would nevertheless be established in the coming months to examine the instruments, follow through the submission and ratification procedures and draw up the reports. Several documents on standards had been submitted to the members of the National Assembly, the President of the Bar and the Ministry of Justice. *The Committee therefore hopes that the Government will make every effort in the near future so that it is soon in a position to announce the submission to the National Assembly of the instruments adopted by the Conference at the 20 sessions held between 1988 and 2007.*

Chad

Submission to the National Assembly. The Committee notes with **interest** the communication of 20 May 2009 in which the Ministry of the Public Service and Labour wrote to the President of the National Assembly with a view to the submission of the Conventions, Recommendations and Protocols adopted by the Conference between 1993 and 2007. The Committee also notes that the Government and the social partners, in the context of their consultations, examined the possibility of proposing the ratification of the Conventions which are applicable to the national situation. **The Committee welcomes this progress and the consequent fulfilment of the obligation to submit to the National Assembly the instruments adopted by the Conference over several sessions.**

Chile

Serious failure to submit. **The Committee asks the Government to provide the information required on the submission to the National Congress of the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It urges the Government to take steps without delay to submit the pending instruments to the National Congress.**

Colombia

The Committee refers to its observation on the application of Convention No. 144 and asks the Government to provide all relevant information on the submission to the Congress of the Republic of the 31 instruments adopted at the 75th (Convention No. 168), 79th (Convention No. 173), 81st (Recommendation No. 182), 82nd, 83rd, 84th, 85th, 86th, 88th (Recommendation No. 191), 89th (Recommendation No. 192), 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference.

Comoros

Serious failure to submit. The Committee notes the Government's reply, received in September 2009, indicating that it is awaiting the renewal of the National Assembly scheduled to take place in October 2009 for the gradual submission of the instruments adopted by the Conference between 1992 and 2007, according to the schedule of parliamentary sessions. **The Committee hopes that the Government will soon be in a position to announce that the instruments adopted at the 16 sessions held between 1992 and 2007 have been submitted to the Assembly of the Union of Comoros.**

Congo

Serious failure to submit. The Committee notes that no information has been received on the steps taken to actually transmit to the National Assembly the instruments adopted at the 54th (Recommendation Nos 135 and 136), 55th (Recommendations Nos 137, 138, 139, 140, 141 and 142), 58th (Convention No. 137 and Recommendation No. 145), 60th (Convention Nos 141 and 143, Recommendations Nos 149 and 151), 62nd, 63rd (Recommendation No. 156), 67th (Recommendations Nos 163, 164 and 165), 68th (Convention No. 157 and Recommendations Nos 167 and 168), 69th, 70th, 71st (Recommendations Nos 170 and 171), 72nd, 74th and 75th (Recommendations Nos 175 and 176) Sessions of the Conference and the instruments adopted between 1990 and 2007 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). **The Committee urges the Government to spare no effort to comply with the obligation of submission and recalls that the Office is available to the parties concerned to overcome this significant backlog.**

Côte d'Ivoire

Serious failure to submit. The Committee notes the statement by the Government representative of the Côte d'Ivoire to the Conference Committee in June 2009 indicating that the Government was taking all the necessary measures to ensure the submission of all the instruments concerned to the National Assembly. **The Committee refers to its previous observations and hopes that the Government will provide the respective information on the submission to the National Assembly of the instruments adopted at the 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).**

Croatia

In its previous comments, the Committee noted that the instruments adopted at the 86th, 88th, 89th, 90th, 91st and 92nd Sessions of the Conference had not been submitted to the Croatian Parliament because the translation had not yet been finished. **It asks the Government to take appropriate measures in order to ensure that all the remaining instruments adopted by the Conference between 1998 and 2007 are submitted to the Croatian Parliament.**

Democratic Republic of the Congo

Serious failure to submit. The Committee asks the Government to provide all relevant information concerning the submission to Parliament of the instruments adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).

Djibouti

Serious failure to submit. The Committee notes the statement by the Government representative of Djibouti to the Conference Committee in June 2009 recalling that his country had ratified over 60 Conventions, most of which did not correspond to the geographical, economic and social characteristics of the country. The Government had therefore decided to review all the ratified Conventions in order to gradually denounce those not adapted to the real situation in the country, such as the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and the Underground Work (Women) Convention, 1935 (No. 45), which had been denounced in May 2008. The Committee also notes that the Government intends to refer the issue of submissions to Parliament once this process has been completed. The Committee recalls that, in its comments on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), ratified by Djibouti in February 2005, it noted the work of the National Council for Labour, Employment and Vocational Training, a tripartite body which may give technical and legal advice on the proper implementation or possible denunciation of the Conventions to which Djibouti is a party. The Committee notes with *serious concern* that the failure of submission by Djibouti concerns the instruments adopted at the 26 sessions of the Conference held between 1980 and 2007. *The Committee expresses serious concern and requests the Government to make every effort in a tripartite framework to ensure that it is in a position in the near future to provide the required information on the submission to the National Assembly of the instruments adopted at the 26 sessions of the Conference held between 1980 and 2007 (66th, 68th, 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Dominica

Serious failure to submit. The Committee *regrets* that the Government has not replied to its previous observations. *It reiterates its hope that the Government will soon announce that the instruments adopted by the Conference during 15 sessions held between 1993 and 2007 (80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the House of Assembly.*

El Salvador

In its previous comments, the Committee observed the failure to submit to the Congress of the Republic the instruments adopted at the 62nd, 65th, 66th, 68th, 70th, 82nd, 83rd, 84th, 85th, 86th, 88th and 89th Sessions of the Conference, as well as the remaining instruments from the 63rd (Convention No. 148 and Recommendations Nos 156 and 157), 67th (Convention No. 154 and Recommendation No. 163) and 69th (Recommendation No. 167) Sessions. *The Committee requests the Government to provide information on the submission to the Congress of the Republic of all the remaining instruments, including Recommendations Nos 193 and 194 (90th Session, 2002) and the instruments adopted at the 91st, 92nd, 94th, 95th and 96th Sessions (2003–07).*

Equatorial Guinea

Serious failure to submit. The Committee recalls the communication dated 9 May 2008 in which the Ministry of Labour and Social Security requested the Head of Government to proceed with the submission to the House of People's Representatives of the instruments adopted by the Conference at 13 sessions held between 1993 and 2006. *The Committee asks the Government to provide the other relevant information on compliance with the obligation of submission, and particularly the date on which the instruments adopted between 1993 and 2007 were in fact submitted to the House of People's Representatives.*

Ethiopia

The Committee asks the Government to provide the relevant information on the submission to the House of People's Representatives of the instruments adopted by the Conference at its 88th (Recommendation No. 191), 90th, 91st, 92nd, 94th, 95th and 96th Sessions.

Fiji

The Committee recalls that the ratification of Conventions Nos 81, 149, 155, 172, 178 and 184 was registered on 28 May 2008. In its 2008 observation, the Committee further noted that by Cabinet Decisions of May 2007, it was decided to defer the ratification of Conventions Nos 177, 179, 180, 181, 183 and 185. The Committee recalls that even when a

decision to defer the ratification of Conventions is adopted, Governments still have the obligation to submit to parliament all Conventions, Recommendations and Protocols adopted by the Conference. *The Committee asks the Government to provide the relevant information on the submission to the Parliament of Fiji of the remaining instruments adopted by the Conference at its 84th Session (Maritime, October 1996) and all the instruments adopted at the 83rd, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions.*

Gabon

The Committee notes with *interest* that the ratification of Conventions Nos 122 and 155 was registered in October 2009. It recalls its previous comments, inviting the Government to report on Parliament's decision regarding Conventions Nos 138, 142, 155, 176, 177, 179, 181, 184 and 185. In February 2008 the Government indicated that it intends to submit to Parliament the Maritime Labour Convention, 2006, for its ratification. *The Committee invites the Government to provide information concerning the submission to Parliament of the other Conventions, Recommendations and Protocols not yet submitted to Parliament that were adopted at the 74th, 82nd, 83rd, 84th, 86th, 88th, 89th, 90th, 92nd, 94th, 95th and 96th Sessions of the Conference.*

Gambia

Serious failure to submit. The Committee notes with *serious concern* that the Government has not provided information on the submission to the National Assembly of the instruments adopted by the Conference at the 13 sessions held between 1995 and 2007.

The Committee recalls that Gambia has been a Member of the Organization since 29 May 1995. It further recalls that, under article 19 of the Constitution of the Organization, each Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the enactment of legislation or other action". The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities* asking for particulars on this subject.

The Committee, in the same way as the Conference Committee, urges the Government to spare no effort with a view to complying with the constitutional obligation of submission and recalls that the Office can provide it with the necessary technical assistance to help in overcoming this significant backlog.

Georgia

Serious failure to submit. The Committee refers to its previous observations and asks the Government to report on the submission to Parliament of the instruments adopted by the Conference at the 13 sessions held between 1993 and 2007 (80th, 81st, 82nd, 83rd, 84th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). *The Committee urges the Government to take steps without delay to submit the instruments to Parliament.*

Ghana

Serious failure to submit. The Committee recalls the information provided by the Government in July 2006, indicating that the instruments adopted by the Conference at its 88th, 89th, 90th, 91st and 92nd Sessions were sent by the Labour Department to the Sector Ministry for their submission to the Parliament of the Republic of Ghana. *It asks the Government to indicate if all the instruments adopted by the Conference at the eight sessions held between 2000 and 2007 have been submitted to Parliament. In addition, the Committee recalls its previous comments and once again asks the Government to supply the indications required with regard to the submission to Parliament of the instruments adopted by the Conference at its 80th Session (Convention No. 174 and Recommendation No. 181), 81st Session (Convention No. 175 and Recommendation No. 182), 82nd Session (Convention No. 176 and Recommendation No. 183, and the Protocol of 1995) and 84th Session (Recommendations Nos 185 and 186).*

Guinea

Serious failure to submit. *The Committee refers to its previous comments and asks the Government to provide the information requested regarding the submission to the National Assembly of the instruments adopted at the 11 sessions held by the Conference between October 1996 and June 2007 (84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Guinea-Bissau

The Committee refers to its previous observations and notes that the ratifications of Conventions Nos 138 and 182 were registered in March 2009 and August 2008, respectively. *The Committee requests the Government to supply*

updated information on the submission to the National People's Assembly of the instruments adopted by the Conference at its 89th, 90th, 91st, 92nd, 95th and 96th Sessions.

Haiti

Serious failure to submit. ILO assistance. The Committee notes the statement by the Government representative of Haiti to the Conference Committee in June 2009 explaining that the reasons for the failure of submission were related to the political and social crisis, natural cataclysms and the unrest that had affected the country. She indicated that her country had received ILO technical assistance in March 2009 with a view to carrying out the remaining submissions. ***The Committee therefore hopes that the Government will make every effort in the near future to be in a position to announce soon the submission to the National Assembly of the following instruments:***

- (a) *the remaining instruments from the 67th Session (Conventions Nos 154 and 155, and Recommendations Nos 163 and 164);*
- (b) *the instruments adopted at the 68th Session;*
- (c) *the remaining instruments adopted at the 75th Session (Convention No. 168, and Recommendations Nos 175 and 176); and*
- (d) *the instruments adopted at the 19 sessions of the Conference held between 1989 and 2007.*

Ireland

Serious failure to submit. The Committee hopes that the Government will be able to announce soon that the instruments adopted by the Conference at the eight sessions held between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) were submitted to the Oireachtas (Parliament).

Kazakhstan

Serious failure to submit. The Committee refers to its previous observations and asks the Government to supply the requested information on the submission to Parliament of the 32 instruments still pending submission which were adopted by the Conference between 1993 and 2007. It urges the Government to take steps without delay to submit the pending instruments to Parliament.

Kenya

Serious failure to submit. The Committee notes the statement by the Government representative of Kenya at the Conference Committee in June 2009, in which the Government declared that the delay in submitting the instruments adopted by the Conference to the National Assembly was not deliberate and was largely due to the political circumstances in the country since 2002. The lengthy process of reviewing the labour law, following the last two general elections and the 2005 referendum, had affected the process of submitting the pending instruments. The National Labour Board was established in November 2008 and inaugurated in April 2009. The 1995 and 1996 Protocols and all the instruments adopted between 2000 and 2007 were included among the priority agenda items for consideration by the tripartite board and for subsequent submission to the competent authorities. ***The Committee therefore asks the Government to provide the required information on the submission to the National Assembly of the Protocols adopted at the 82nd and 84th Sessions and of all the other instruments adopted by the Conference at its eight sessions held between 2000 and 2007.***

Kyrgyzstan

Serious failure to submit. The Committee notes with ***serious concern*** that the Government has not communicated information on the submission to the competent authorities of instruments adopted by the Conference at the 16 sessions held between 1992 and 2007.

The Committee notes that Kyrgyzstan has been a Member of the Organization since 31 March 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on measures to be taken with regard to the instruments that have been submitted.

The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Lao People's Democratic Republic

Serious failure to submit. The Committee recalls the assistance provided by the ILO in 2008 to translate the instruments still pending submission into Lao. *The Committee hopes that the Government will soon indicate that the instruments adopted by the Conference during 13 sessions held between 1995 and 2007 have been submitted to the National Assembly.*

Liberia

The Committee notes the information provided by the Government in May 2009 indicating that the instruments adopted by the Conference at its 88th, 89th, 90th, 92nd and 95th Sessions, as well as the Protocols of 1990 and of 1995, have yet to be submitted to the National Legislature. The Committee recalls that the National Tripartite Committee was established in June 2008 following the conclusion of a Memorandum of Understanding among the social partners for the implementation of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). *The Committee reiterates its hope that the Government will soon be in a position to submit to the National Legislature the instruments adopted by the Conference at the six sessions held between 2000 and 2007, as well as the 1990 and 1995 Protocols.*

Libyan Arab Jamahiriya

Serious failure to submit. *The Committee asks the Government to provide the information requested concerning the submission to the competent authorities, within the meaning of article 19, paragraphs 5 and 6, of the ILO Constitution, of all Conventions, Recommendations and Protocols adopted at 12 sessions of the Conference held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It urges the Government to take steps without delay to submit the pending instrument to the competent authorities.*

Malta

The Committee asks the Government to provide all the required information on the submission to the House of Representatives of the instruments adopted by the Conference at its 91st, 92nd, 94th, 95th and 96th Sessions (2003–07).

Mongolia

The Committee asks the Government to indicate if the instruments adopted by the Conference at 11 sessions held between 1995 and 2007 (82nd, 83rd, 84th, 85th, 86th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) were submitted to the State Great Khural.

Mozambique

Serious failure to submit. The Committee notes the statement by the Government representative of Mozambique in June 2009 to the Conference Committee. The Government indicated that it had begun the examination of all the remaining Conventions and Recommendation for submission to the Assembly. Submission had been delayed as the instruments needed to be translated into Portuguese. The Committee observes that the Government requested the ILO's assistance to obtain translations into Portuguese of the instruments that are awaiting submission. *The Committee hopes that the Government will obtain the requested assistance and that it will be in a position to announce shortly that the instruments adopted at the 12 sessions of the Conference held between 1996 and 2007 have been submitted to the Assembly of the Republic.*

Nepal

Serious failure to submit. The Committee notes the statement made by the Government representative of Nepal to the Conference Committee in June 2009 indicating that measures had already been taken for the submission to Parliament of the instruments adopted by the Conference. It further recalls its 2008 observation in which it noted the volume forwarded to the Office in August 2008 containing the instruments adopted by the Conference between June 1995 and June 2006 that were due to be submitted to Parliament for its consideration. *The Committee therefore reiterates its hope that the Government will soon be in a position to announce that the 26 instruments adopted by the Conference between 1995 and 2007 have been submitted to Parliament.*

Niger

The Committee notes with *interest* the registration in February 2009 of the ratifications of Conventions Nos 155, 161 and 187. *It hopes that the Government will also be in a position to provide the information required concerning the submission to the National Assembly of the 23 instruments adopted by the Conference at 11 sessions (83rd, 84th, 85th, 86th, 89th, 90th, 91st, 92nd, 94th, 95th (for the Employment Relationship Recommendation, 2006 (No. 198)) and 96th) held between 1996 and 2007.*

Pakistan

Serious failure to submit. The Committee refers to its previous observations and asks the Government to report on the measures taken to submit to Majlis-e-Shoora (Parliament) the instruments adopted by the Conference at 14 sessions held between 1994 and 2007 at its 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions. It urges the Government to take steps without delay to submit the pending instruments to Parliament.

Papua New Guinea

Serious failure to submit. The Committee notes the statement by the Government representative of Papua New Guinea at the Conference Committee in June 2009, indicating that the prolonged delay in the submission of the instruments adopted between 2000 and 2007 had been due to administrative difficulties. The Department of Labour and Industrial Relations was engaged in preparing a single comprehensive policy submission to Cabinet which would include all the instruments adopted by the Conference since 2000. The Committee further notes the Government's intention to pursue a new approach of submitting the instruments adopted by the Conference directly through the Cabinet, with the National Tripartite Consultative Council (NTCC) being advised. *The Committee therefore hopes that the Government will provide soon information on the submission to the National Parliament of the instruments adopted by the Conference at eight sessions between 2000 and 2007 (88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Paraguay

Serious failure of submission. ILO assistance. The Committee notes the statement by the Government representative of Paraguay to the Conference Committee in June 2009. The Government representative indicated that authentic copies of the instruments awaiting submission had been requested from the Office and it undertook to transmit them to the executive authorities with a view to the completion of the respective procedure. The Government also undertook to communicate to the principal organizations of employers and workers the texts of the information that would be sent to the Director-General. The Government also indicated in August 2009 that, with the cooperation of the Office, it was planned to hold a meeting with the members of the legislative chambers during the course of 2009. The Committee recalls its previous observations, and particularly that no information has been received concerning the submission to the National Congress of the instruments adopted at the ten sessions of the Conference held between 1997 and 2007 (85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). *The Committee hopes that the Government will provide the remaining information required to indicate that the instruments adopted by the Conference between 1997 and 2007 have been submitted to the National Congress.*

Peru

The Committee recalls its previous observation and requests the Government to provide further information on the measures adopted for the submission to the Congress of the Republic of the remaining instruments adopted at the 84th, 88th and 90th Sessions of the Conference, and at the other sessions of the Conference held between 2001 and 2007 (89th, 91st, 92nd, 94th, 95th and 96th Sessions).

Russian Federation

Serious failure to submit. The Committee notes the communication dated 17 June 2009 that was sent by the Chair of the Committee on Labour and Social Policy of the State Duma to the Ministry of Health and Social Development of the Russian Federation requesting the Government of the Russian Federation to comply in a timely manner with its obligations under article 19 of the ILO Constitution. The Committee further recalls the resolution adopted by the State Duma on 29 June 2007 requesting the Government of the Russian Federation to take additional measures to ensure unconditional observance of article 19 of the ILO Constitution with regard to the mandatory and timely submission to the State Duma of the Conventions and Recommendations adopted by the Conference. *In conformity with article 19 of the ILO Constitution, the Committee also asks the Government to take appropriate measures to comply with the requirement of the submission to the State Duma of the instruments adopted by the Conference at the seven sessions held between 2001 and 2007 (89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions).*

Rwanda

Serious failure to submit. **The Committee asks the Government to report on the submission to the National Assembly of the Conventions, Recommendations and Protocols adopted by the Conference at the 14 sessions held between 1993 and 2007 (80th, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It urges the Government to take steps without delay to submit the pending instruments to the National Assembly.**

Saint Kitts and Nevis

Serious failure to submit. The Committee notes with **regret** that the Government has not replied to its previous comments. **The Committee asks the Government to provide the required information about the date on which the instruments were submitted to the National Assembly and the proposals made by the Government on the measures which might be taken with regard to the instruments adopted by the Conference at the 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.**

Saint Lucia

Serious failure to submit. The Committee notes with **regret** that the Government has not replied to its previous comments. It recalls that, in accordance with article 19, paragraphs 5 and 6, of the Constitution of the Organization, Saint Lucia, as a Member of the Organization, has the obligation to submit to Parliament all the remaining Conventions, Recommendations and Protocols adopted by the Conference from 1980 to 2007 (66th, 67th (Conventions Nos 155 and 156 and Recommendations Nos 164 and 165), 68th (Convention No. 157 and Protocol of 1982), 69th, 70th, 71st, 72nd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). **The Committee again requests the Government to take the necessary measures to ensure full compliance with the constitutional obligation to submit.**

Saint Vincent and the Grenadines

Serious failure to submit. In its previous observations, the Committee noted the information provided by the Government indicating that it had fulfilled its obligation to submit to the competent authorities all of the instruments adopted by the Conference. Through the Minister of Labour, the Department of Labour submitted to the Cabinet a list of all the Conventions and Recommendations adopted by the Conference from October 1996 to June 2004, along with its recommendations for ratification. The submission to the Cabinet was made on 11 September 2006 and the representative organizations of employers and workers were duly notified. The Committee once again notes that, under the 1979 Constitution of Saint Vincent and the Grenadines, the Cabinet is the executive authority which has the responsibility for making final decisions on ratification and for determining any matter that is brought before the House of Assembly for legislative action. **The Committee asks the Government to fulfil its remaining obligations under article 19, paragraphs 5 and 6, of the ILO Constitution by also submitting to the House of Assembly the instruments (Conventions, Recommendations and Protocols) adopted by the Conference at 12 sessions held from October 1996 to June 2007.**

Sao Tome and Principe

Serious failure to submit. The Committee recalls that the Government has not provided the required information on the submission to the competent authorities of 41 instruments adopted by the Conference between 1990 and 2007 (77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). **The Committee asks the Government to make every effort to fulfil the constitutional obligation of submission and recalls that the International Labour Office is available to provide the necessary technical assistance to give effect to this essential obligation.**

Senegal

Submission to the National Assembly. The Committee notes with **interest** the communication forwarded to the Presidents of the Senate and the National Assembly containing explanatory technical notes on each of the Conventions and Recommendations adopted by the Conference from 1992 to 2007. **The Committee welcomes this progress and hopes that the Government will continue to provide regularly the required information on the obligation to submit the instruments adopted by the Conference to the National Assembly.**

Submission of protocols. **The Committee invites the Government to provide information on the submission to the National Assembly of the Protocol of 1995 to the Labour Inspection Convention, 1947 (82nd Session), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (90th Session).**

Seychelles

The Committee asks the Government to indicate whether the instruments adopted by the Conference at the seven sessions held between 2001 and 2007 (89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions) have been submitted to the National Assembly.

Sierra Leone

Serious failure to submit. The Committee notes with *regret* that the Government has not replied to its previous comments. *The Committee asks the Government to report on the submission to Parliament of the instruments adopted by the Conference in October 1976 (Convention No. 146 and Recommendation No. 154, adopted at the 62nd Session) and the instruments adopted between 1977 and 2007.*

Solomon Islands

Serious failure to submit. *The Committee requests the Government to make every effort to comply with the constitutional obligation to submit to the National Legislature the instruments adopted by the Conference between 1984 and 2007.*

Somalia

Serious failure to submit. *The Committee trusts that, when the national circumstances permit, the Government will provide information on the submission to the competent authorities with regard to the instruments adopted by the Conference between October 1976 and June 2007.*

Spain

Submission to the Cortes Generales. The Committee notes the communications received in July and November 2009 informing the ILO of the decisions by the Council of Ministers dated 12 June 2009. The Committee notes that the Council of Ministers decided to submit to the Cortes Generales certain Conventions and Recommendations for information. Furthermore, the Committee notes with *interest* that the Council of Ministers decided to authorize the ratification of the Maritime Labour Convention, 2006 (adopted at the 94th Session of the Conference) and decided on its submission to the Cortes Generales. The Committee welcomes the fact the Government has complied with its obligation to submit to the Cortes Generales the instruments adopted by the Conference at its 63rd, 80th, 81st, 83rd, 84th, 86th, 89th, 92nd and 95th Sessions. *The Committee trusts that the Government will provide information regularly on compliance with its obligation to submit the instruments adopted by the Conference to the Cortes Generales.*

Sudan

Serious failure to submit. Assistance by the ILO. The Committee notes the statement by the Government representative of Sudan at the Conference Committee in June 2009, in which the Government indicated that despite the difficulties and the exceptional situation that the country was facing, it undertook to supply all the reports due by the end of 2009 to achieve its common objectives so that the respective Conventions and Recommendations were submitted to the National Assembly. The Committee further notes that the Government requested the assistance of the ILO's Subregional Office in Cairo concerning international labour standards. *The Committee therefore reiterates its hope that the Government will announce soon that the instruments adopted by the Conference between 1994 and 2007 were submitted to the National Assembly.*

Syrian Arab Republic

The Committee notes with *interest* that the ratification of Convention No. 155 and its Protocol of 2002 was registered in May 2009. It recalls that 40 of the instruments adopted by the Conference are still waiting to be submitted to the People's Council. *The Committee hopes that the Government will shortly be in a position to announce that the instruments adopted by the Conference at its 66th and 69th Sessions (Recommendations Nos 167 and 168) and at its 70th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 90th (Recommendations Nos 193 and 194) 91st, 92nd, 94th, 95th and 96th Sessions have been submitted to the People's Council.*

Tajikistan

Serious failure to submit. The Committee notes with *regret* that the information on submission to Parliament required by article 19 of the ILO Constitution for the instruments adopted by the Conference at the ten sessions of the Conference held between October 1996 and June 2007 (84th, 85th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and

96th Sessions) has not been received. *The Committee urges the Government to take steps without delay to submit the pending instruments to Parliament.*

The former Yugoslav Republic of Macedonia

Serious failure to submit. The Committee notes with **regret** that the Government has not sent the information concerning the submission to the competent authorities of instruments adopted by the Conference at the 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). *The Committee urges the Government to take steps without delay to submit the pending instruments to the competent authorities.*

Togo

The Committee refers to its previous comments and asks the Government to indicate the date on which the instruments on maternity protection (88th Session, 2000) were submitted to the National Assembly and the representative employers' and workers' organizations to which the information supplied to the Office was communicated. The Committee asks the Government to indicate whether the instruments adopted by the Conference at the six sessions held between 2002 and 2007 at the 90th, 91st, 92nd, 94th, 95th and 96th Sessions of the Conference have been submitted to the National Assembly.

Turkmenistan

Serious failure to submit. The Committee notes with **serious concern** that the Government has not provided information on the submission to the competent authorities of the instruments adopted by the Conference at 15 sessions held by the Conference between 1994 and 2007.

The Committee notes that Turkmenistan has been a Member of the Organization since 24 September 1993. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies "for the enactment of legislation or other action". The Governing Body of the International Labour Office adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars on this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and any proposals made by the Government on the measures to be taken with regard to the instruments that have been submitted.*

The Committee, in the same way as the Conference Committee, urges the Government to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Uganda

Serious failure to submit. *The Committee asks the Government to provide the required information on the submission to Parliament of the instruments adopted by the Conference at 14 sessions held between 1994 and 2007 (81st, 82nd, 83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It urges the Government to take steps without delay to submit the pending instruments to Parliament.*

Ukraine

The Committee notes the reply provided by the Government, in May 2009, to its previous comments indicating that the instruments adopted by the Conference between 2003 and 2007 were referred to the competent bodies of the executive authority in order to examine the possibility of their ratification. The Government further stated that these instruments were not submitted to the Supreme Rada of Ukraine since no proposals were made with regard to their ratification.

The Committee notes that, by virtue of the relevant provisions of article 19, paragraphs 5, 6 and 7, of the Constitution, the Members of the Organization have undertaken to submit the instruments adopted by the Conference to the authority or authorities within whose competence the matter lies for the enactment of legislation or other action. In the *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, the Governing Body indicated that the competent authority is the authority which, under the Constitution of each State, has the power to legislate or to take other action in order to implement Conventions and Recommendations. The competent national authority should normally be the legislature. Even in the case of instruments not requiring action in the form of legislation, it would be desirable to ensure that the purpose of submission, which is also to bring Conventions and Recommendations to the knowledge of the public, is fully met – to submit these instruments also to the parliamentary body.

The Committee also notes that for many years the Government has provided information on the submission of the instruments adopted by the Conference to the Supreme Rada. Submission of the instruments adopted by the Conference to the Supreme Rada does not imply any obligation for the Government to propose the ratification of a Convention or Protocol, or the application of a Recommendation. Governments have complete freedom as to the nature of the proposals to be made when submitting instruments to the competent authorities. Furthermore, the proposals to be made to the competent authority or authorities in connection with submission have to be the subject of consultation in accordance with the tripartite procedures required in Article 5(1)(b) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which has been ratified by Ukraine.

The Committee therefore hopes that the Government will be in a position in the near future to provide all the information requested in the questionnaire at the end of the Memorandum on the submission to the Supreme Rada of Ukraine regarding the instruments adopted at the 91st, 92nd, 94th, 95th and 96th Sessions of the Conference (2003–07).

Uzbekistan

Serious failure to submit. The Committee recalls that the Government has not communicated information on the submission to the competent authorities of the instruments adopted by the Conference during 14 sessions held between 1993 and 2007.

The Committee notes that Uzbekistan has been a Member of the Organization since 31 July 1992. It recalls that, under article 19 of the Constitution of the International Labour Organization, every Member undertakes to bring the instruments adopted by the International Labour Conference before the authority or authorities within whose competence the matter lies “for the enactment of legislation or other action”. The Governing Body of the International Labour Office has adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, asking for particulars about this subject. *The Committee hopes that the Government will provide all the information requested by the questionnaire at the end of the Memorandum about the competent authority, the date on which the instruments were submitted and the proposals made by the Government on the measures which might be taken with regard to the instruments that have been submitted.*

The Committee urges the Government, in the same way as the Conference Committee, to make every effort to comply with the constitutional obligation of submission and recalls that the Office can provide technical assistance to overcome this serious delay.

Bolivarian Republic of Venezuela

Serious failure to submit. The Committee recalls that 41 instruments await submission to the National Assembly adopted at the 79th and 81st Sessions (1992 and 1994) and between 1996 and 2007, as well as certain instruments adopted earlier (74th Session, 1987: Conventions Nos 163, 164, 165 and 166, and Recommendation No. 174; 75th Session, 1988: Convention No. 168 and Recommendation No. 176; 77th Session, 1990: Convention No. 171 and Recommendation No. 178, the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948; 78th Session, 1991: Convention No. 172; 82nd Session, 1995: Protocol of 1995 to the Labour Inspection Convention, 1947). The Committee refers to the communication received in August 2008 which indicated that in due course the Government will report on the procedure for approval by the National Assembly and ratification by the President of the Republic. *The Committee reiterates the comments which it has made for many years and invites the Government to proceed with the tripartite consultations to be held under Convention No. 144 and the submission to the National Assembly of the 41 instruments pending.*

Zambia

Serious failure to submit. *The Committee requests the Government to provide the relevant information on the submission to the National Assembly of the instruments adopted by the Conference at the 12 sessions held between 1996 and 2007 (83rd, 84th, 85th, 86th, 88th, 89th, 90th, 91st, 92nd, 94th, 95th and 96th Sessions). It urges the Government to take steps without delay to submit the pending instruments to the National Assembly.*

Direct requests

In addition, requests regarding certain points are being addressed directly to the following States: *Afghanistan, Albania, Argentina, Armenia, Austria, Barbados, Belgium, Botswana, Burundi, Canada, Costa Rica, Cuba, Cyprus, Dominican Republic, Ecuador, Eritrea, Grenada, Guyana, Honduras, Islamic Republic of Iran, Iraq, Jamaica, Jordan, Kuwait, Lesotho, Madagascar, Malaysia, Mali, Mauritania, Mexico, Republic of Moldova, Netherlands, Nigeria, Oman, Panama, Portugal, Qatar, Samoa, Sri Lanka, Suriname, Swaziland, Sweden, Timor-Leste, Trinidad and Tobago, Uruguay, Vanuatu, Viet Nam, Yemen.*



Appendices

**Appendix I. Table of reports received on ratified Conventions
as of 11 December 2009
(articles 22 and 35 of the Constitution)**

Article 22 of the Constitution of the International Labour Organization provides that “each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request”. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 204th Session (November 1977), the Governing Body approved the following arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 22 and 35 of the Constitution:

- (a) the practice of tabular classification of reports, without summary of their contents, which has been followed for several years in respect of reports subsequent to first reports after ratification, should be applied to all reports, including first reports;
- (b) the Director-General should make available, for consultation at the Conference, the original texts of all reports received on ratified Conventions; in addition, photocopies of the reports should be supplied on request to members of delegations.

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification.

Reports received under articles 22 and 35 of the Constitution appear in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations; first reports are indicated in parentheses.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

**Appendix I. Table of reports received on ratified Conventions
as of 11 December 2009**
(articles 22 and 35 of the Constitution)

Note: First reports are indicated in parentheses.

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| Afghanistan | 3 reports requested |
| · No reports received: Conventions Nos 100, 105, 111 | |
| Albania | 16 reports requested |
| · 10 reports received: Conventions Nos 87, 97, 98, 100, 135, 144, 150, 151, 154, (156) | |
| · 6 reports not received: Conventions Nos 16, 105, 111, (129), (147), 178 | |
| Algeria | 21 reports requested |
| · 18 reports received: Conventions Nos 56, 63, 68, 69, 71, 73, 74, 87, 91, 92, 98, 100, 105, 108, 122, 135, 147, 150 | |
| · 3 reports not received: Conventions Nos 81, 111, 144 | |
| Angola | 14 reports requested |
| · All reports received: Conventions Nos 68, 69, 73, 74, 81, 87, 91, 92, 98, 100, 105, 107, 108, 111 | |
| Antigua and Barbuda | 16 reports requested |
| · 14 reports received: Conventions Nos 17, 81, 87, 98, 100, 108, 111, 122, 135, 144, 150, 151, 154, 158 | |
| · 2 reports not received: Conventions Nos (161), (182) | |
| Argentina | 20 reports requested |
| · All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 58, 68, 71, 73, 87, 98, 100, 111, 135, 144, 150, 151, 154, 169 | |
| Armenia | 22 reports requested |
| · 7 reports received: Conventions Nos (14), (26), 29, 105, (132), (150), (173) | |
| · 15 reports not received: Conventions Nos 81, (87), (97), 98, 100, 111, 122, 135, (138), (143), 144, 151, 154, (160), (182) | |
| Australia | 19 reports requested |
| · All reports received: Conventions Nos 8, 16, 22, 58, 69, 73, 87, 92, 98, 100, 111, 122, 133, 135, 144, 150, 158, 160, 166 | |
| <i>Norfolk Island</i> | 5 reports requested |
| · 3 reports received: Conventions Nos 100, 122, 160 | |
| · 2 reports not received: Conventions Nos 87, 98 | |
| Austria | 8 reports requested |
| · All reports received: Conventions Nos 87, 98, 100, 111, 122, 135, 144, 160 | |
| Azerbaijan | 18 reports requested |
| · All reports received: Conventions Nos 16, 23, 69, 73, 87, 92, 98, 100, 111, 122, 133, 134, 135, 144, 147, 151, 154, 160 | |
| Bahamas | 9 reports requested |
| · 7 reports received: Conventions Nos 87, 98, 100, 111, 144, 147, 182 | |
| · 2 reports not received: Conventions Nos 12, 22 | |
| Bahrain | 1 report requested |
| · All reports received: Convention No. 111 | |
| Bangladesh | 7 reports requested |
| · All reports received: Conventions Nos 16, 22, 87, 98, 100, 111, 144 | |

Barbados

25 reports requested

- 16 reports received: Conventions Nos 12, 17, 19, 42, 97, 100, 101, 102, 105, 118, 122, 128, 138, 144, 172, 182
- 9 reports not received: Conventions Nos 22, 63, 74, 87, 98, 108, 111, 135, 147

Belarus

12 reports requested

- All reports received: Conventions Nos 16, 87, 98, 100, 108, 111, 122, 144, 150, 151, 154, 160

Belgium

24 reports requested

- 23 reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 87, 92, 98, 100, 111, 122, 129, 144, 147, 151, 154
- 1 report not received: Convention No. 180

Belize

32 reports requested

- All reports received: Conventions Nos 8, 14, 16, 22, 23, 29, 55, 58, 87, 89, 92, 97, 98, 100, 101, 105, 108, 111, 115, 133, 134, 135, 140, 144, 147, 150, 151, 154, 155, 156, 182, 183

Benin

8 reports requested

- All reports received: Conventions Nos 87, 98, 100, 111, 135, 144, 150, 160

Bolivia

32 reports requested

- 26 reports received: Conventions Nos 1, 14, 19, 20, 30, 77, 78, 87, 89, 95, 98, 100, 102, 103, 106, 111, 117, 118, 121, 122, 123, 124, 128, 130, 156, 160
- 6 reports not received: Conventions Nos 81, 90, 96, 129, 131, 136

Bosnia and Herzegovina

20 reports requested

- All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 111, 122, 135, 144, 158

Botswana

12 reports requested

- 8 reports received: Conventions Nos 14, 29, 98, 105, 111, 138, 144, 182
- 4 reports not received: Conventions Nos 19, 87, 100, 151

Brazil

26 reports requested

- 23 reports received: Conventions Nos 16, 22, 53, 92, 98, 100, 108, 111, 122, 133, 134, 135, 142, 144, 145, 146, 147, 154, 160, 163, 164, 166, (178)
- 3 reports not received: Conventions Nos 94, 140, 169

Bulgaria

25 reports requested

- No reports received: Conventions Nos 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 87, 98, 100, 108, 111, 144, 146, 147, 163, 164, 166, 178, 179, 180

Burkina Faso

7 reports requested

- No reports received: Conventions Nos 87, 98, 100, 111, 135, 144, 150

Burundi

16 reports requested

- No reports received: Conventions Nos 1, 14, 29, 52, 81, 87, 89, 98, 100, 101, 105, 111, 135, 138, 144, 182

Cambodia

7 reports requested

- No reports received: Conventions Nos 87, 98, 100, 105, 111, 122, 150

Cameroon

12 reports requested

- All reports received: Conventions Nos 9, 16, 87, 94, 98, 100, 108, 111, 122, 135, 146, 158

Canada

15 reports requested

- All reports received: Conventions Nos 8, 16, 22, 58, 68, 69, 73, 74, 87, 100, 108, 111, 122, 147, 160

Cape Verde

11 reports requested

- No reports received: Conventions Nos 17, 19, 29, 81, 87, 98, 100, 105, 111, 118, 182

Central African Republic

12 reports requested

- 9 reports received: Conventions Nos 87, 98, 100, 105, 111, 138, 144, 150, 182
- 3 reports not received: Conventions Nos 122, 142, 158

Chad

15 reports requested

- All reports received: Conventions Nos 14, 29, 41, 81, 87, 98, 100, 105, 111, 132, 135, (138), 144, 151, 182

Chile

15 reports requested

- All reports received: Conventions Nos 8, 9, 16, 22, 35, 63, 87, 98, 100, 105, 111, 122, 135, 144, 151

China

9 reports requested

- All reports received: Conventions Nos 16, 22, 23, 100, 111, 122, 144, 150, (155)

Hong Kong Special Administrative Region

16 reports requested

- All reports received: Conventions Nos 8, 16, 22, 23, 74, 87, 92, 98, 108, 122, 133, 144, 147, 150, 151, 160

Macau Special Administrative Region

15 reports requested

- All reports received: Conventions Nos 22, 23, 68, 69, 73, 74, 87, 92, 98, 100, 108, 111, 122, 144, 150

Colombia

15 reports requested

- All reports received: Conventions Nos 8, 9, 16, 17, 22, 23, 87, 98, 100, 111, 144, 151, 154, 160, 169

Comoros

17 reports requested

- 10 reports received: Conventions Nos 29, 52, 98, 99, 100, 105, 111, 122, 138, 182
- 7 reports not received: Conventions Nos 6, 11, 12, 14, 87, 89, 106

Congo

16 reports requested

- No reports received: Conventions Nos 14, 29, 81, 87, 89, 95, 98, 100, 105, 111, 138, 144, 149, 150, 152, 182

Costa Rica

16 reports requested

- All reports received: Conventions Nos 8, 16, 87, 92, 98, 100, 111, 122, 134, 135, 137, 144, 145, 147, 150, 160

Côte d'Ivoire

18 reports requested

- All reports received: Conventions Nos 3, 14, 29, 41, 52, 81, 87, 98, 100, 105, 110, 111, 129, 133, 135, 138, 144, 182

Croatia

20 reports requested

- No reports received: Conventions Nos 8, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 103, 111, 122, 135, 147, 179

Cuba

18 reports requested

- 17 reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 63, 87, 92, 98, 100, 108, 111, 122, 135, 145, 150
- 1 report not received: Convention No. 151

Cyprus

15 reports requested

- All reports received: Conventions Nos 16, 23, 87, 92, 98, 100, 111, 122, 135, 144, 147, 150, 151, 154, 160

Czech Republic

22 reports requested

- No reports received: Conventions Nos 1, 14, 29, 87, 98, 100, 105, 108, 111, 122, 132, 135, (138), 140, 142, 144, 150, 160, 163, 164, 171, 182

Democratic Republic of the Congo

19 reports requested

- No reports received: Conventions Nos 12, 19, 29, 62, 87, 89, 94, 98, 100, 105, 111, 117, 119, 120, 121, 135, 144, 150, 158

Denmark

27 reports requested

- 23 reports received: Conventions Nos 8, 9, 16, 53, 73, 87, 92, 98, 100, 108, 111, 122, 133, 134, 135, 144, 149, 150, 151, 160, (162), 163, 182
- 4 reports not received: Conventions Nos 27, 147, 169, 180

*Faeroe Islands***21 reports requested**

· All reports received: Conventions Nos 5, 6, 7, 8, 9, 11, 12, 14, 16, 18, 19, 27, 29, 52, 53, 87, 92, 98, 105, 106, 126

*Greenland***8 reports requested**

· 4 reports received: Conventions Nos 14, 29, 105, 106

· 4 reports not received: Conventions Nos 7, 16, 87, 122

Djibouti**29 reports requested**

· No reports received: Conventions Nos 1, 9, 16, 22, 23, 26, 38, 53, 55, 56, 63, 69, 71, 73, 87, 94, 95, 96, 98, 100, 101, 106, 108, 111, 115, 120, 122, 124, 144

Dominica**23 reports requested**

· 19 reports received: Conventions Nos 8, 12, 14, 16, 19, 22, 26, 81, 87, 98, 100, 105, 108, 111, (135), (144), (150), (169), (182)

· 4 reports not received: Conventions Nos 29, 95, 138, (147)

Dominican Republic**12 reports requested**

· All reports received: Conventions Nos 52, 87, 98, 100, 105, 107, 111, 122, 144, 150, (170), 182

Ecuador**8 reports requested**

· All reports received: Conventions Nos 81, 87, 98, 100, 111, 122, 144, 152

Egypt**24 reports requested**

· All reports received: Conventions Nos 9, 22, 23, 53, 55, 56, 63, 68, 69, 71, 73, 74, 87, 92, 98, 100, 111, 134, 135, 144, 145, 147, 150, 166

El Salvador**10 reports requested**

· All reports received: Conventions Nos 87, 98, 100, 111, 122, 135, 144, 150, 151, 160

Equatorial Guinea**14 reports requested**

· No reports received: Conventions Nos 1, 14, 29, 30, (68), 87, (92), 98, 100, 103, 105, 111, 138, 182

Eritrea**7 reports requested**

· No reports received: Conventions Nos 29, 87, 98, 100, 105, 111, 138

Estonia**17 reports requested**

· All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 87, 98, 100, 108, 111, 122, 129, 135, (138), 144, 147

Ethiopia**9 reports requested**

· 3 reports received: Conventions Nos 29, 138, 182

· 6 reports not received: Conventions Nos 87, 98, 100, 111, 156, 158

Fiji**8 reports requested**

· All reports received: Conventions Nos 8, 87, 98, 100, 105, 108, 111, 144

Finland**29 reports requested**

· All reports received: Conventions Nos 8, 16, 22, 53, 73, 87, 92, 98, 100, 108, 111, 121, 122, 133, 134, 135, 144, 145, 146, 147, 150, 151, 154, 160, 163, 164, 178, 179, 180

France**45 reports requested**

· 15 reports received: Conventions Nos 14, 29, 63, 82, 87, 94, 98, 100, 102, 105, 106, 111, 135, 140, 144

· 30 reports not received: Conventions Nos 8, 16, 22, 23, 27, 53, 55, 56, 68, 69, 71, 73, 74, 88, 92, 96, 122, 133, 134, 137, 145, 146, 147, 149, 163, 164, 166, 178, 179, 180

*French Guiana***32 reports requested**

· 9 reports received: Conventions Nos 14, 87, 98, 100, 106, 111, 129, 135, 144

· 23 reports not received: Conventions Nos 8, 9, 16, 22, 23, 27, 32, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 145, 146, 147, 149

*French Polynesia***22 reports requested**

· All reports received: Conventions Nos 9, 16, 22, 23, 53, 55, 56, 58, 63, 69, 71, 73, 87, 98, 100, 108, 111, 122, 144, 145, 146, 147

*French Southern and Antarctic Territories***20 reports requested**

· 2 reports received: Conventions Nos 98, 111

· 18 reports not received: Conventions Nos 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146, 147

*Guadeloupe***35 reports requested**

· 12 reports received: Conventions Nos 14, 29, 87, 98, 100, 101, 105, 106, 111, 129, 135, 144

· 23 reports not received: Conventions Nos 8, 9, 16, 22, 23, 27, 32, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 145, 146, 147, 149

*Martinique***33 reports requested**

· 10 reports received: Conventions Nos 14, 29, 87, 98, 100, 106, 111, 129, 135, 144

· 23 reports not received: Conventions Nos 8, 9, 16, 22, 23, 27, 32, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 145, 146, 147, 149

*New Caledonia***22 reports requested**

· All reports received: Conventions Nos 9, 16, 22, 23, 53, 55, 56, 58, 63, 69, 71, 73, 87, 98, 100, 108, 111, 122, 144, 145, 146, 147

*Réunion***34 reports requested**

· 10 reports received: Conventions Nos 14, 29, 87, 98, 100, 105, 106, 129, 135, 144

· 24 reports not received: Conventions Nos 8, 9, 16, 22, 23, 27, 32, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 111, 133, 145, 146, 147, 149

*St Pierre and Miquelon***29 reports requested**

· 13 reports received: Conventions Nos 14, 29, 63, 82, 87, 98, 100, 105, 106, 111, 122, 129, 144

· 16 reports not received: Conventions Nos 9, 16, 22, 23, 53, 55, 56, 58, 69, 71, 73, 108, 145, 146, 147, 149

Gabon**12 reports requested**

· All reports received: Conventions Nos 29, 81, 87, 98, 100, 105, 111, 135, 144, 150, 154, 158

Gambia**7 reports requested**

· All reports received: Conventions Nos 87, 98, 100, (105), 111, (138), (182)

Georgia**7 reports requested**

· All reports received: Conventions Nos 87, 98, 100, 111, 122, 151, 163

Germany**26 reports requested**

· All reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 56, 73, 87, 92, 98, 100, 111, 122, 133, 134, 135, 144, 146, 147, 150, 160, 164, 166, (170), 180

Ghana**18 reports requested**

· 14 reports received: Conventions Nos 8, 16, 22, 23, 58, 87, 92, 98, 100, 108, 111, 147, 150, 151

· 4 reports not received: Conventions Nos 69, 74, 105, 119

Greece**26 reports requested**

· All reports received: Conventions Nos 8, 9, 16, 23, 55, 68, 69, 71, 73, 87, 92, 98, 100, 108, 111, 122, 133, 134, 135, 144, 147, 150, 151, 154, 160, 180

Grenada**8 reports requested**

· 6 reports received: Conventions Nos 8, 87, 98, 100, 111, 144

· 2 reports not received: Conventions Nos 16, 108

Guatemala**15 reports requested**

· All reports received: Conventions Nos 1, 16, 58, 87, 98, 100, 108, 111, 117, 122, 144, 154, 160, (163), 169

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| Guinea | 43 reports requested |
| · No reports received: Conventions Nos 3, 11, 14, 16, 26, 29, 45, 81, 87, 89, 90, 94, 95, 98, 99, 100, 105, 111, 113, 115, 117, 118, 119, 121, 122, 132, 133, 134, 135, 136, 138, 140, 142, 143, 144, 148, 149, 150, 151, 152, 156, 159, 182 | |
| Guinea-Bissau | 24 reports requested |
| · No reports received: Conventions Nos 1, 7, 12, 14, 17, 18, 19, 27, 29, 68, 69, 73, 74, 81, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111 | |
| Guyana | 26 reports requested |
| · No reports received: Conventions Nos 12, 19, 29, 42, 81, 87, 97, 98, 100, 105, 108, 111, 129, 135, 137, 138, 140, 142, 144, 149, 150, 151, 166, 172, 175, 182 | |
| Haiti | 5 reports requested |
| · All reports received: Conventions Nos 87, 98, 100, 111, (182) | |
| Honduras | 6 reports requested |
| · All reports received: Conventions Nos 87, 98, 100, 108, 111, 122 | |
| Hungary | 29 reports requested |
| · 28 reports received: Conventions Nos 3, 14, 16, 29, 81, 87, 98, 100, 105, 111, 122, 129, 132, 135, 138, 140, 142, 144, 145, 147, 151, 154, 163, 164, 165, 166, 182, 183 | |
| · 1 report not received: Convention No. 24 | |
| Iceland | 10 reports requested |
| · 8 reports received: Conventions Nos 87, 98, 100, 111, 122, 138, 144, 182 | |
| · 2 reports not received: Conventions Nos 108, 147 | |
| India | 10 reports requested |
| · All reports received: Conventions Nos 16, 22, 29, 100, 108, 111, 122, 144, 147, 160 | |
| Indonesia | 6 reports requested |
| · All reports received: Conventions Nos 69, 87, 98, 100, 111, 144 | |
| Islamic Republic of Iran | 12 reports requested |
| · 5 reports received: Conventions Nos 14, 19, 29, 95, 106 | |
| · 7 reports not received: Conventions Nos 100, 105, 108, 111, 122, (142), 182 | |
| Iraq | 19 reports requested |
| · 11 reports received: Conventions Nos 22, 23, 98, 100, 108, 115, 120, 122, 144, 147, 167 | |
| · 8 reports not received: Conventions Nos 8, 16, 92, 111, 135, 145, 146, 150 | |
| Ireland | 34 reports requested |
| · 2 reports received: Conventions Nos 87, 98 | |
| · 32 reports not received: Conventions Nos 8, 14, 16, 22, 23, 27, 29, 32, 53, 68, 69, 73, 74, 81, 92, 100, 105, 108, 111, 122, 132, 138, 142, 144, 147, 160, 172, 177, 178, 179, 180, 182 | |
| Israel | 12 reports requested |
| · All reports received: Conventions Nos 9, 53, 87, 92, 98, 100, 111, 122, 133, 134, 147, 150 | |
| Italy | 32 reports requested |
| · 30 reports received: Conventions Nos 8, 9, 16, 22, 23, 53, 55, 68, 69, 71, 73, 74, 87, 92, 98, 100, 108, 111, 117, 133, 134, 135, 143, 144, 145, 146, 147, 150, 151, 160 | |
| · 2 reports not received: Conventions Nos 122, 164 | |
| Jamaica | 9 reports requested |
| · 8 reports received: Conventions Nos 8, 16, 87, 98, 111, 122, 144, 150 | |
| · 1 report not received: Convention No. 100 | |

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| Japan | 14 reports requested |
| · All reports received: Conventions Nos 8, 9, 16, 22, 69, 73, 87, 88, 98, 100, 122, 134, 144, 147 | |
| Jordan | 8 reports requested |
| · All reports received: Conventions Nos 98, 100, 111, 122, 135, 144, 147, 150 | |
| Kazakhstan | 10 reports requested |
| · All reports received: Conventions Nos 29, 81, 88, 105, 129, 135, 138, 148, 155, 182 | |
| Kenya | 17 reports requested |
| · 12 reports received: Conventions Nos 2, 14, 29, 45, 81, 88, 111, 129, 135, 138, 142, 182 | |
| · 5 reports not received: Conventions Nos 27, 94, 105, 137, 149 | |
| Kiribati | 2 reports requested |
| · No reports received: Conventions Nos 29, 105 | |
| Republic of Korea | 8 reports requested |
| · All reports received: Conventions Nos 81, 88, 135, 138, 159, (162), 170, 182 | |
| Kuwait | 12 reports requested |
| · 11 reports received: Conventions Nos 29, 81, (98), 105, 111, 119, 136, 138, 144, 159, 182 | |
| · 1 report not received: Convention No. 52 | |
| Kyrgyzstan | 30 reports requested |
| · 8 reports received: Conventions Nos 11, 14, 45, 52, 77, 98, 100, 182 | |
| · 22 reports not received: Conventions Nos (17), 29, 78, 79, 81, 87, 95, 105, (111), 115, 119, 120, 122, 124, (131), 138, (144), 148, 149, 154, 159, (184) | |
| Lao People's Democratic Republic | 6 reports requested |
| · 4 reports received: Conventions Nos 13, 29, (138), (182) | |
| · 2 reports not received: Conventions Nos 4, 6 | |
| Latvia | 15 reports requested |
| · All reports received: Conventions Nos 13, 29, 81, 105, 115, 119, 120, 129, 135, 138, 148, 151, 154, 155, 182 | |
| Lebanon | 17 reports requested |
| · All reports received: Conventions Nos 29, 45, 81, 88, 105, 115, 120, 127, 136, 138, 139, 148, 159, 170, 174, 176, 182 | |
| Lesotho | 10 reports requested |
| · No reports received: Conventions Nos 26, 29, 45, 81, 105, 135, 138, 155, 167, 182 | |
| Liberia | 19 reports requested |
| · 14 reports received: Conventions Nos 22, 23, 53, 55, 58, (81), 92, 105, 111, 112, (144), 147, (150), (182) | |
| · 5 reports not received: Conventions Nos 29, 108, 113, 114, (133) | |
| Libyan Arab Jamahiriya | 12 reports requested |
| · No reports received: Conventions Nos 29, 81, 88, 96, 102, 105, 118, 121, 128, 130, 138, 182 | |
| Lithuania | 12 reports requested |
| · All reports received: Conventions Nos 29, 81, 88, 105, 127, 135, 138, (149), 154, 159, 181, 182 | |
| Luxembourg | 13 reports requested |
| · 6 reports received: Conventions Nos 29, 105, 135, 138, 151, 182 | |
| · 7 reports not received: Conventions Nos 2, 13, 81, 88, 96, 155, 159 | |
| Madagascar | 14 reports requested |
| · All reports received: Conventions Nos 13, 29, 81, 88, 100, (105), 119, 120, 127, 129, 138, 144, 159, 182 | |

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| Malawi | 15 reports requested |
| <ul style="list-style-type: none"> · 8 reports received: Conventions Nos 26, 81, 89, 98, 99, 107, 129, 149 · 7 reports not received: Conventions Nos 29, 45, 105, 138, 158, 159, 182 | |
| Malaysia | 7 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 81, 88, 119, 138, 144, 182 | |
| Peninsular Malaysia | 1 report requested |
| <ul style="list-style-type: none"> · All reports received: Convention No. 45 | |
| Mali | 9 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 81, 105, 135, 138, 151, 159, 182 | |
| Malta | 28 reports requested |
| <ul style="list-style-type: none"> · 10 reports received: Conventions Nos 1, 14, 87, 98, 100, 106, 111, 117, 132, 149 · 18 reports not received: Conventions Nos 2, 13, 29, 32, 62, 81, 88, 96, 105, 119, 127, 129, 135, 136, 138, 148, 159, 182 | |
| Mauritania | 9 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 62, 81, 96, 102, 105, 138, 182 | |
| Mauritius | 8 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 29, 81, 88, 105, 138, 159, 182 | |
| Mexico | 15 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 45, 96, 105, 115, 120, 135, 155, 159, 161, 167, 169, 170, 182 | |
| Republic of Moldova | 16 reports requested |
| <ul style="list-style-type: none"> · 15 reports received: Conventions Nos 29, 81, 88, 105, 119, 127, 129, 135, 138, 151, 154, 155, 181, 182, 184 · 1 report not received: Convention No. (152) | |
| Mongolia | 8 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 103, 105, 135, 138, 155, 159, 182 | |
| Montenegro | 19 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 13, 29, 45, 81, 88, 105, 119, 129, 135, 136, 138, 139, 148, 155, 159, 161, 162, 182 | |
| Morocco | 13 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 13, 29, 45, 81, 105, 119, 129, 135, 136, 138, 181, 182 | |
| Mozambique | 7 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 81, 88, 105, 111, 138, 182 | |
| Myanmar | 3 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 29, 87 | |
| Namibia | 4 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 105, 138, 182 | |
| Nepal | 5 reports requested |
| <ul style="list-style-type: none"> · 4 reports received: Conventions Nos 29, (105), 138, 182 · 1 report not received: Convention No. (169) | |
| Netherlands | 18 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 62, 81, 88, 105, 115, 129, 135, 138, 151, 154, 155, 159, 162, 174, 181, 182 | |
| Aruba | 8 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 81, 88, 94, 105, 122, 135, 138 | |

*Netherlands Antilles***4 reports requested**

· All reports received: Conventions Nos 29, 81, 88, 105

New Zealand**6 reports requested**

· All reports received: Conventions Nos 29, 81, 88, 105, (155), 182

*Tokelau***2 reports requested**

· All reports received: Conventions Nos 29, 105

Nicaragua**25 reports requested**

· All reports received: Conventions Nos 3, 4, 13, 29, 45, 87, 88, 98, 100, 105, 110, 111, 115, 117, 119, 122, 127, 135, 136, 138, 139, 140, 142, 144, 182

Niger**16 reports requested**

· All reports received: Conventions Nos 13, 29, 81, 95, 98, 100, 105, 111, 119, 135, 138, 148, 154, 156, 158, 182

Nigeria**18 reports requested**

· 1 report received: Convention No. 81

· 17 reports not received: Conventions Nos 8, 19, 29, 32, 45, 87, 88, 94, 97, 98, 100, 105, 123, 138, 144, 155, 182

Norway**33 reports requested**

· 13 reports received: Conventions Nos 14, 29, 30, 47, 94, 100, 105, 111, 132, 142, 144, 149, 169

· 20 reports not received: Conventions Nos 13, 81, 88, 115, 119, 120, 129, 135, 138, 139, 148, 151, 154, 155, 159, 162, 167, 170, 176, 182

Oman**4 reports requested**

· All reports received: Conventions Nos 29, 105, 138, 182

Pakistan**13 reports requested**

· 2 reports received: Conventions Nos 98, 107

· 11 reports not received: Conventions Nos 11, 29, 45, 81, 87, 96, 105, 138, 144, 159, 182

Panama**26 reports requested**

· 25 reports received: Conventions Nos 3, 13, 17, 29, 30, 45, 52, 81, 88, 89, 98, 100, 105, 107, 110, 111, 117, 119, 120, 122, 127, 138, 159, 181, 182

· 1 report not received: Convention No. 87

Papua New Guinea**13 reports requested**

· 5 reports received: Conventions Nos 87, 103, 111, 138, 158

· 8 reports not received: Conventions Nos 2, 29, 45, 98, 100, 105, 122, 182

Paraguay**21 reports requested**

· 20 reports received: Conventions Nos 29, 81, 87, 89, 95, 98, 99, 100, 105, 106, 111, 115, 119, 120, 122, 138, (156), 159, 169, 182

· 1 report not received: Convention No. 123

Peru**12 reports requested**

· All reports received: Conventions Nos 29, 62, 71, 81, 88, 105, 138, 139, 151, 159, 169, 182

Philippines**11 reports requested**

· All reports received: Conventions Nos 29, 87, 88, 94, 98, 105, 138, 144, 159, 176, 182

Poland**20 reports requested**

· All reports received: Conventions Nos 2, 13, 29, 62, 81, 105, 115, 119, 120, 127, 129, 135, 138, 148, 151, 159, 161, 170, 176, 182

| | |
|---|-----------------------------|
| Portugal | 20 reports requested |
| · All reports received: Conventions Nos 29, 45, 81, 88, 105, 115, 120, 127, 129, 135, 138, 139, 148, 151, 155, 159, 162, 176, 181, 182 | |
| Qatar | 5 reports requested |
| · All reports received: Conventions Nos 29, 81, (105), 138, 182 | |
| Romania | 12 reports requested |
| · All reports received: Conventions Nos 13, 29, 81, 88, 105, 127, 129, 135, 136, 138, 154, 182 | |
| Russian Federation | 23 reports requested |
| · 22 reports received: Conventions Nos 13, 29, 45, 81, 100, 105, 106, 115, 119, 120, 122, 126, 138, 142, 148, 149, 152, 155, 156, 159, 162, 182 | |
| · 1 report not received: Convention No. 103 | |
| Rwanda | 17 reports requested |
| · 11 reports received: Conventions Nos 12, 14, 17, 87, 89, 94, 98, 100, 111, 132, 135 | |
| · 6 reports not received: Conventions Nos 29, 62, 81, 105, 138, 182 | |
| Saint Kitts and Nevis | 9 reports requested |
| · 8 reports received: Conventions Nos 29, (87), (98), 100, 105, 111, (138), 144 | |
| · 1 report not received: Convention No. 182 | |
| Saint Lucia | 13 reports requested |
| · All reports received: Conventions Nos 14, 29, 87, 97, 98, 100, 101, 105, 108, 111, 154, 158, (182) | |
| Saint Vincent and the Grenadines | 6 reports requested |
| · All reports received: Conventions Nos 29, 81, 105, 111, (138), 182 | |
| San Marino | 15 reports requested |
| · No reports received: Conventions Nos 29, 88, 103, 105, 119, 138, 140, 143, 144, 148, 151, 154, 159, 161, 182 | |
| Sao Tome and Principe | 18 reports requested |
| · No reports received: Conventions Nos 29, 81, 87, 88, 98, 100, 105, 106, 111, (135), (138), 144, (151), (154), (155), 159, (182), (184) | |
| Saudi Arabia | 6 reports requested |
| · All reports received: Conventions Nos 29, 45, 81, 105, 174, 182 | |
| Senegal | 12 reports requested |
| · No reports received: Conventions Nos 13, 29, 81, 96, 102, 105, 117, 120, 122, 135, 138, 182 | |
| Serbia | 20 reports requested |
| · All reports received: Conventions Nos 13, 19, 29, 45, 81, 88, 102, 105, 119, 129, 135, 136, 138, 139, 148, 155, 159, 161, 162, 182 | |
| Seychelles | 17 reports requested |
| · No reports received: Conventions Nos 2, 8, 22, 29, (73), 81, 105, 138, (144), (147), 148, 151, (152), 155, (161), (180), 182 | |
| Sierra Leone | 23 reports requested |
| · No reports received: Conventions Nos 8, 17, 19, 26, 29, 32, 45, 59, 81, 87, 88, 94, 95, 98, 99, 100, 101, 105, 111, 119, 125, 126, 144 | |
| Singapore | 6 reports requested |
| · All reports received: Conventions Nos 29, 45, 81, 88, 138, 182 | |

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|--|-----------------------------|
| Slovakia | 17 reports requested |
| <ul style="list-style-type: none"> · 4 reports received: Conventions Nos 29, 88, 105, 138 · 13 reports not received: Conventions Nos 13, 115, 120, 136, 139, 148, 155, 159, 161, 167, 176, 182, 184 | |
| Slovenia | 20 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 81, 88, 105, 119, 129, 135, 136, 138, 139, 140, 142, 148, 154, 155, 159, 161, 162, 182 | |
| Solomon Islands | 10 reports requested |
| <ul style="list-style-type: none"> · No reports received: Conventions Nos 14, 19, 26, 29, 42, 45, 81, 84, 94, 95 | |
| Somalia | 9 reports requested |
| <ul style="list-style-type: none"> · No reports received: Conventions Nos 17, 19, 29, 45, 84, 94, 95, 105, 111 | |
| South Africa | 9 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 29, 45, 89, 105, 138, 155, 176, 182 | |
| Spain | 24 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 62, 81, 88, 105, 115, 119, 120, 127, 129, 135, 136, 138, 148, 151, 154, 155, 159, 162, (169), 176, 181, 182 | |
| Sri Lanka | 9 reports requested |
| <ul style="list-style-type: none"> · 7 reports received: Conventions Nos 29, 45, 81, 96, 115, 138, 182 · 2 reports not received: Conventions Nos 105, 135 | |
| Sudan | 9 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 19, 29, 81, 98, 105, 117, 138, 182 | |
| Suriname | 11 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 62, 81, 88, 105, 135, 151, 154, 181, 182 | |
| Swaziland | 8 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 29, 45, 81, 87, 96, 105, 138, 182 | |
| Sweden | 26 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 13, 29, 81, 88, 105, 115, 119, 120, 129, 135, 138, 139, 148, 149, 151, 154, 155, 159, 161, 162, 167, 170, 174, 176, 182, 184 | |
| Switzerland | 19 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 29, 45, 62, 81, 88, 105, 115, 119, 120, 136, 138, 139, 142, 151, 154, 159, 162, 182 | |
| Syrian Arab Republic | 17 reports requested |
| <ul style="list-style-type: none"> · All reports received: Conventions Nos 2, 29, 45, 81, 88, 96, 105, 115, 119, 120, 129, 135, 136, 138, 139, 170, 182 | |
| Tajikistan | 26 reports requested |
| <ul style="list-style-type: none"> · 16 reports received: Conventions Nos 11, 14, 29, (97), 98, 103, 113, 115, 120, 122, 124, 138, 148, 149, 159, (182) · 10 reports not received: Conventions Nos 27, 32, 45, 105, 106, 111, 119, 126, 142, (143) | |
| United Republic of Tanzania | 16 reports requested |
| <ul style="list-style-type: none"> · 14 reports received: Conventions Nos 29, 87, 98, 100, 105, 111, 138, 140, 142, 144, 148, 149, 154, 182 · 2 reports not received: Conventions Nos 135, 170 | |
| Tanganyika | 4 reports requested |
| <ul style="list-style-type: none"> · No reports received: Conventions Nos 45, 81, 88, 101 | |
| Zanzibar | 1 report requested |
| <ul style="list-style-type: none"> · No reports received: Convention No. 97 | |

Thailand 10 reports requested

- 2 reports received: Conventions Nos 14, 127
- 8 reports not received: Conventions Nos 29, 88, 100, 105, 122, 138, (159), 182

The former Yugoslav Republic of Macedonia 54 reports requested

- 28 reports received: Conventions Nos 8, 9, 11, 16, 22, 23, 45, 53, 56, 69, 73, 74, 91, 92, 106, 113, 114, 126, 132, 135, 138, 140, 142, (144), 148, 158, 162, (182)
- 26 reports not received: Conventions Nos 12, 13, 19, 24, 25, 27, 29, 32, 81, 88, 97, 102, 105, 111, 119, 121, 122, 129, 131, 136, 139, 143, 155, 156, 159, 161

Togo 17 reports requested

- 2 reports received: Conventions Nos 87, 98
- 15 reports not received: Conventions Nos 6, 11, 13, 14, 26, 29, 85, 95, 100, 105, 111, 138, 143, 144, 182

Trinidad and Tobago 7 reports requested

- All reports received: Conventions Nos 29, (81), 105, 138, (150), 159, 182

Tunisia 15 reports requested

- 13 reports received: Conventions Nos 13, 29, 45, 62, 81, 88, 105, 119, 120, (135), 138, 159, 182
- 2 reports not received: Conventions Nos 118, 127

Turkey 18 reports requested

- 1 report received: Convention No. 96
- 17 reports not received: Conventions Nos 29, 45, 81, 87, 88, 105, 115, 119, 127, 135, 138, 151, 155, 158, 159, 161, 182

Turkmenistan 6 reports requested

- No reports received: Conventions Nos (29), (87), (98), (100), (105), (111)

Uganda 22 reports requested

- No reports received: Conventions Nos 11, 12, 19, 26, 29, 45, 81, 94, 95, 98, 105, 122, 123, 124, 138, 143, 144, 154, 158, 159, 162, 182

Ukraine 17 reports requested

- All reports received: Conventions Nos 2, 29, 45, 81, 105, 111, 115, 119, 120, 129, 135, 138, 140, 147, 154, 159, 182

United Arab Emirates 6 reports requested

- All reports received: Conventions Nos 29, 81, 105, 111, 138, 182

United Kingdom 11 reports requested

- All reports received: Conventions Nos 2, 29, 81, 105, 115, 120, 135, 138, 148, 151, 182

Anguilla 25 reports requested

- All reports received: Conventions Nos 8, 11, 12, 14, 17, 19, 22, 23, 26, 29, 42, 58, 59, 82, 85, 87, 94, 97, 98, 99, 101, 105, 108, 140, 148

Bermuda 9 reports requested

- All reports received: Conventions Nos 17, 29, 59, 82, 87, 98, 105, 115, 135

British Virgin Islands 11 reports requested

- No reports received: Conventions Nos 10, 14, 26, 29, 59, 82, 87, 94, 97, 98, 105

Falkland Islands (Malvinas) 10 reports requested

- No reports received: Conventions Nos 10, 14, 29, 32, 45, 59, 82, 87, 98, 105

Gibraltar 12 reports requested

- No reports received: Conventions Nos 2, 29, 45, 59, 81, 82, 98, 100, 105, 135, 142, 151

| | |
|---|----------------------|
| <i>Guernsey</i> | 10 reports requested |
| · All reports received: Conventions Nos 2, 29, 81, 105, 115, 135, 142, 148, 151, 182 | |
| <i>Isle of Man</i> | 9 reports requested |
| · All reports received: Conventions Nos 2, 29, 81, 87, 98, 101, 105, 122, 151 | |
| <i>Jersey</i> | 5 reports requested |
| · All reports received: Conventions Nos 2, 29, 81, 105, 115 | |
| <i>Montserrat</i> | 4 reports requested |
| · No reports received: Conventions Nos 29, 82, 85, 105 | |
| <i>St Helena</i> | 18 reports requested |
| · No reports received: Conventions Nos 8, 10, 11, 12, 14, 16, 17, 19, 29, 58, 59, 63, 82, 85, 105, 108, 150, 151 | |
| United States | 3 reports requested |
| · All reports received: Conventions Nos 105, 176, 182 | |
| Uruguay | 24 reports requested |
| · All reports received: Conventions Nos 13, 29, 81, 105, 115, 119, 120, 121, 128, 129, 136, 138, 139, 148, 151, 154, 155, 159, 161, 162, 167, 181, 182, 184 | |
| Uzbekistan | 5 reports requested |
| · 1 report received: Convention No. (182) | |
| · 4 reports not received: Conventions Nos 29, 105, 135, 154 | |
| Vanuatu | 7 reports requested |
| · No reports received: Conventions Nos (29), (87), (98), (100), (105), (111), (182) | |
| Bolivarian Republic of Venezuela | 16 reports requested |
| · All reports received: Conventions Nos 13, 27, 29, 45, 81, 87, 88, 105, 111, 120, 127, 138, 139, 155, 158, 182 | |
| Viet Nam | 7 reports requested |
| · All reports received: Conventions Nos (29), 45, 81, 120, 138, 155, 182 | |
| Yemen | 8 reports requested |
| · All reports received: Conventions Nos 29, 81, 105, 131, 135, 138, 159, 182 | |
| Zambia | 12 reports requested |
| · 3 reports received: Conventions Nos 29, 138, 182 | |
| · 9 reports not received: Conventions Nos 11, 105, 135, 136, 148, 151, 154, 159, 176 | |
| Zimbabwe | 15 reports requested |
| · No reports received: Conventions Nos 29, 81, 99, 105, 129, 135, 138, 155, 159, 161, 162, 170, 174, 176, 182 | |

Grand Total

A total of 2,733 reports (article 22) were requested,
of which 1,853 reports (67.80 per cent) were received.

A total of 388 reports (article 35) were requested,
of which 200 reports (51.55 per cent) were received.

**Appendix II. Statistical table of reports received on ratified Conventions
as of 11 December 2009**
(article 22 of the Constitution)

| Year of the session of the Committee of Experts | Reports requested | Reports received at the date requested | | Reports received in time for the session of the Committee | | Reports received in time for the session of the Conference | |
|---|-------------------|--|-------|---|-------|--|-------|
| 1932 | 447 | - | | 406 | 90.8% | 423 | 94.6% |
| 1933 | 522 | - | | 435 | 83.3% | 453 | 86.7% |
| 1934 | 601 | - | | 508 | 84.5% | 544 | 90.5% |
| 1935 | 630 | - | | 584 | 92.7% | 620 | 98.4% |
| 1936 | 662 | - | | 577 | 87.2% | 604 | 91.2% |
| 1937 | 702 | - | | 580 | 82.6% | 634 | 90.3% |
| 1938 | 748 | - | | 616 | 82.4% | 635 | 84.9% |
| 1939 | 766 | - | | 588 | 76.8% | - | |
| 1944 | 583 | - | | 251 | 43.1% | 314 | 53.9% |
| 1945 | 725 | - | | 351 | 48.4% | 523 | 72.2% |
| 1946 | 731 | - | | 370 | 50.6% | 578 | 79.1% |
| 1947 | 763 | - | | 581 | 76.1% | 666 | 87.3% |
| 1948 | 799 | - | | 521 | 65.2% | 648 | 81.1% |
| 1949 | 806 | 134 | 16.6% | 666 | 82.6% | 695 | 86.2% |
| 1950 | 831 | 253 | 30.4% | 597 | 71.8% | 666 | 80.1% |
| 1951 | 907 | 288 | 31.7% | 507 | 77.7% | 761 | 83.9% |
| 1952 | 981 | 268 | 27.3% | 743 | 75.7% | 826 | 84.2% |
| 1953 | 1026 | 212 | 20.6% | 840 | 75.7% | 917 | 89.3% |
| 1954 | 1175 | 268 | 22.8% | 1077 | 91.7% | 1119 | 95.2% |
| 1955 | 1234 | 283 | 22.9% | 1063 | 86.1% | 1170 | 94.8% |
| 1956 | 1333 | 332 | 24.9% | 1234 | 92.5% | 1283 | 96.2% |
| 1957 | 1418 | 210 | 14.7% | 1295 | 91.3% | 1349 | 95.1% |
| 1958 | 1558 | 340 | 21.8% | 1484 | 95.2% | 1509 | 96.8% |
| As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions | | | | | | | |
| 1959 | 995 | 200 | 20.4% | 864 | 86.8% | 902 | 90.6% |
| 1960 | 1100 | 256 | 23.2% | 838 | 76.1% | 963 | 87.4% |
| 1961 | 1362 | 243 | 18.1% | 1090 | 80.0% | 1142 | 83.8% |
| 1962 | 1309 | 200 | 15.5% | 1059 | 80.9% | 1121 | 85.6% |
| 1963 | 1624 | 280 | 17.2% | 1314 | 80.9% | 1430 | 88.0% |
| 1964 | 1495 | 213 | 14.2% | 1268 | 84.8% | 1356 | 90.7% |
| 1965 | 1700 | 282 | 16.6% | 1444 | 84.9% | 1527 | 89.8% |
| 1966 | 1562 | 245 | 16.3% | 1330 | 85.1% | 1395 | 89.3% |
| 1967 | 1883 | 323 | 17.4% | 1551 | 84.5% | 1643 | 89.6% |
| 1968 | 1647 | 281 | 17.1% | 1409 | 85.5% | 1470 | 89.1% |
| 1969 | 1821 | 249 | 13.4% | 1501 | 82.4% | 1601 | 87.9% |
| 1970 | 1894 | 360 | 18.9% | 1463 | 77.0% | 1549 | 81.6% |
| 1971 | 1992 | 237 | 11.8% | 1504 | 75.5% | 1707 | 85.6% |
| 1972 | 2025 | 297 | 14.6% | 1572 | 77.6% | 1753 | 86.5% |
| 1973 | 2048 | 300 | 14.6% | 1521 | 74.3% | 1691 | 82.5% |
| 1974 | 2189 | 370 | 16.5% | 1854 | 84.6% | 1958 | 89.4% |
| 1975 | 2034 | 301 | 14.8% | 1663 | 81.7% | 1764 | 86.7% |
| 1976 | 2200 | 292 | 13.2% | 1831 | 83.0% | 1914 | 87.0% |

| Committee of Experts year | Reports requested | Reports received at the date requested | | Reports received in time for the session of the Committee | | Reports received in time for the session of the Conference | |
|---|-------------------|--|-------|---|-------|--|-------|
| As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals | | | | | | | |
| 1977 | 1529 | 215 | 14.0% | 1120 | 73.2% | 1328 | 87.0% |
| 1978 | 1701 | 251 | 14.7% | 1289 | 75.7% | 1391 | 81.7% |
| 1979 | 1593 | 234 | 14.7% | 1270 | 79.8% | 1376 | 86.4% |
| 1980 | 1581 | 168 | 10.6% | 1302 | 82.2% | 1437 | 90.8% |
| 1981 | 1543 | 127 | 8.1% | 1210 | 78.4% | 1340 | 86.7% |
| 1982 | 1695 | 332 | 19.4% | 1382 | 81.4% | 1493 | 88.0% |
| 1983 | 1737 | 236 | 13.5% | 1388 | 79.9% | 1558 | 89.6% |
| 1984 | 1669 | 189 | 11.3% | 1286 | 77.0% | 1412 | 84.6% |
| 1985 | 1666 | 189 | 11.3% | 1312 | 78.7% | 1471 | 88.2% |
| 1986 | 1752 | 207 | 11.8% | 1388 | 79.2% | 1529 | 87.3% |
| 1987 | 1793 | 171 | 9.5% | 1408 | 78.4% | 1542 | 86.0% |
| 1988 | 1636 | 149 | 9.0% | 1230 | 75.9% | 1384 | 84.4% |
| 1989 | 1719 | 196 | 11.4% | 1256 | 73.0% | 1409 | 81.9% |
| 1990 | 1958 | 192 | 9.8% | 1409 | 71.9% | 1639 | 83.7% |
| 1991 | 2010 | 271 | 13.4% | 1411 | 69.9% | 1544 | 76.8% |
| 1992 | 1824 | 313 | 17.1% | 1194 | 65.4% | 1384 | 75.8% |
| 1993 | 1906 | 471 | 24.7% | 1233 | 64.6% | 1473 | 77.2% |
| 1994 | 2290 | 370 | 16.1% | 1573 | 68.7% | 1879 | 82.0% |
| As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995 | | | | | | | |
| 1995 | 1252 | 479 | 38.2% | 824 | 65.8% | 988 | 78.9% |
| As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals | | | | | | | |
| 1996 | 1806 | 362 | 20.5% | 1145 | 63.3% | 1413 | 78.2% |
| 1997 | 1927 | 553 | 28.7% | 1211 | 62.8% | 1438 | 74.6% |
| 1998 | 2036 | 463 | 22.7% | 1264 | 62.1% | 1455 | 71.4% |
| 1999 | 2288 | 520 | 22.7% | 1406 | 61.4% | 1641 | 71.7% |
| 2000 | 2550 | 740 | 29.0% | 1798 | 70.5% | 1952 | 76.6% |
| 2001 | 2313 | 598 | 25.9% | 1513 | 65.4% | 1672 | 72.2% |
| 2002 | 2368 | 600 | 25.3% | 1529 | 64.5% | 1701 | 71.8% |
| 2003 | 2344 | 568 | 24.2% | 1544 | 65.9% | 1701 | 72.6% |
| 2004 | 2569 | 659 | 25.6% | 1645 | 64.0% | 1852 | 72.1% |
| 2005 | 2638 | 696 | 26.4% | 1820 | 69.0% | 2065 | 78.3% |
| 2006 | 2586 | 745 | 28.8% | 1719 | 66.5% | 1949 | 75.4% |
| 2007 | 2478 | 845 | 34.1% | 1611 | 65.0% | 1812 | 73.2% |
| 2008 | 2515 | 811 | 32.2% | 1768 | 70.2% | 1962 | 78.0% |
| 2009 | 2733 | 682 | 24.9% | 1853 | 67.8% | | |

Appendix III. List of observations made by employers' and workers' organizations

Albania

- Confederation of Trade Unions of Albania (CTUA)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98, 144, 151, 156
87, 98

Algeria

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Angola

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Argentina

- Association of Health Professionals of Salta (APSADES)
- Confederation of Argentinian Workers (CTA)
- International Trade Union Confederation (ITUC)

on Conventions Nos
169
87, 98, 111, 135, 150, 169
87, 98

Australia

- Australian Chamber of Commerce and Industry (ACCI)
- Australian Council of Trade Unions (ACTU)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98
87, 98, 100, 111, 122, 135, 144, 158
87, 98

Austria

- Austrian Confederation of Trade Unions (OGB)
- Federal Chamber of Labour (BAK)

on Conventions Nos
87
87, 98, 100, 102, 111, 160

Bahamas

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Bangladesh

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Barbados

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Belarus

- Belarusian Congress of Democratic Trade Unions (BKDP)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98, 122
87, 98

Belgium

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Belize

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Benin

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Bolivia

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Bosnia and Herzegovina

- Confederation of Independent Trade Unions of Bosnia and Herzegovina (SSSBiH)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98, 111
87, 98

Botswana

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Brazil

- Força Sindical
- Gaucha Association of Labour Inspectors (AGITRA)
- International Trade Union Confederation (ITUC)
- SINDSPREV/RJ
- Union of Rural Workers of Alcantara (STTR) and Union of Family Agricultural Workers of Alcantara (SINTRAF)

on Conventions Nos
98, 135
81
98
81, 111
169

Bulgaria

- Confederation of Independent Trade Unions of Bulgaria (CITUB)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98
87, 98

Burkina Faso

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Burundi

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Cambodia

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Cameroon

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Canada

- Canadian Labour Congress (CLC)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 111, 122, 160
87

Central African Republic

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Chad

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Chile

- College of Teachers of Chile A.G.
- COPEC
- International Trade Union Confederation (ITUC)
- Single Central Organization (CUT)

on Conventions Nos
35, 37
87, 98
87, 98
35

China

- All-China Federation of Trade Unions (ACFTU)
- China Enterprise Federation (CEF)
- International Trade Union Confederation (ITUC)

on Conventions Nos
144, 155
100, 111
155

Hong Kong Special Administrative Region

- Hong Kong Confederation of Trade Unions (HKCTU)
- International Trade Union Confederation (ITUC)

on Conventions Nos
98, 144
87, 98

Macao Special Administrative Region

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Colombia

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98, 169 |
| • National Association of Telephone, Communication and Allied Technicians (ATELCA) | 98, 151, 154 |
| • Single Confederation of Workers of Colombia (CUT) | 87, 98, 151, 154 |
| • Union of Maritime and Inland Water Transport Workers (UNIMAR) | 87, 95, 98 |
| • Union of Workers of the National Mining Enterprise 'Minercol Ltda.' (SINTRAMINERCOL) | 169 |
| • Workers' Trade Union Confederation of the Oil Industry (USO) | 169 |

Comoros

| | |
|--|---------------------------|
| | on Conventions Nos |
| • Employers' Organization of Comoros (OPACO) | 12, 98, 100, 111, 122 |

Congo

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Costa Rica

| | |
|--|---------------------------|
| | on Conventions Nos |
| • Confederation of Workers Rerum Novarum (CTRN) | 81 |
| • Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP) | 98, 135 |
| • International Trade Union Confederation (ITUC) | 87, 98, 182 |
| • Union of Workers of the Ministry of Finance and the National Customs Service (SITRAHSAN) | 94, 95 |

Côte d'Ivoire

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Croatia

| | |
|--|---------------------------|
| | on Conventions Nos |
| • Croatian Association of Unions (HUC) | 162 |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Cuba

| | |
|--|---------------------------|
| | on Conventions Nos |
| • Independent National Confederation of Cuba (CONIC) | 87, 98 |
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • Worker's Central Union of Cuba (CTC) | 98 |

Czech Republic

| | |
|---|---------------------------|
| | on Conventions Nos |
| • Czech-Moravian Confederation of Trade Unions (CM KOS) | 87, 98, 111 |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Democratic Republic of the Congo

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Djibouti

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Dominican Republic

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

Ecuador

| | |
|---|---------------------------|
| | on Conventions Nos |
| • International Organization of Employers (IOE) | 87, 131, 144 |
| • International Trade Union Confederation (ITUC) | 87, 98 |
| • National Federation of Workers of the Enterprise "Petróleos del Ecuador" (FETRAPEC) | 87, 98 |

Egypt

| | |
|--|---------------------------|
| | on Conventions Nos |
| • International Trade Union Confederation (ITUC) | 87, 98 |

El Salvador

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Eritrea

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Estonia

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Ethiopia

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Fiji

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Finland

- Confederation of Unions for Professionals and Managerial Staff in Finland (AKAVA), Central Organization of Finnish Trade Unions (SAK), Finnish Confederation of Professionals (STTK).

on Conventions Nos
87, 98

France

- General Confederation of Labour - Force Ouvrière (CGT-FO)
- International Trade Union Confederation (ITUC)

on Conventions Nos
14, 87, 98, 106
87, 98

Guadeloupe

- United Confederation of Workers (CTU)

on Conventions Nos
87, 98

Gabon

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Georgia

- International Trade Union Confederation (ITUC)

on Convention No.
98

Germany

- German Confederation of Trade Unions (DGB)
- IG Metall Vorstand
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98
87, 98
87, 98

Ghana

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Greece

- Greek Federation of Bank Employee Unions
- Greek General Confederation of Labour (OTOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98
87, 98
87, 98

Guatemala

- Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98, 111, 144, 160, 169
87, 98

Guinea

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Guinea-Bissau

- International Trade Union Confederation (ITUC)

on Convention No.
98

Haiti

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Honduras

- Honduran National Business Council (COHEP)
- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98
87, 98

Hungary

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

India

- Akhil Bhartiya Safai Mazdur Congress
- All India Manufacturers' Organization (AIMO)
- International Trade Union Confederation (ITUC)

on Conventions Nos
111
108
107

Indonesia

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Islamic Republic of Iran

- International Trade Union Confederation (ITUC)

on Convention No.
95

Iraq

- International Trade Union Confederation (ITUC)

on Convention No.
98

Ireland

- Irish Congress of Trade Unions (ICTU)

on Conventions Nos
87, 98

Israel

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Italy

- General Confederation of Commerce, Tourism and Services (CONFCOMMERCIO)
- Italian Confederation of Private Shipowners (CONFITARMA)
- Italian General Confederation of Labour (CGIL)
- Italian Union of Labour (UIL), Italian General Confederation of Labour (CGIL), Italian Confederation of Workers' Trade Unions (CISL)

on Conventions Nos
100, 111
9
117, 160, 182
143

Jamaica

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Japan

- All Japan Shipbuilding and Engineering Union (AJSEU)
- Federation of Korean Trade Unions (FKTU) - Korean Confederation of Trade Unions (KCTU)
- International Trade Union Confederation (ITUC)
- Japanese Trade Union Confederation (JTUC-RENGO)
- Teacher's Union of the Nagoya Municipal High School
- Working Women's Network (WWN)

on Conventions Nos
29
29
29, 87, 98
87, 88, 98, 100, 122
29
100

Jordan

- International Trade Union Confederation (ITUC)

on Convention No.
98

Kuwait

- International Trade Union Confederation (ITUC)

on Convention No.
98

Kyrgyzstan

- International Trade Union Confederation (ITUC)

on Convention No.
87

Latvia

- Latvian Free Trade Union Federation (LBAS)

on Conventions Nos
135, 154

Malawi

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Mauritania

- Association of Pensioners of the National Social Security Fund

on Convention No.
102

Mauritius

- Confederation of Private Sector Workers (CTSP)
- Mauritius Employers' Federation (MEF)

on Conventions Nos
14, 29
88, 138, 182

Mexico

- Independent Union of Daily Workers (SINTRAJOR)
- Single Union of Government Workers of the Federal District (SUTGDF)
- Trade Union Delegation of 'Radio Educación', Chapter XI of the National Union of Education Workers (SNTE)
- Union of Workers of the National Autonomous University of Mexico (STUNAM)

on Conventions Nos
169
102, 161
169
102

Republic of Moldova

- Confederation of Trade Unions of the Republic of Moldova

on Conventions Nos
87, 98

Mongolia

- Confederation of Mongolian Trade Unions (CMTU)
- Mongolian Employer's Federation (MONEF)

on Conventions Nos
103
29

Montenegro

- Confederation of Trade Unions of Montenegro

on Conventions Nos
2, 29, 81, 87, 88, 98, 135, 144, 161

Myanmar

- Federation of Trade Unions Kawthoolei (FTUK)
- International Trade Union Confederation (ITUC)

on Conventions Nos
29
22, 87

Nepal

- International Trade Union Confederation (ITUC)

on Convention No.
29

Netherlands

- Confederation of Netherlands Industry and Employers (VNO-NCW)
- National Federation of Christian Trade Unions (CNV)
- Netherlands Trade Union Confederation (FNV)

on Conventions Nos
13, 115, 154, 155, 162, 174
29, 81, 87, 88, 98, 154, 155, 159, 182
29, 62, 81, 87, 98, 105, 121, 138, 154,
155, 162, 174, 181

New Zealand

- Business New Zealand
- New Zealand Council of Trade Unions (NZCTU)

on Conventions Nos
29, 81, 88, 155, 182
29, 81, 88, 155, 182

Tokelau

- Business New Zealand

on Convention No.
29

Nicaragua

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Nigeria

- International Trade Union Confederation (ITUC)

on Conventions Nos
87, 98

Norway

- Confederation of Norwegian Business and Industry (NHO)
- Confederation of Unions for Professionals (Unio)
- HSH
- Norwegian Confederation of Trade Unions (LO)
- Sami Parliament of Norway

on Conventions Nos

94, 100
100
111
100, 144
169

Pakistan

- International Trade Union Confederation (ITUC)
- Pakistan Workers' Federation (PWF)

on Conventions Nos

87
87, 98, 144

Panama

- International Trade Union Confederation (ITUC)
- National Council of Private Enterprise of Panama (CONEP)
- National Federation of Public Employees and Public Service Enterprise Workers (FENASEP)

on Conventions Nos

87, 98
87, 98
87, 98, 100, 111, 138, 182

Paraguay

- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

Peru

- CGTP-CATP-CUT
- General Confederation of Workers of Peru (CGTP)
- International Trade Union Confederation (ITUC)

on Conventions Nos

81, 98, 105, 151
29, 62, 71, 88, 138, 139, 159, 169, 182
182

Philippines

- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

Poland

- Independent and Self-Governing Trade Union "Solidarnosc"

on Conventions Nos

159, 161

Portugal

- Confederation of Portuguese Industry (CIP)
- General Workers' Union (UGT)

on Conventions Nos

45, 81
29, 81, 105, 115, 120, 127, 129, 135,
138, 139, 151, 155, 162

Romania

- Federation of National Education (FEN)
- National Trade Union Confederation (CNS 'CARTEL ALFA')

on Conventions Nos

95
81

Rwanda

- Association of Christian Trade Unions (UMURIMO)
- International Trade Union Confederation (ITUC)

on Conventions Nos

17, 29, 111
87, 98

Senegal

- International Trade Union Confederation (ITUC)

on Convention No.

182

Serbia

- Confederation of Autonomous Trade Unions of Serbia
- Trade Union Confederation 'Nezavisnost'

on Conventions Nos

29, 88, 105, 119, 136, 155, 159, 161,
182
102

Slovenia

- Confederation of New Trade Unions of Slovenia (KNSS)
- Employers' Association of Slovenia

on Conventions Nos

159, 161
159

Spain

- Independent Federation of Civil Servants (CSI-F)

on Convention No.

88

Sri Lanka

- National Trade Union Federation (NTUF)

on Conventions Nos

29, 45, 81, 96, 105, 135, 138, 182

Sudan

- International Trade Union Confederation (ITUC)

on Convention No.

98

Swaziland

- International Trade Union Confederation (ITUC)

on Convention No.

87

Sweden

- Merchant Marine Officers' Association
- Swedish Ship Officers' Association
- Swedish Shipowners' Employer Association (SEA)
- Union of Service and Communication Employees (SEKO)

on Conventions Nos

180

180

180

180

Switzerland

- Swiss Federation of Trade Unions (USS/SGB)
- Union of Swiss Employers (UPS)

on Conventions Nos

2, 151, 162

151, 162

United Republic of Tanzania

- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

Thailand

- State Enterprises Workers Relations Confederation (SERC)

on Convention No.

19

Togo

- International Trade Union Confederation (ITUC)

on Conventions Nos

87, 98

Trinidad and Tobago

- Employers' Consultative Association of Trinidad and Tobago (ECA)

on Convention No.

100

Turkey

- Confederation of Progressive Trade Unions of Turkey (DISK)
- Confederation of Public Employees' Trade Unions (KESK)
- Confederation of Turkish Trade Unions (TÜRK-İS)
- International Trade Union Confederation (ITUC)
- Turkish Confederation of Employers' Associations (TİSK)
- Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen)

on Conventions Nos

87, 98

87, 98, 151

98, 100, 111, 122, 142, 144

81, 87, 88, 135, 138, 155, 159, 161, 182

87, 98, 111, 122, 142, 144

87, 98, 151

Uganda

- International Trade Union Confederation (ITUC)

on Convention No.

98

Ukraine

- Confederation of Free Trade Unions of the Lugansk Region - KSPLO
- Federation of Trade Unions of Ukraine
- Independent Union of Miners at the Barakov Mine Enterprise (IUMBME)
- Workers' Union of the Coalmine Nikanor-Nova (NPG)

on Conventions Nos

95

81, 129

135

95

United Kingdom

- British Air Line Pilots' Association (BALPA)

on Convention No.

87

Uzbekistan

- Council of the Federation of Trade Unions
- International Organization of Employers (IOE)
- International Trade Union Confederation (ITUC)

on Conventions Nos

105

29, 105, 182

29

Bolivarian Republic of Venezuela

| | |
|---|--------------------|
| | on Conventions Nos |
| • Confederation of Workers of Venezuela (CTV) | 111 |
| • International Trade Union Confederation (ITUC) | 87 |
| • Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS) | 26, 87, 144, 158 |

Zimbabwe

| | |
|--|--|
| | on Conventions Nos |
| • Zimbabwe Congress of Trade Unions (ZCTU) | 19, 26, 29, 81, 87, 98, 99, 100, 105, 111, 129, 135, 138, 140, 144, 150, 159, 161, 162, 170, 174, 176, 182 |

Appendix IV. Summary information supplied by governments with regard to the obligation to submit the instruments adopted by the International Labour Conference to the competent authorities

Article 19 of the Constitution of the International Labour Organization prescribes, in paragraphs 5, 6 and 7, that Members shall bring the Conventions, Recommendations and Protocols adopted by the International Labour Conference before the competent authorities within a specified period. Under the same provisions, the governments of member States shall inform the Director-General of the International Labour Office of the measures taken to submit the instruments to the competent authorities, and also communicate particulars of the authority or authorities regarded as competent, and of the action taken by them.

In accordance with article 23 of the Constitution, a summary of the information communicated in pursuance of article 19 is submitted to the Conference.

At its 267th Session (November 1996), the Governing Body approved new measures of rationalization and simplification. In this connection, the summarized information appears in an appendix to the report of the Committee of Experts on the Application of Conventions and Recommendations.

The present summary contains information relating to the submission to the competent authorities of the instruments adopted by the Conference at its 96th Session (May–June 2007): the Work in Fishing Convention, 2007 (No. 188) and the Work in Fishing Recommendation, 2007 (No. 199). The period of 12 months provided for the submission to the competent authorities of Convention No. 188 and Recommendation No. 199 expired on 15 June 2008, and the period of 18 months on 15 December 2008.

The summarized information also consists of communications which were forwarded to the Director-General of the International Labour Office after the closure of the 98th Session of the Conference (Geneva, June 2009) and which could not therefore be laid before the Conference at that session.

Algeria. The instruments adopted at the 96th Session were submitted to Parliament on 3 December 2008.

Armenia. The instruments adopted at the 96th Session were submitted to the National Assembly on 22 October 2008.

Australia. The instruments adopted at the 96th Session were submitted to the House of Representatives and the Senate on 24 February and 30 March 2009, respectively.

Barbados. The instruments adopted at the 95th Session were submitted to Parliament on 31 July 2007.

Belarus. The instruments adopted at the 96th Session were submitted to the National Assembly on 10 November 2008.

Benin. The instruments adopted at the 96th Session were submitted to the National Assembly on 8 February 2008.

Botswana. The instruments adopted at the 95th Session were submitted to the National Assembly on 23 August 2007.

Bulgaria. The instruments adopted at the 96th Session were submitted to the National Assembly on 18 April 2008.

Burundi. The instruments adopted at the 95th Session were submitted to the National Assembly on 28 May 2007.

Cameroon. The instruments adopted at the sessions of the Conference held between 1983 and 2007 were submitted to the competent authorities.

Chad. The instruments adopted at the sessions of the Conference held between 1993 and 2007 were submitted to the National Assembly on 20 May 2009.

China. The instruments adopted at the 96th Session were submitted to the State Council and the Standing Committee of the National People's Congress in June 2008.

Czech Republic. The instruments adopted at the 96th Session were submitted to the Chamber of Deputies on 24 July and the Senate on 28 July 2008.

Denmark. The ratification of Convention No. 187 was registered on 28 January 2009.

Dominican Republic. The instruments adopted at the 95th Session were submitted to the National Congress on 2 and 24 January 2008.

Egypt. The instruments adopted at the 96th Session were submitted to the People's Assembly on 26 October 2007.

Finland. The instruments adopted at the 96th Session were submitted to Parliament on 31 October 2008.

France. The instruments adopted at the 96th Session were submitted to the Presidents of the National Assembly and the Senate on 23 July 2008.

Germany. The instruments adopted at the 96th Session were submitted to the *Bundestag* and the *Bundesrat* on 14 August 2008.

Greece. The instruments adopted at the 96th Session were submitted to the Hellenic Parliament in August 2008.

Guatemala. The instruments adopted at the 96th Session were submitted to the Congress of the Republic on 28 August 2007.

Hungary. The instruments adopted at the 96th Session were submitted to the National Assembly on 9 May 2008.

Iceland. The instruments adopted at the 96th Session were submitted to Parliament on 22 May 2008.

India. The instruments adopted at the 96th Session were submitted to the House of the People and Council of States on 17 December and 15 December 2008, respectively.

Indonesia. The instruments adopted at the 96th Session were submitted to the House of Representatives on 19 December 2008.

Islamic Republic of Iran. The instruments adopted at the 95th and 96th Sessions have been submitted to the Islamic Consultative Assembly.

Israel. The instruments adopted at the 96th Session were submitted to the Knesset on 7 January 2008.

Italy. The instruments adopted at the 96th Session have been submitted to the Presidents of the House of Representatives and the Senate.

Japan. The instruments adopted at the 96th Session were submitted to the Diet on 10 June 2008.

Republic of Korea. The instruments adopted at the 96th Session were submitted to the National Assembly on 29 August 2008.

Lebanon. The instruments adopted at the 96th Session were submitted to the National Assembly on 4 November 2008.

Lithuania. The instruments adopted at the 96th Session were submitted to the *Seimas* in December 2008.

Luxembourg. The instruments adopted at the 96th Session were submitted to the Chamber of Deputies in August 2007.

Malawi. The instruments adopted at the 96th Session were submitted to the National Assembly on 14 September 2007.

Mauritius. The instruments adopted at the 96th Session were submitted to the National Assembly on 27 June 2008.

Morocco. The instruments adopted at the 96th Session were submitted to Parliament on 8 February 2008.

Myanmar. The instruments adopted at the 96th Session were submitted to a competent authority on 28 May 2008.

Namibia. The instruments adopted at the sessions held between 2000 and 2007 were submitted to Parliament on 2 October 2007.

Netherlands. The instruments adopted at the 96th Session were submitted to Parliament on 1 July 2008.

New Zealand. The instruments adopted at the 96th Session were submitted to the House of Representatives on 22 December 2008.

Nicaragua. The instruments adopted at the 96th Session were submitted to the National Assembly on 4 January 2008.

Norway. The instruments adopted at the 96th Session were submitted to the Storting on 13 June 2008.

Philippines. The instruments adopted at the 96th Session were submitted to the House of Representatives and the Senate on 21 April 2008.

Poland. The instruments adopted at the 96th Session were submitted to the *Sejm* on 15 May 2008.

Romania. The instruments adopted at the 95th Session were submitted to the Senate on 23 October 2007.

San Marino. The instruments adopted at the 96th Session were submitted to the Great and General Council on 17 September 2007.

Saudi Arabia. The instruments adopted at the 96th Session were submitted to the Council of Ministers and the Consultative Council on 19 August 2008.

Senegal. The instruments adopted at the sessions held between 1992 and 2007 were submitted to the Presidents of the Senate and National Assembly on 6 April 2009.

Serbia. The instruments adopted at the 96th Session were submitted to the National Assembly on 25 February 2009.

Singapore. The instruments adopted at the 96th Session were submitted to Parliament on 11 February 2008.

Slovakia. The instruments adopted at the 96th Session were submitted to the National Council on 21 December 2007.

Slovenia. The instruments adopted at the 96th Session were submitted to the National Assembly on 6 May 2008.

South Africa. The instruments adopted at the 96th Session were submitted to Parliament on 29 February 2008.

Switzerland. The instruments adopted at the 94th, 95th and 96th Sessions were submitted to Parliament on 30 May 2008.

United Republic of Tanzania. The instruments adopted at the 96th Session were submitted to the National Assembly on 19 October 2007.

Thailand. The instruments adopted at the 96th Session were submitted to the National Legislative Assembly on 25 November 2007.

Timor-Leste. The instruments adopted at the 91st, 92nd, 94th, 95th and 96th Session were submitted to the National Parliament on 4 September 2009.

Tunisia. The instruments adopted at the 96th Session were submitted to the Chamber of Deputies on 4 September 2007.

Turkey. The instruments adopted at the 96th Session were submitted to the Grand National Assembly on 8 December 2007.

United Arab Emirates. The instruments adopted at the 96th Session were submitted to the competent authorities in October 2008.

United Kingdom. The instruments adopted at the 96th Session were submitted to Parliament in May 2008.

United States. The instruments adopted at the 96th Session were submitted to the House of Representatives and the Senate on 27 June 2008.

Zimbabwe. The instruments adopted at the 96th Session were submitted to Parliament on 24 September 2008.

The Committee has deemed it necessary, in certain cases, to request additional information on the nature of the competent authorities to which the instruments adopted by the Conference have been submitted, as well as other indications required by the questionnaire at the end of the Memorandum of 1980, as revised in March 2005.

**Appendix V. Information supplied by governments with regard to the
obligation to submit Conventions and Recommendations
to the competent authorities**

(31st to 97th Sessions of the International Labour Conference, 1948-2008)

Note. The number of the Convention or Recommendation is given in parentheses, preceded by the letter "C" or "R" as the case may be, when only some of the texts adopted at any one session have been submitted. The Protocols are indicated by the letter "P" followed by the number of the corresponding Convention. When the ratification of a Convention was registered, that Convention and the corresponding Recommendation are considered as submitted.

Account has been taken of the date of admission or readmission of States Members to the ILO for determining the sessions of the Conference whose texts are taken into consideration.

The Conference did not adopt any Conventions or Recommendations at its 57th Session (June 1972), 73rd Session (June 1987), 93rd Session (June 2004) and 97th Session (June 2008).

| | 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 | 31-56, 58-72, 74-92, 94-95 | 96 |
| Albania | 31-49, 79-81, 82(C176; R183), 83, 84(C178; P147; R186), 85, 87-88, 90(P155), 91 | 78, 82(P081), 84(C179; C180; R185; R187), 86, 89, 90(R193; R194), 92, 94, 95, 96 |
| Algeria | 47-56, 58-72, 74-92, 94-96 | - |
| Angola | 61-72, 74-78, 79(C173), 80-81, 82(C176; R183), 83-85, 87-90 | 79(R180), 82(P081), 86, 91, 92, 94, 95, 96 |
| Antigua and Barbuda | 68-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Argentina | 31-56, 58-72, 74-90, 92 | 91, 94, 95, 96 |
| Armenia | 80-81, 82(C176; R183), 83-89, 90(R193; R194), 91-92, 94-96 | 82(P081), 90(P155) |
| Australia | 31-56, 58-72, 74-92, 94-96 | - |
| Austria | 31-56, 58-72, 74-92, 95(R198) | 94, 95(C187; R197), 96 |
| Azerbaijan | 79(C173), 80-82, 85-87, 91-92 | 79(R180), 83, 84, 88, 89, 90, 94, 95, 96 |
| Bahamas | 61-72, 74-84, 87, 91, 94 | 85, 86, 88, 89, 90, 92, 95, 96 |
| Bahrain | 63-72, 74-87 | 88, 89, 90, 91, 92, 94, 95, 96 |
| Bangladesh | 58-72, 74-76, 77(C171; R178), 78, 80, 84(C178; C180; P147), 85(C181), 87 | 77(C170; P089; R177), 79, 81, 82, 83, 84(C179; R185; R186; R187), 85(R188), 86, 88, 89, 90, 91, 92, 94, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|-------------------------------|--|--|
| Barbados | 51-56, 58-72, 74-92, 95 | 94, 96 |
| Belarus | 37-56, 58-72, 74-92, 94-96 | - |
| Belgium | 31-56, 58-72, 74-92, 94, 95(C187; R197) | 95(R198), 96 |
| Belize | 68-72, 74-76, 84(P147), 87-88 | 77, 78, 79, 80, 81, 82, 83, 84(C178; C179; C180; R185; R186; R187), 85, 86, 89, 90, 91, 92, 94, 95, 96 |
| Benin | 45-56, 58-72, 74-92, 94-96 | - |
| Bolivia | 31-56, 58-72, 74-79, 80(C174), 81(C175), 82(C176), 83(C177), 84(C178; C179; C180), 85(C181), 87, 88(C183), 89(C184), 91 | 80(R181), 81(R182), 82(P081; R183), 83(R184), 84(P147; R185; R186; R187), 85(R188), 86, 88(R191), 89(R192), 90, 92, 94, 95, 96 |
| Bosnia and Herzegovina | 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Botswana | 64-72, 74-87, 94-95 | 88, 89, 90, 91, 92, 96 |
| Brazil | 31-50, 51(C127; R128; R129; R130; R131), 53(R133; R134), 54-56, 58-62, 63(C148; R156; R157), 64(C151; R158; R159), 65-66, 67(C154; C155; R163; R164; R165), 68(C158; P110; R166), 69-72, 74-77, 80, 82(C176; R183), 84(C178; R185), 87, 89, 91 | 51(C128), 52, 53(C129; C130), 63(C149), 64(C150), 67(C156), 68(C157), 78, 79, 81, 82(P081), 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 92, 94, 95, 96 |
| Brunei Darussalam | - | 96 |
| Bulgaria | 31-56, 58-72, 74-92, 94-96 | - |
| Burkina Faso | 45-56, 58-72, 74-92, 94-96 | - |
| Burundi | 47-56, 58-72, 74-92, 95 | 94, 96 |
| Cambodia | 53-54, 56, 58(C138; R146), 64(C150; R158), 87 | 55, 58(C137; R145), 59, 60, 61, 62, 63, 64(C151; R159), 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Cameroon | 44-56, 58-72, 74-92, 94-96 | - |
| Canada | 31-56, 58-72, 74-90, 94 | 91, 92, 95, 96 |
| Cape Verde | 65-72, 74-81, 87 | 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---|--|--|
| Central African Republic | 45-56, 58-72, 74, 87 | 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Chad | 45-56, 58-72, 74-92, 94-96 | - |
| Chile | 31-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| China | 31-56, 58-72, 74-92, 94-96 | - |
| Colombia | 31-56, 58-72, 74, 75(C167; R175; R176), 76-78, 79(R180), 80, 81(C175), 87, 88(C183), 89(C184) | 75(C168), 79(C173), 81(R182), 82, 83, 84, 85, 86, 88(R191), 89(R192), 90, 91, 92, 94, 95, 96 |
| Comoros | 65-72, 74-78, 87 | 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Congo | 45-53, 54(C131; C132), 55(C133; C134), 56, 58(C138; R146), 59, 60(C142; R150), 61, 63(C148; C149; R157), 64-66, 67(C154; C155; C156), 68(C158), 71(C160; C161), 75(C167; C168), 76, 87 | 54(R135; R136), 55(R137; R138; R139; R140; R141; R142), 58(C137; R145), 60(C141; C143; R149; R151), 62, 63(R156), 67(R163; R164; R165), 68(C157; P110; R166), 69, 70, 71(R170; R171), 72, 74, 75(R175; R176), 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Costa Rica | 31-56, 58-72, 74-92, 94-95 | 96 |
| Côte d'Ivoire | 45-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Croatia | 80-85, 87 | 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Cuba | 31-56, 58-72, 74-91, 95(C187; R197) | 92, 94, 95(R198), 96 |
| Cyprus | 45-56, 58-72, 74-90, 92 | 91, 94, 95, 96 |
| Czech Republic | 80-92, 94-96 | - |
| Democratic Republic of the Congo | 45-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Denmark | 31-56, 58-72, 74-92, 94-96 | - |
| Djibouti | 64-65, 67, 71-72, 83, 87 | 66, 68, 69, 70, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Dominica | 68-72, 74-79, 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---------------------------|---|--|
| Dominican Republic | 31-56, 58-72, 74-92, 94-95 | 96 |
| Ecuador | 31-56, 58-72, 74-88, 90(P155), 91-92, 94-95 | 89, 90(R193; R194), 96 |
| Egypt | 31-56, 58-72, 74-92, 94-96 | - |
| El Salvador | 31-56, 58-61, 63(C149), 64, 67(C155; C156; R164; R165), 69(C159; R168), 71-72, 74-81, 87, 90(P155) | 62, 63(C148; R156; R157), 65, 66, 67(C154; R163), 68, 69(R167), 70, 82, 83, 84, 85, 86, 88, 89, 90(R193; R194), 91, 92, 94, 95, 96 |
| Equatorial Guinea | 67-72, 74-79, 84, 87 | 80, 81, 82, 83, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Eritrea | 80-92, 94-95 | 96 |
| Estonia | 79-92, 94-95 | 96 |
| Ethiopia | 31-56, 58-72, 74-87, 88(C183), 89 | 88(R191), 90, 91, 92, 94, 95, 96 |
| Fiji | 59-72, 74-82, 84(C178; R185), 87, 89 | 83, 84(C179; C180; P147; R186; R187), 85, 86, 88, 90, 91, 92, 94, 95, 96 |
| Finland | 31-56, 58-72, 74-92, 94-96 | - |
| France | 31-56, 58-72, 74-92, 94-96 | - |
| Gabon | 45-56, 58-72, 75-81, 82(C176), 83(C177), 84(C179), 85(C181), 87, 89(C184), 91 | 74, 82(P081; R183), 83(R184), 84(C178; C180; P147; R185; R186; R187), 85(R188), 86, 88, 89(R192), 90, 92, 94, 95, 96 |
| Gambia | 87 | 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Georgia | 85, 86-87 | 80, 81, 82, 83, 84, 88, 89, 90, 91, 92, 94, 95, 96 |
| Germany | 34-56, 58-72, 74-76, 77(C170; R177), 78-92, 94-96 | 77(C171; P089; R178) |
| Ghana | 40-56, 58-72, 74-79, 83, 84(C178; C179; C180; P147; R187), 85-87 | 80, 81, 82, 84(R185; R186), 88, 89, 90, 91, 92, 94, 95, 96 |
| Greece | 31-56, 58-72, 74-92, 94-96 | - |
| Grenada | 66-72, 74-92, 94-95 | 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---------------------------------|---|--|
| Guatemala | 31-56, 58-72, 74-92, 94-96 | - |
| Guinea | 43-56, 58-72, 74-83, 87 | 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Guinea-Bissau | 63-72, 74-82, 83(R184), 84-87, 88(R191), 94 | 83(C177), 88(C183), 89, 90, 91, 92, 95, 96 |
| Guyana | 50-56, 58-72, 74-92, 94-95 | 96 |
| Haiti | 31-56, 58-66, 67(C156; R165), 69-72, 74, 75(C167), 87 | 67(C154; C155; R163; R164), 68, 75(C168; R175; R176), 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Honduras | 39-56, 58-72, 74-92 | 94, 95, 96 |
| Hungary | 31-56, 58-72, 74-92, 94-96 | - |
| Iceland | 31-56, 58-72, 74-92, 94-96 | - |
| India | 31-56, 58-72, 74-92, 94-96 | - |
| Indonesia | 33-56, 58-72, 74-92, 94-96 | - |
| Islamic Republic of Iran | 31-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 92, 95-96 | 84(P147), 90(P155), 91, 94 |
| Iraq | 31-56, 58-72, 74-87, 89 | 88, 90, 91, 92, 94, 95, 96 |
| Ireland | 31-56, 58-72, 74-87 | 88, 89, 90, 91, 92, 94, 95, 96 |
| Israel | 32-56, 58-72, 74-92, 94-96 | - |
| Italy | 31-56, 58-72, 74-92, 94-96 | - |
| Jamaica | 47-56, 58-72, 74-91 | 92, 94, 95, 96 |
| Japan | 35-56, 58-72, 74-92, 94-96 | - |
| Jordan | 39-56, 58-72, 74-91 | 92, 94, 95, 96 |
| Kazakhstan | 82(C176; R183), 87 | 80, 81, 82(P081), 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---|---|---|
| Kenya | 48-56, 58-72, 74-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-87 | 82(P081), 84(P147), 88, 89, 90, 91, 92, 94, 95, 96 |
| Kiribati | - | 88, 89, 90, 91, 92, 94, 95, 96 |
| Republic of Korea | 79-92, 94-96 | - |
| Kuwait | 45-56, 58-72, 74-76, 78-79, 80(C174), 81-85, 87-88, 90-91 | 77, 80(R181), 86, 89, 92, 94, 95, 96 |
| Kyrgyzstan | 87, 89 | 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95, 96 |
| Lao People's Democratic Republic | 48-56, 58-72, 74-81, 87 | 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Latvia | 79-92, 94-95 | 96 |
| Lebanon | 31-56, 58-72, 74-92, 94-96 | - |
| Lesotho | 51-53, 66-72, 74-92, 94-95 | 96 |
| Liberia | 31-56, 58-72, 74-76, 77(C170; C171; R177; R178), 78-81, 82(C176; R183), 83-87, 91, 94 | 77(P089), 82(P081), 88, 89, 90, 92, 95, 96 |
| Libyan Arab Jamahiriya | 35-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Lithuania | 79-92, 94-96 | - |
| Luxembourg | 31-56, 58-72, 74-92, 94-96 | - |
| Madagascar | 45-56, 58-72, 74-89, 91 | 90, 92, 94, 95, 96 |
| Malawi | 49-56, 58-72, 74-92, 94-96 | - |
| Malaysia | 41-56, 58-72, 74-92, 94 | 95, 96 |
| Mali | 44-56, 58-72, 74-83, 84(C178; C179; C180; R185; R186; R187), 85, 87-89, 90(R193; R194), 91 | 84(P147), 86, 90(P155), 92, 94, 95, 96 |
| Malta | 49-56, 58-72, 74-90 | 91, 92, 94, 95, 96 |
| Marshall Islands | - | 96 |

| Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---|---|
| Mauritania 45-56, 58-72, 74-80, 81(C175), 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-91 | 81(R182), 82(P081), 84(P147), 92, 94, 95, 96 |
| Mauritius 53-56, 58-72, 74-92, 94-96 | - |
| Mexico 31-56, 58-72, 74-89, 90(P155; R194), 91 | 90(R193), 92, 94, 95, 96 |
| Republic of Moldova 79-91 | 92, 94, 95, 96 |
| Mongolia 52-56, 58-72, 74-81, 87-89 | 82, 83, 84, 85, 86, 90, 91, 92, 94, 95, 96 |
| Montenegro - | 96 |
| Morocco 39-56, 58-72, 74-92, 94-96 | - |
| Mozambique 61-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Myanmar 31-56, 58-72, 74-92, 94-96 | - |
| Namibia 78-92, 94-96 | - |
| Nepal 51-56, 58-72, 74-81, 83, 85, 87 | 82, 84, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Netherlands 31-56, 58-72, 74-92, 95(R198), 96 | 94, 95(C187; R197) |
| New Zealand 31-56, 58-72, 74-92, 94-96 | - |
| Nicaragua 40-56, 58-72, 74-92, 94-96 | - |
| Niger 45-56, 58-72, 74-82, 87-88, 95(C187; R197) | 83, 84, 85, 86, 89, 90, 91, 92, 94, 95(R198), 96 |
| Nigeria 45-56, 58-72, 74-92, 95 | 94, 96 |
| Norway 31-56, 58-72, 74-92, 94-96 | - |
| Oman 81-91 | 92, 94, 95, 96 |
| Pakistan 31-56, 58-72, 74-80, 87, 91 | 81, 82, 83, 84, 85, 86, 88, 89, 90, 92, 94, 95, 96 |
| Panama 31-56, 58-72, 74-87, 88(R191), 89(R192), 90(R193; R194), 92, 94 | 88(C183), 89(C184), 90(P155), 91, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|---|--|--|
| Papua New Guinea | 61-72, 74-87 | 88, 89, 90, 91, 92, 94, 95, 96 |
| Paraguay | 40-56, 58-72, 74-84, 87 | 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Peru | 31-56, 58-72, 74-83, 84(C178; R185; R186), 85-87, 88(C183), 90(R193) | 84(C179; C180; P147; R187), 88(R191), 89, 90(P155; R194), 91, 92, 94, 95, 96 |
| Philippines | 31-56, 58-72, 74-92, 94-96 | - |
| Poland | 31-56, 58-72, 74-92, 94-96 | - |
| Portugal | 31-56, 58-72, 74-92, 94-95 | 96 |
| Qatar | 58-72, 74-92 | 94, 95, 96 |
| Romania | 39-56, 58-72, 74-92, 94-96 | - |
| Russian Federation | 37-56, 58-72, 74-88 | 89, 90, 91, 92, 94, 95, 96 |
| Rwanda | 47-56, 58-72, 74-79, 81, 87 | 80, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Saint Kitts and Nevis | 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Saint Lucia | 67(C154; R163), 68(C158; R166), 87 | 66, 67(C155; C156; R164; R165), 68(C157; P110), 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Saint Vincent and the Grenadines | 86, 87 | 82, 83, 84, 85, 88, 89, 90, 91, 92, 94, 95, 96 |
| Samoa | - | 94, 95, 96 |
| San Marino | 69-72, 74-92, 94-96 | - |
| Sao Tome and Principe | 68-72, 74-76, 87, 89 | 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88, 90, 91, 92, 94, 95, 96 |
| Saudi Arabia | 61-72, 74-92, 94-96 | - |
| Senegal | 44-56, 58-72, 74-81, 82(C176; R183), 83, 84(C178; C179; C180; R185; R186; R187), 85-89, 90(R193; R194), 91-92, 94-96 | 82(P081), 84(P147), 90(P155) |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|-----------------------------|---|--|
| Serbia | 89-92, 94-96 | - |
| Seychelles | 63-72, 74-88 | 89, 90, 91, 92, 94, 95, 96 |
| Sierra Leone | 45-56, 58-61, 62(C145; C147; R153; R155) | 62(C146; R154), 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96 |
| Singapore | 50-56, 58-72, 74-92, 94-96 | - |
| Slovakia | 80-83, 85-92, 94-96 | 84 |
| Slovenia | 79-92, 94-96 | - |
| Solomon Islands | 74 | 70, 71, 72, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96 |
| Somalia | 45-56, 58-72, 74-75 | 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96 |
| South Africa | 31-50, 68, 74, 81-92, 94-96 | - |
| Spain | 39-56, 58-72, 74-87, 89, 90(R193; R194), 92, 94-95 | 88, 90(P155), 91, 96 |
| Sri Lanka | 31-56, 58-72, 74-92 | 94, 95, 96 |
| Sudan | 39-56, 58-72, 74-80, 87 | 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Suriname | 61-72, 74-89 | 90, 91, 92, 94, 95, 96 |
| Swaziland | 60-72, 74-92 | 94, 95, 96 |
| Sweden | 31-56, 58-72, 74-92, 95 | 94, 96 |
| Switzerland | 31-56, 58-72, 74-92, 94-96 | - |
| Syrian Arab Republic | 31-56, 58-65, 67-68, 69(C159; R167), 71-72, 74-76, 77(C170; R177), 87-89, 90(P155) | 66, 69(R168), 70, 77(C171; P089; R178), 78, 79, 80, 81, 82, 83, 84, 85, 86, 90(R193; R194), 91, 92, 94, 95, 96 |
| Tajikistan | 81-83, 86-87 | 84, 85, 88, 89, 90, 91, 92, 94, 95, 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|--|---|--|
| United Republic of Tanzania | 46-56, 58-72, 74-92, 94-96 | - |
| Thailand | 31-56, 58-72, 74-92, 94-96 | - |
| The former Yugoslav Republic of Macedonia | 80-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Timor-Leste | 92, 94-96 | - |
| Togo | 44-56, 58-72, 74-87, 89 | 88, 90, 91, 92, 94, 95, 96 |
| Trinidad and Tobago | 47-56, 58-72, 74-92, 95 | 94, 96 |
| Tunisia | 39-56, 58-72, 74-92, 94-96 | - |
| Turkey | 31-56, 58-72, 74-92, 94-96 | - |
| Turkmenistan | - | 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96 |
| Uganda | 47-56, 58-72, 74-80, 87 | 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Ukraine | 37-56, 58-72, 74-90 | 91, 92, 94, 95, 96 |
| United Arab Emirates | 58-72, 74-92, 95-96 | 94 |
| United Kingdom | 31-56, 58-72, 74-92, 94-96 | - |
| United States | 31-56, 58-60, 66-72, 74-92, 94-96 | - |
| Uruguay | 31-56, 58-72, 74-89, 90(R193; R194), 91-92, 95(R197; R198) | 90(P155), 94, 95(C187), 96 |
| Uzbekistan | 87 | 80, 81, 82, 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Vanuatu | - | 91, 92, 94, 95, 96 |
| Bolivarian Republic of Venezuela | 31-56, 58-72, 74(R173), 75(C167; R175), 76, 77(C170; R177), 78(R179), 80, 82(C176; R183), 87-88 | 74(C163; C164; C165; C166; R174), 75(C168; R176), 77(C171; P089; R178), 78(C172), 79, 81, 82(P081), 83, 84, 85, 86, 89, 90, 91, 92, 94, 95, 96 |
| Viet Nam | 33-56, 58-63, 80-92, 94-95 | 96 |

| | Sessions of which the adopted texts have been submitted to the authorities considered as competent by governments | Sessions of which the adopted texts have not been submitted (including cases in which no information has been supplied) |
|-----------------|---|---|
| Yemen | 49-56, 58-72, 74-87, 88(C183), 89(C184), 91 | 88(R191), 89(R192), 90, 92, 94, 95, 96 |
| Zambia | 49-56, 58-72, 74-82, 87 | 83, 84, 85, 86, 88, 89, 90, 91, 92, 94, 95, 96 |
| Zimbabwe | 66-72, 74-92, 94-96 | - |

**Appendix VI. Overall position of member States with regard to
the submission to the competent authorities of
the instruments adopted by the Conference
(as of 11 December 2009)**

| Sessions of the ILC | Number of States in which, according to the information supplied by the Government: | | | ILO Member States at the time of the session |
|---|---|---|---|--|
| | All the instruments have been submitted | Some of the instruments have been submitted | None of the instruments have been submitted | |
| <i>All the instruments adopted between the 31st and the 50th Sessions have been submitted to the competent authorities by member States</i> | | | | |
| 51st (June 1967) | 116 | 1 | | 117 |
| 52nd (June 1968) | 117 | | 1 | 118 |
| 53rd (June 1969) | 120 | 1 | | 121 |
| 54th (June 1970) | 119 | 1 | | 120 |
| 55th (October 1970) | 117 | 1 | 2 | 120 |
| 56th (June 1971) | 120 | | | 120 |
| 58th (June 1973) | 121 | 2 | | 123 |
| 59th (June 1974) | 124 | | 1 | 125 |
| 60th (June 1975) | 123 | 1 | 2 | 126 |
| 61st (June 1976) | 129 | | 2 | 131 |
| 62nd (October 1976) | 127 | 1 | 3 | 131 |
| 63rd (June 1977) | 128 | 3 | 3 | 134 |
| 64th (June 1978) | 132 | 2 | 1 | 135 |
| 65th (June 1979) | 133 | | 4 | 137 |
| 66th (June 1980) | 136 | | 6 | 142 |
| 67th (June 1981) | 135 | 5 | 3 | 143 |
| 68th (June 1982) | 138 | 3 | 6 | 147 |
| 69th (June 1983) | 140 | 3 | 5 | 148 |
| 70th (June 1984) | 140 | | 9 | 149 |
| 71st (June 1985) | 143 | 1 | 5 | 149 |
| 72nd (June 1986) | 143 | | 6 | 149 |
| 74th (October 1987) | 141 | 1 | 7 | 149 |
| 75th (June 1988) | 138 | 4 | 7 | 149 |
| 76th (June 1989) | 138 | | 9 | 147 |
| 77th (June 1990) | 130 | 5 | 12 | 147 |
| 78th (June 1991) | 133 | 1 | 15 | 149 |
| 79th (June 1992) | 136 | 3 | 17 | 156 |
| 80th (June 1993) | 143 | 2 | 22 | 167 |
| 81st (June 1994) | 140 | 3 | 28 | 171 |
| 82nd (June 1995) | 127 | 12 | 34 | 173 |
| 83rd (June 1996) | 125 | 3 | 46 | 174 |
| 84th (October 1996) | 114 | 14 | 46 | 174 |
| 85th (June 1997) | 123 | 3 | 48 | 174 |
| 86th (June 1998) | 119 | | 55 | 174 |
| 87th (June 1999) | 170 | | 4 | 174 |
| 88th (June 2000) | 108 | 7 | 60 | 175 |
| 89th (June 2001) | 109 | 5 | 61 | 175 |
| 90th (June 2002) | 92 | 13 | 70 | 175 |
| 91st (June 2003) | 103 | | 73 | 176 |
| 92nd (June 2004) | 90 | | 87 | 177 |
| 94th (February 2006) | 78 | | 100 | 178 |
| 95th (June 2006) | 78 | 6 | 94 | 178 |
| 96th (June 2007) | 60 | | 118 | 178 |

Appendix VII. Comments made by the Committee, by country

*The comments referred to below have been drawn up in the form of either "observations", which are reproduced in this report, or "direct requests", which are not published but are communicated directly to the governments concerned.
This table also lists acknowledgements by the Committee of responses received to direct requests.*

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| Afghanistan | <i>General direct request</i> Observations on Conventions Nos 100, 105, 111, 139 <i>Direct requests on Conventions Nos 105, 140, 142</i> <i>Direct request on submission</i> |
| Albania | Observations on Conventions Nos 87, 98, 151 <i>Direct requests on Conventions Nos 16, 26, 29, 87, 97, 105, 111, 131, 144, 154, 155, 171, 173, 174, 176, 177, 178</i> <i>Direct request on submission</i> |
| Algeria | <i>General direct request</i> Observations on Conventions Nos 29, 32, 68, 81, 87, 92, 94, 105, 111, 120, 144 <i>Direct requests on Conventions Nos 24, 29, 44, 81, 91, 98, 105, 111, 147</i> <i>Response received to direct requests on Conventions Nos. 17, 74</i> |
| Angola | Observations on Conventions Nos 81, 98, 100, 111 <i>Direct requests on Conventions Nos 81, 87, 98, 100, 105, 107, 111</i> <i>Response received to a direct request on Convention No. 92</i> Observation on submission |
| Antigua and Barbuda | General observation Observations on Conventions Nos 17, 81, 87 <i>Direct requests on Conventions Nos 81, 100, 111, 122, 135, 142, 144, 150, 151, 154, 158</i> Observation on submission |
| Argentina | Observations on Conventions Nos 26, 29, 53, 87, 142, 169 <i>Direct requests on Conventions Nos 3, 22, 169, 177, 184</i> <i>Response received to a direct request on Convention No. 73</i> <i>Direct request on submission</i> |
| Armenia | General observation <i>Direct requests on Conventions Nos 26, 81, 98, 100, 111, 122, 132, 135, 144, 154, 174, 176</i> <i>Direct request on submission</i> |
| Australia Norfolk Island | Observations on Conventions Nos 29, 47, 81, 87, 98, 122, 135, 158 <i>Direct requests on Conventions Nos 29, 47, 81, 87, 92, 98, 133, 155, 182</i> <i>Direct requests on Conventions Nos 47, 131</i> |
| Austria | Observations on Conventions Nos 100, 172 <i>Direct requests on Conventions Nos 100, 101, 111, 135, 172</i> <i>Direct request on submission</i> |
| Azerbaijan | Observations on Conventions Nos 87, 98 <i>Direct requests on Conventions Nos 29, 32, 47, 105, 140, 142, 144, 149</i> <i>Response received to a direct request on Convention No. 23</i> Observation on submission |
| Bahamas | Observations on Conventions Nos 87, 98 <i>Direct requests on Conventions Nos 144, 182</i> <i>Response received to a direct request on Convention No. 45</i> Observation on submission |
| Bahrain | Observations on Conventions Nos 81, 111 <i>Direct requests on Conventions Nos 14, 29, 105, 111</i> Observation on submission |
| Bangladesh | Observations on Conventions Nos 87, 98, 107, 144 <i>Direct request on Convention No. 149</i> Observation on submission |

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| Barbados | Observations on Conventions Nos 87, 97, 98, 102, 108, 122, 128 <i>Direct requests on Conventions Nos 26, 63, 95, 97, 100, 101, 102, 105, 111, 128, 138, 144, 147, 172, 182</i> <i>Direct request on submission</i> |
| Belarus | Observations on Conventions Nos 87, 98, 122 <i>Direct requests on Conventions Nos 47, 81, 142, 149</i> |
| Belgium | Observations on Conventions Nos 1, 81, 87 <i>Direct requests on Conventions Nos 1, 8, 9, 14, 16, 22, 23, 29, 69, 73, 92, 98, 129, 132, 149, 171, 180</i> <i>Direct request on submission</i> |
| Belize | <i>General direct request</i> Observations on Conventions Nos 87, 98, 105, 115, 144 <i>Direct requests on Conventions Nos 14, 22, 23, 29, 89, 92, 97, 100, 101, 105, 111, 133, 134, 140, 147, 150, 154, 155, 182, 183</i> Observation on submission |
| Benin | Observations on Conventions Nos 29, 87, 105 <i>Direct requests on Conventions Nos 14, 29, 98, 105</i> |
| Bolivia | Observations on Conventions Nos 1, 14, 30, 77, 78, 81, 87, 89, 95, 98, 100, 102, 103, 105, 106, 111, 121, 128, 129, 130, 131, 136, 156, 169 <i>Direct requests on Conventions Nos 20, 95, 96, 100, 103, 105, 111, 122, 124, 156, 169</i> Observation on submission |
| Bosnia and Herzegovina | Observations on Conventions Nos 87, 98, 111, 135 <i>Direct requests on Conventions Nos 8, 9, 13, 16, 22, 23, 32, 53, 69, 73, 74, 87, 91, 92, 98, 100, 111, 119, 122, 136, 139, 140, 142, 144, 148, 158, 162</i> Observation on submission |
| Botswana | <i>General direct request</i> Observations on Conventions Nos 87, 98, 111, 144, 151 <i>Direct requests on Conventions Nos 14, 29, 100, 105, 138, 182</i> <i>Direct request on submission</i> |
| Brazil | Observations on Conventions Nos 29, 94, 98, 111, 115, 117, 118, 122, 136, 138, 139, 148, 152, 155, 167, 169, 170, 182 <i>Direct requests on Conventions Nos 29, 98, 100, 111, 132, 136, 138, 139, 140, 152, 154, 160, 162, 171, 182</i> Observation on submission |
| Bulgaria | <i>General direct request</i> Observations on Conventions Nos 87, 94, 98, 111 <i>Direct requests on Conventions Nos 1, 22, 23, 30, 53, 55, 56, 68, 69, 73, 100, 108, 111, 146, 147, 156, 163, 164, 166, 178, 179, 180</i> |
| Burkina Faso | <i>General direct request</i> Observations on Conventions Nos 87, 98, 144 <i>Direct requests on Conventions Nos 87, 100, 111, 150</i> Observation on submission |
| Burundi | General observation Observations on Conventions Nos 29, 81, 87, 98, 100, 111, 135, 138, 144, 182 <i>Direct requests on Conventions Nos 14, 29, 52, 87, 89, 100, 101, 105, 111, 138, 182</i> <i>Direct request on submission</i> |
| Cambodia | <i>General direct request</i> Observations on Conventions Nos 87, 98, 122 <i>Direct requests on Conventions Nos 87, 100, 105, 111, 150</i> |
| Cameroon | Observations on Conventions Nos 9, 29, 87, 94, 95, 98, 100, 105, 111, 158 <i>Direct requests on Conventions Nos 3, 29, 100, 105, 108, 111, 122, 131, 135, 146</i> Observation on submission |
| Canada | Observations on Conventions Nos 1, 87, 122 <i>Direct requests on Conventions Nos 1, 8, 14, 22, 69, 73, 74, 147</i> <i>Direct request on submission</i> |

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| Cape Verde | <p>General observation</p> <p>Observations on Conventions Nos 81, 98, 118</p> <p><i>Direct requests on Conventions Nos 17, 19, 29, 87, 100, 111, 118, 182</i></p> <p>Observation on submission</p> |
| Central African Republic | <p>Observations on Conventions Nos 87, 98, 100, 105, 138, 182</p> <p><i>Direct requests on Conventions Nos 87, 98, 100, 105, 111, 120, 122, 142, 144, 150, 158, 182</i></p> <p>Observation on submission</p> |
| Chad | <p>Observations on Conventions Nos 14, 29, 81, 87, 98, 111, 144, 182</p> <p><i>Direct requests on Conventions Nos 29, 41, 100, 105, 132, 138, 151, 182</i></p> <p>Observation on submission</p> |
| Chile | <p>Observations on Conventions Nos 20, 24, 25, 35, 87, 98, 103, 144, 161</p> <p><i>Direct requests on Conventions Nos 8, 29, 105, 140, 161</i></p> <p><i>Response received to a direct request on Convention No. 151</i></p> <p>Observation on submission</p> |
| China | <p>Observation on Convention No. 155</p> <p><i>Direct requests on Conventions Nos 14, 111, 144</i></p> |
| Hong Kong Special Administrative Region | <p>Observations on Conventions Nos 81, 87, 98, 144</p> <p><i>Direct requests on Conventions Nos 14, 32, 101, 147</i></p> <p><i>Response received to direct requests on Conventions Nos. 92, 108, 133, 151</i></p> |
| Macau Special Administrative Region | <p><i>Direct requests on Conventions Nos 1, 14, 29, 81, 87, 98, 105, 106</i></p> |
| Colombia | <p>Observations on Conventions Nos 1, 17, 87, 95, 98, 100, 111, 144, 151, 154, 169</p> <p><i>Direct requests on Conventions Nos 4, 9, 16, 22, 29, 52, 101, 169</i></p> <p><i>Response received to a direct request on Convention No. 87</i></p> <p>Observation on submission</p> |
| Comoros | <p>Observations on Conventions Nos 26, 52, 98, 99, 100, 111, 122</p> <p><i>Direct requests on Conventions Nos 1, 12, 29, 100, 105, 111, 138, 182</i></p> <p>Observation on submission</p> |
| Congo | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 29, 81, 87, 95, 144, 150, 152, 182</p> <p><i>Direct requests on Conventions Nos 29, 87, 89, 98, 100, 105, 111, 138, 149, 182</i></p> <p>Observation on submission</p> |
| Costa Rica | <p>Observations on Conventions Nos 1, 14, 81, 87, 94, 95, 98, 106, 111, 129, 135, 137, 169</p> <p><i>Direct requests on Conventions Nos 81, 89, 100, 111, 120, 122, 129, 144, 169</i></p> <p><i>Direct request on submission</i></p> |
| Côte d'Ivoire | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 111, 129, 144, 182</p> <p><i>Direct requests on Conventions Nos 3, 14, 29, 41, 52, 81, 87, 98, 100, 110, 111, 129, 133, 138, 182</i></p> <p>Observation on submission</p> |
| Croatia | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 87, 98, 111, 162</p> <p><i>Direct requests on Conventions Nos 8, 22, 23, 53, 56, 69, 73, 74, 81, 87, 91, 92, 100, 111, 122, 129, 132, 147, 179</i></p> <p>Observation on submission</p> |
| Cuba | <p>Observations on Conventions Nos 87, 98, 108, 150</p> <p><i>Direct requests on Conventions Nos 22, 92, 100, 110, 111, 122, 150, 183</i></p> <p><i>Direct request on submission</i></p> |
| Cyprus | <p><i>Direct requests on Conventions Nos 23, 92, 106, 114, 122, 171, 172, 175, 183</i></p> <p><i>Direct request on submission</i></p> |
| Czech Republic | <p>General observation</p> <p>Observations on Conventions Nos 98, 111, 182</p> <p><i>Direct requests on Conventions Nos 1, 14, 29, 87, 100, 105, 122, 132, 140, 144, 150, 160, 171, 182</i></p> |

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| Democratic Republic of the Congo | <i>General direct request</i> Observations on Conventions Nos 29, 87, 94, 98, 100, 111, 117, 119, 121, 144, 150, 158 <i>Direct requests on Conventions Nos 29, 62, 87, 98, 100, 105, 111, 135, 150</i> Observation on submission |
| Denmark | Observations on Conventions Nos 87, 98, 129 <i>Direct requests on Conventions Nos 14, 16, 27, 52, 73, 87, 106, 147, 149, 152, 163, 169, 180, 182</i> <i>Response received to direct requests on Conventions Nos. 92, 133</i> <i>Direct requests on Conventions Nos 14, 18, 19, 52, 106, 126</i> <i>Direct requests on Conventions Nos 14, 106, 122</i> |
| Faeroe Islands Greenland | |
| Djibouti | <i>General direct request</i> Observations on Conventions Nos 26, 56, 71, 87, 94, 95, 98, 100, 115, 120 <i>Direct requests on Conventions Nos 9, 16, 23, 29, 38, 55, 63, 73, 87, 96, 100, 101, 105, 111, 122, 144</i> Observation on submission |
| Dominica | General observation Observations on Conventions Nos 29, 81, 87, 138 <i>Direct requests on Conventions Nos 8, 12, 14, 16, 19, 29, 95, 100, 111, 135, 144, 150, 169, 182</i> Observation on submission |
| Dominican Republic | Observations on Conventions Nos 87, 98, 171 <i>Direct requests on Conventions Nos 29, 52, 87, 170, 172</i> <i>Direct request on submission</i> |
| Ecuador | Observations on Conventions Nos 87, 98, 105, 111, 131, 148, 169 <i>Direct requests on Conventions Nos 87, 100, 110, 111, 144, 149, 169</i> <i>Direct request on submission</i> |
| Egypt | Observations on Conventions Nos 9, 55, 87, 94, 98, 118, 138 <i>Direct requests on Conventions Nos 1, 19, 22, 30, 56, 68, 87, 129, 142, 144, 149</i> |
| El Salvador | Observations on Conventions Nos 87, 151 <i>Direct requests on Conventions Nos 87, 98, 135, 144</i> Observation on submission |
| Equatorial Guinea | General observation Observations on Conventions Nos 1, 30, 87, 98 <i>Direct requests on Conventions Nos 1, 29, 30, 103, 105, 111, 138, 182</i> Observation on submission |
| Eritrea | General observation Observation on Convention No. 98 <i>Direct requests on Conventions Nos 29, 87, 100, 105, 111, 138</i> <i>Direct request on submission</i> |
| Estonia | Observations on Conventions Nos 9, 87 <i>Direct requests on Conventions Nos 14, 23, 98, 108, 147</i> <i>Response received to a direct request on Convention No. 22</i> |
| Ethiopia | <i>General direct request</i> Observations on Conventions Nos 14, 87, 98, 106, 111, 138, 181 <i>Direct requests on Conventions Nos 29, 100, 156, 158, 181, 182</i> Observation on submission |
| Fiji | Observations on Conventions Nos 87, 98, 144 <i>Direct requests on Conventions Nos 8, 26, 105, 138, 182</i> Observation on submission |
| Finland | Observations on Conventions Nos 81, 149, 150 <i>Direct requests on Conventions Nos 47, 129, 132, 135, 140, 147, 149, 175, 177, 179, 180</i> <i>Response received to a direct request on Convention No. 134</i> |

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| France | General observation <i>General direct request</i> Observations on Conventions Nos 14, 106, 134, 137, 149, 152 <i>Direct requests on Conventions Nos 14, 16, 23, 27, 29, 52, 53, 69, 73, 74, 87, 88, 96, 98, 106, 122, 145, 149, 163, 164, 166, 178, 179, 180</i> |
| Gabon | Observations on Conventions Nos 81, 87, 105, 144 <i>Direct requests on Conventions Nos 3, 29, 81, 87, 98, 100, 105, 111, 158</i> <i>Response received to a direct request on Convention No. 135</i> Observation on submission |
| Gambia | <i>General direct request</i> Observation on Convention No. 98 <i>Direct requests on Conventions Nos 29, 87, 105, 138, 182</i> Observation on submission |
| Georgia | <i>General direct request</i> Observations on Conventions Nos 52, 87, 98, 100, 111 <i>Direct requests on Conventions Nos 100, 111, 117, 122, 142, 163, 181</i> Observation on submission |
| Germany | Observations on Conventions Nos 3, 81, 87, 98, 150 <i>Direct requests on Conventions Nos 9, 129, 132, 146, 164, 170, 172</i> |
| Ghana | Observations on Conventions Nos 81, 98, 100, 105, 119 <i>Direct requests on Conventions Nos 8, 69, 74, 81, 87, 100, 105, 111, 117, 149</i> Observation on submission |
| Greece | Observations on Conventions Nos 29, 81, 92, 98, 105, 133, 147, 180 <i>Direct requests on Conventions Nos 1, 81, 92, 133, 147, 149, 180</i> <i>Response received to a direct request on Convention No. 69</i> |
| Grenada | Observation on Convention No. 100 <i>Direct requests on Conventions Nos 8, 87, 100, 111</i> <i>Direct request on submission</i> |
| Guatemala | Observations on Conventions Nos 1, 29, 81, 87, 98, 100, 103, 105, 111, 129, 144, 149, 169 <i>Direct requests on Conventions Nos 16, 58, 100, 110, 111, 154, 169</i> <i>Response received to a direct request on Convention No. 108</i> |
| Guinea | General observation Observations on Conventions Nos 26, 81, 87, 94, 98, 99, 111, 115, 118, 119, 121, 122, 134, 136, 142, 144, 148, 149, 152 <i>Direct requests on Conventions Nos 3, 16, 29, 81, 89, 90, 95, 100, 105, 111, 113, 117, 118, 132, 133, 138, 140, 143, 150, 156, 159, 182</i> Observation on submission |
| Guinea-Bissau | General observation Observations on Conventions Nos 18, 19, 69, 98 <i>Direct requests on Conventions Nos 7, 12, 14, 17, 29, 73, 74, 81, 89, 91, 92, 100, 105, 106, 108, 111</i> Observation on submission |
| Guyana | General observation Observations on Conventions Nos 29, 42, 87, 98, 100, 111, 129, 144 <i>Direct requests on Conventions Nos 19, 81, 97, 100, 111, 137, 138, 140, 142, 149, 150, 166, 172, 175, 182</i> <i>Direct request on submission</i> |
| Haiti | Observations on Conventions Nos 29, 87, 98 <i>Direct requests on Conventions Nos 100, 111</i> Observation on submission |
| Honduras | Observations on Conventions Nos 87, 98, 100, 108 <i>Direct requests on Conventions Nos 100, 111</i> <i>Direct request on submission</i> |

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| Hungary | Observations on Conventions Nos 24, 29, 81 <i>Direct requests on Conventions Nos 14, 81, 105, 129, 132, 138, 140, 142, 147, 182, 183</i> <i>Response received to direct requests on Conventions Nos. 16, 163, 164, 165, 166</i> |
| Iceland | Observations on Conventions Nos 98, 122, 144 <i>Direct requests on Conventions Nos 108, 138, 147, 182</i> |
| India | Observations on Conventions Nos 1, 29, 100, 107, 111 <i>Direct requests on Conventions Nos 1, 14, 22, 29, 105, 107, 108, 147</i> |
| Indonesia | Observations on Conventions Nos 87, 98, 144 <i>Response received to a direct request on Convention No. 98</i> |
| Islamic Republic of Iran | <i>General direct request</i> Observations on Conventions Nos 95, 111 <i>Direct requests on Conventions Nos 100, 106, 122, 182</i> <i>Direct request on submission</i> |
| Iraq | Observations on Conventions Nos 1, 8, 30, 94, 98, 100, 107, 132, 147 <i>Direct requests on Conventions Nos 14, 16, 17, 19, 22, 23, 29, 42, 81, 88, 89, 92, 95, 100, 105, 106, 108, 111, 115, 118, 119, 120, 131, 136, 137, 139, 140, 142, 144, 145, 146, 148, 149, 150, 152, 153, 167, 172</i> <i>Direct request on submission</i> |
| Ireland | <i>General direct request</i> Observations on Conventions Nos 111, 122, 144 <i>Direct requests on Conventions Nos 14, 23, 29, 98, 100, 111, 132, 138, 147, 160, 172, 177, 178, 179, 180, 182</i> Observation on submission |
| Israel | <i>Direct requests on Conventions Nos 81, 118</i> <i>Response received to direct requests on Conventions Nos. 87, 134</i> |
| Italy | Observations on Conventions Nos 81, 129, 143, 147 <i>Direct requests on Conventions Nos 9, 23, 29, 69, 105, 106, 108, 117, 122, 134, 143, 149, 152, 164, 175, 183</i> <i>Response received to a direct request on Convention No. 53</i> |
| Jamaica | Observations on Conventions Nos 87, 94, 98, 100 <i>Direct requests on Conventions Nos 8, 16, 100, 111, 122, 144, 149, 152</i> <i>Direct request on submission</i> |
| Japan | Observations on Conventions Nos 27, 87, 98, 142, 147, 156, 159 <i>Direct requests on Conventions Nos 9, 16, 22, 147, 181</i> |
| Jordan | Observations on Conventions Nos 98, 106, 135 <i>Direct requests on Conventions Nos 106, 144</i> <i>Direct request on submission</i> |
| Kazakhstan | Observations on Conventions Nos 100, 111, 148 <i>Direct requests on Conventions Nos 29, 100, 105, 122, 135, 144, 148</i> Observation on submission |
| Kenya | Observations on Conventions Nos 29, 81, 105, 111, 132, 138 <i>Direct requests on Conventions Nos 2, 14, 29, 88, 105, 111, 137, 142, 149, 182</i> <i>Response received to a direct request on Convention No. 45</i> Observation on submission |
| Kiribati | <i>General direct request</i> <i>Direct requests on Conventions Nos 29, 105</i> |
| Republic of Korea | <i>Direct requests on Conventions Nos 88, 122, 138, 142, 162, 170, 182</i> |
| Kuwait | Observations on Conventions Nos 1, 30, 106, 111, 136, 138, 144 <i>Direct requests on Conventions Nos 98, 119, 182</i> <i>Direct request on submission</i> |

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| Kyrgyzstan | <p>General observation</p> <p>Observations on Conventions Nos 14, 122, 148, 149</p> <p><i>Direct requests on Conventions Nos 11, 27, 29, 32, 47, 77, 78, 79, 81, 87, 98, 100, 103, 105, 113, 115, 119, 120, 124, 126, 138, 154, 159</i></p> <p><i>Response received to a direct request on Convention No. 45</i></p> <p>Observation on submission</p> |
| Lao People's Democratic Republic | <p>Observation on Convention No. 13</p> <p><i>Direct requests on Conventions Nos 4, 29, 138, 182</i></p> <p>Observation on submission</p> |
| Latvia | <p>Observation on Convention No. 119</p> <p><i>Direct requests on Conventions Nos 13, 29, 115, 120, 122, 132, 138, 142, 148, 149, 155, 182</i></p> |
| Lebanon | <p>Observations on Conventions Nos 100, 111, 138, 182</p> <p><i>Direct requests on Conventions Nos 1, 30, 45, 52, 100, 105, 111, 122, 136, 138, 139, 142, 148, 170, 172, 174, 182</i></p> |
| Lesotho | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 111, 144, 158</p> <p><i>Direct requests on Conventions Nos 14, 29, 45, 81, 100, 105, 111, 138, 150, 155, 158, 167, 182</i></p> <p><i>Direct request on submission</i></p> |
| Liberia | <p>General observation</p> <p><i>General direct request</i></p> <p>Observations on Conventions Nos 29, 55, 98, 105, 112, 113, 114, 133</p> <p><i>Direct requests on Conventions Nos 29, 81, 105, 111, 144, 150</i></p> <p>Observation on submission</p> |
| Libyan Arab Jamahiriya | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 1, 52, 81, 102, 103, 105, 111, 118, 130, 131</p> <p><i>Direct requests on Conventions Nos 14, 29, 88, 89, 96, 100, 102, 118, 121, 122, 128, 130, 182</i></p> <p>Observation on submission</p> |
| Lithuania | <p>Observations on Conventions Nos 100, 111, 122, 127, 142</p> <p><i>Direct requests on Conventions Nos 29, 47, 88, 100, 111, 138, 147, 149, 171, 181, 182, 183</i></p> <p><i>Response received to a direct request on Convention No. 135</i></p> |
| Luxembourg | <p><i>General direct request</i></p> <p>Observation on Convention No. 81</p> <p><i>Direct requests on Conventions Nos 1, 13, 14, 30, 81, 96, 100, 111, 132, 142, 155, 158, 159, 172, 175</i></p> |
| Madagascar | <p>Observations on Conventions Nos 100, 119, 120, 122, 127, 138, 144</p> <p><i>Direct requests on Conventions Nos 13, 89, 100, 117, 132, 182</i></p> <p><i>Direct request on submission</i></p> |
| Malawi | <p>Observations on Conventions Nos 81, 98, 129, 138</p> <p><i>Direct requests on Conventions Nos 26, 29, 45, 89, 99, 105, 107, 138, 149, 158, 159, 182</i></p> |
| Malaysia | <p>Observations on Conventions Nos 100, 138, 182</p> <p><i>Direct requests on Conventions Nos 29, 100, 119, 144</i></p> <p><i>Direct request on submission</i></p> <p><i>Direct request on Convention No. 45</i></p> <p>Observation on Convention No. 14</p> <p><i>Direct request on Convention No. 14</i></p> |
| <div>Peninsular Malaysia</div> <div>Sarawak</div> | |
| Mali | <p>Observations on Conventions Nos 81, 151, 182</p> <p><i>Direct requests on Conventions Nos 13, 29, 105, 138, 151, 182</i></p> <p><i>Direct request on submission</i></p> |
| Malta | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 87, 98</p> <p><i>Direct requests on Conventions Nos 1, 14, 32, 81, 96, 100, 106, 111, 117, 119, 127, 129, 132, 136, 148, 149, 182</i></p> <p>Observation on submission</p> |

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| Mauritania | Observations on Conventions Nos 29, 138, 182 <i>Direct requests on Conventions Nos 62, 105, 122, 138, 182</i> <i>Response received to a direct request on Convention No. 29</i> <i>Direct request on submission</i> |
| Mauritius | Observations on Conventions Nos 14, 26, 81, 105, 138 <i>Direct requests on Conventions Nos 29, 81, 88, 138, 175</i> <i>Response received to a direct request on Convention No. 182</i> |
| Mexico | Observations on Conventions Nos 29, 100, 155, 169 <i>Direct requests on Conventions Nos 45, 96, 100, 110, 115, 142, 155, 159, 169, 170, 172</i> <i>Response received to a direct request on Convention No. 13</i> <i>Direct request on submission</i> |
| Republic of Moldova | Observations on Conventions Nos 105, 111 <i>Direct requests on Conventions Nos 29, 47, 81, 88, 100, 105, 111, 117, 119, 122, 127, 129, 138, 142, 150, 151, 155, 181, 182, 183, 184</i> <i>Direct request on submission</i> |
| Mongolia | Observations on Conventions Nos 122, 138, 155 <i>Direct requests on Conventions Nos 103, 111, 135, 155, 182</i> Observation on submission |
| Montenegro | Observations on Conventions Nos 81, 161 <i>Direct requests on Conventions Nos 13, 14, 45, 81, 89, 100, 106, 111, 119, 122, 129, 132, 135, 136, 138, 139, 140, 142, 148, 155, 162, 182</i> |
| Morocco | Observations on Conventions Nos 94, 122, 138, 182 <i>Direct requests on Conventions Nos 2, 13, 45, 119, 136, 138, 181, 182</i> |
| Mozambique | Observations on Conventions Nos 100, 122, 182 <i>Direct requests on Conventions Nos 1, 14, 29, 30, 88, 100, 105, 111, 138</i> Observation on submission |
| Myanmar | Observations on Conventions Nos 2, 26, 29, 87 <i>Direct requests on Conventions Nos 1, 14</i> |
| Namibia | Observations on Conventions Nos 98, 111 <i>Direct requests on Conventions Nos 98, 111, 138, 144, 158, 182</i> |
| Nepal | <i>Direct requests on Conventions Nos 14, 29, 138, 182</i> Observation on submission |
| Netherlands | Observations on Conventions Nos 62, 122, 142, 152, 155, 162, 175, 177 <i>Direct requests on Conventions Nos 29, 88, 115, 135, 138, 152, 159, 174, 175, 177, 181, 182</i> <i>Direct request on submission</i> |
| Aruba | Observations on Conventions Nos 135, 138 <i>Direct requests on Conventions Nos 14, 89, 101, 106, 140, 142, 144</i> |
| Netherlands Antilles | <i>Direct requests on Conventions Nos 14, 81, 101, 106, 122, 172</i> |
| New Zealand | Observations on Conventions Nos 14, 47, 81, 88, 100, 111, 122, 155, 182 <i>Direct requests on Conventions Nos 29, 47, 100, 111, 182</i> |
| Nicaragua | Observations on Conventions Nos 87, 98, 105, 115, 119, 122, 138, 144, 182 <i>Direct requests on Conventions Nos 3, 4, 13, 29, 88, 100, 110, 111, 117, 127, 136, 139, 140, 142, 182</i> <i>Response received to a direct request on Convention No. 45</i> |
| Niger | <i>Direct requests on Conventions Nos 98, 100, 111, 117, 119, 135, 142, 154, 156</i> Observation on submission |
| Nigeria | <i>General direct request</i> Observations on Conventions Nos 87, 88, 98, 105, 123, 144 <i>Direct requests on Conventions Nos 8, 19, 29, 32, 45, 94, 97, 100, 137, 138, 155, 182</i> <i>Direct request on submission</i> |

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| Norway | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 30, 94, 129, 144, 169, 170</p> <p><i>Direct requests on Conventions Nos 13, 14, 30, 47, 81, 94, 115, 120, 122, 132, 139, 142, 148, 149, 159, 162, 167, 176, 182</i></p> |
| Oman | <p>Observation on Convention No. 182</p> <p><i>Direct requests on Conventions Nos 138, 182</i></p> <p><i>Direct request on submission</i></p> |
| Pakistan | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 11, 29, 81, 87, 96, 98, 100, 105, 107, 111, 144, 182</p> <p><i>Direct requests on Conventions Nos 45, 105, 107, 111, 138, 159, 182</i></p> <p>Observation on submission</p> |
| Panama | <p>Observations on Conventions Nos 3, 17, 30, 87, 94, 95, 98, 100, 107, 111</p> <p><i>Direct requests on Conventions Nos 29, 52, 81, 89, 100, 107, 110, 111, 117, 122, 127</i></p> <p><i>Response received to direct requests on Conventions Nos. 9, 45</i></p> <p><i>Direct request on submission</i></p> |
| Papua New Guinea | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 105, 158</p> <p><i>Direct requests on Conventions Nos 29, 45, 87, 100, 103, 111, 122, 138, 182</i></p> <p>Observation on submission</p> |
| Paraguay | <p>Observations on Conventions Nos 29, 81, 87, 95, 98, 120, 122, 169</p> <p><i>Direct requests on Conventions Nos 1, 26, 29, 30, 81, 89, 95, 99, 100, 106, 111, 115, 117, 119, 156, 159, 169</i></p> <p>Observation on submission</p> |
| Peru | <p>Observations on Conventions Nos 67, 102, 111, 122, 152, 169, 182</p> <p><i>Direct requests on Conventions Nos 24, 25, 35, 36, 37, 38, 39, 40, 62, 67, 100, 111, 138, 151, 169, 178, 182</i></p> <p>Observation on submission</p> |
| Philippines | <p>Observations on Conventions Nos 87, 98, 122, 138, 144, 182</p> <p><i>Direct requests on Conventions Nos 110, 143, 149, 176, 182</i></p> |
| Poland | <p>Observations on Conventions Nos 81, 95, 122, 129, 159, 170</p> <p><i>Direct requests on Conventions Nos 62, 81, 115, 119, 120, 127, 140, 142, 148, 149, 151, 161, 176, 182</i></p> |
| Portugal | <p>Observations on Conventions Nos 115, 122</p> <p><i>Direct requests on Conventions Nos 29, 115, 120, 127, 138, 149, 182</i></p> <p><i>Response received to a direct request on Convention No. 45</i></p> <p><i>Direct request on submission</i></p> |
| Qatar | <p><i>Direct requests on Conventions Nos 29, 138</i></p> <p><i>Response received to a direct request on Convention No. 182</i></p> <p><i>Direct request on submission</i></p> |
| Romania | <p>Observations on Conventions Nos 81, 95, 100, 111, 138, 183</p> <p><i>Direct requests on Conventions Nos 13, 88, 100, 111, 122, 127, 129, 136, 154, 182, 183</i></p> |
| Russian Federation | <p>Observations on Conventions Nos 81, 100, 111, 122, 138, 182</p> <p><i>Direct requests on Conventions Nos 14, 47, 81, 103, 106, 111, 134, 138, 156, 163, 182</i></p> <p><i>Response received to a direct request on Convention No. 45</i></p> <p>Observation on submission</p> |
| Rwanda | <p><i>General direct request</i></p> <p>Observations on Conventions Nos 17, 62, 87, 94, 98, 100, 111</p> <p><i>Direct requests on Conventions Nos 12, 14, 29, 81, 87, 89, 100, 105, 111, 132, 135, 138, 182</i></p> <p>Observation on submission</p> |
| Saint Kitts and Nevis | <p><i>Direct requests on Conventions Nos 87, 98, 100, 111, 182</i></p> <p>Observation on submission</p> |

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| Saint Lucia | Observations on Conventions Nos 87, 100 <i>Direct requests on Conventions Nos 14, 29, 87, 97, 98, 100, 101, 108, 111, 154, 158, 182</i> Observation on submission |
| Saint Vincent and the Grenadines | Observations on Conventions Nos 81, 105 <i>Direct requests on Conventions Nos 81, 101, 105, 111, 138, 182</i> <i>Response received to a direct request on Convention No. 29</i> Observation on submission |
| Samoa | <i>Direct request on submission</i> |
| San Marino | <i>General direct request</i> Observations on Conventions Nos 88, 148 <i>Direct requests on Conventions Nos 103, 143, 144, 148, 160, 182</i> |
| Sao Tome and Principe | General observation Observations on Conventions Nos 81, 87, 88, 98, 144 <i>Direct requests on Conventions Nos 29, 81, 98, 100, 105, 106, 111, 159</i> Observation on submission |
| Saudi Arabia | Observations on Conventions Nos 29, 182 <i>Direct requests on Conventions Nos 1, 14, 29, 30, 106</i> |
| Senegal | <i>General direct request</i> Observations on Conventions Nos 13, 96, 105, 122, 138, 182 <i>Direct requests on Conventions Nos 29, 81, 117, 120, 138, 182</i> Observation on submission |
| Serbia | Observations on Conventions Nos 111, 155 <i>Direct requests on Conventions Nos 13, 19, 29, 45, 88, 100, 105, 111, 119, 135, 136, 138, 139, 140, 142, 148, 161, 162, 182</i> |
| Seychelles | General observation Observation on Convention No. 8 <i>Direct requests on Conventions Nos 22, 81, 105, 138, 148, 149, 151, 155, 182</i> Observation on submission |
| Sierra Leone | General observation Observations on Conventions Nos 17, 29, 59, 95, 98, 101, 111, 119, 125, 144 <i>Direct requests on Conventions Nos 26, 45, 81, 87, 88, 94, 99, 100, 105, 126</i> Observation on submission |
| Singapore | Observations on Conventions Nos 29, 94 <i>Direct requests on Conventions Nos 100, 138, 182</i> |
| Slovakia | <i>General direct request</i> Observations on Conventions Nos 100, 111, 122, 144 <i>Direct requests on Conventions Nos 1, 14, 52, 100, 111, 115, 120, 136, 139, 140, 148, 155, 161, 167, 171, 176, 182, 183, 184</i> <i>Response received to a direct request on Convention No. 138</i> |
| Slovenia | Observations on Conventions Nos 148, 161 <i>Direct requests on Conventions Nos 13, 100, 103, 111, 119, 122, 136, 139, 140, 147, 148, 149, 155, 162, 175, 182</i> |
| Solomon Islands | <i>General direct request</i> <i>Direct requests on Conventions Nos 14, 26, 29, 45, 81, 94, 95</i> Observation on submission |
| Somalia | General observation Observation on submission |
| South Africa | <i>General direct request</i> Observation on Convention No. 100 <i>Direct requests on Conventions Nos 100, 111, 138, 155, 176, 182</i> <i>Response received to a direct request on Convention No. 45</i> |

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| Spain | Observations on Conventions Nos 88, 138 <i>Direct requests on Conventions Nos 13, 29, 62, 103, 115, 119, 152, 181, 182</i> <i>Response received to direct requests on Conventions Nos. 120, 127, 154</i> Observation on submission |
| Sri Lanka | Observations on Conventions Nos 96, 182 <i>Direct requests on Conventions Nos 45, 105, 110, 115, 135, 138, 182</i> <i>Direct request on submission</i> |
| Sudan | Observations on Conventions Nos 26, 29, 95, 105, 111, 122, 182 <i>Direct requests on Conventions Nos 19, 100, 105, 111, 117, 138, 182</i> Observation on submission |
| Suriname | Observation on Convention No. 94 <i>Direct requests on Conventions Nos 13, 62, 88, 105, 122, 181, 182</i> <i>Response received to a direct request on Convention No. 154</i> <i>Direct request on submission</i> |
| Swaziland | Observations on Conventions Nos 29, 87, 96, 111 <i>Direct requests on Conventions Nos 14, 87, 101, 111, 138, 160, 182</i> <i>Response received to a direct request on Convention No. 45</i> <i>Direct request on submission</i> |
| Sweden | Observations on Conventions Nos 111, 122, 129, 167, 180 <i>Direct requests on Conventions Nos 14, 47, 81, 100, 111, 115, 119, 132, 139, 140, 148, 149, 155, 161, 162, 170, 174, 175, 176, 180, 182, 184</i> <i>Response received to direct requests on Conventions Nos. 13, 120</i> <i>Direct request on submission</i> |
| Switzerland | Observations on Conventions Nos 81, 142, 182 <i>Direct requests on Conventions Nos 29, 81, 115, 138, 139, 162, 172, 182</i> <i>Response received to direct requests on Conventions Nos. 45, 120</i> |
| Syrian Arab Republic | Observations on Conventions Nos 29, 81, 105, 115, 129, 139 <i>Direct requests on Conventions Nos 14, 29, 52, 101, 106, 138, 139, 170, 182</i> <i>Response received to a direct request on Convention No. 45</i> Observation on submission |
| Tajikistan | <i>General direct request</i> Observation on Convention No. 138 <i>Direct requests on Conventions Nos 11, 14, 29, 47, 52, 95, 97, 98, 103, 105, 115, 120, 138, 142, 148</i> <i>Response received to a direct request on Convention No. 124</i> Observation on submission |
| United Republic of Tanzania | Observations on Conventions Nos 29, 87, 98, 105, 111, 142, 144, 182 <i>Direct requests on Conventions Nos 29, 100, 105, 111, 138, 140, 148, 149, 154, 170</i> General observation Observation on Convention No. 81 <i>Direct requests on Conventions Nos 45, 81, 88, 101</i> General observation <i>Direct request on Convention No. 97</i> |
| Thailand | <i>General direct request</i> Observations on Conventions Nos 19, 29, 105, 122, 182 <i>Direct requests on Conventions Nos 14, 88, 100, 105, 127, 138, 182</i> |
| The former Yugoslav Republic of Macedonia | <i>General direct request</i> Observation on Convention No. 132 <i>Direct requests on Conventions Nos 14, 29, 45, 89, 103, 105, 106, 111, 113, 114, 126, 132, 144, 155</i> Observation on submission |
| Timor-Leste | <i>Direct request on submission</i> |

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| Togo | <i>General direct request</i> Observations on Conventions Nos 29, 87, 98, 144 <i>Direct requests on Conventions Nos 13, 26, 29, 87, 98, 100, 105, 111, 138, 143, 182</i> Observation on submission |
| Trinidad and Tobago | Observation on Convention No. 125 <i>Direct request on submission</i> |
| Tunisia | Observations on Conventions Nos 62, 111, 118 <i>Direct requests on Conventions Nos 88, 100, 111, 117, 120, 122, 138, 142, 182</i> <i>Response received to a direct request on Convention No. 45</i> |
| Turkey | <i>General direct request</i> Observations on Conventions Nos 29, 81, 87, 96, 100, 105, 111, 119, 122, 138, 142, 144, 155, 158, 161, 182 <i>Direct requests on Conventions Nos 14, 29, 45, 88, 100, 105, 111, 115, 127, 138, 153, 155, 159, 161, 182</i> |
| Turkmenistan | General observation Observation on submission |
| Uganda | <i>General direct request</i> Observations on Conventions Nos 26, 29, 81, 98, 105, 122, 144, 158, 182 <i>Direct requests on Conventions Nos 11, 29, 94, 95, 100, 105, 111, 123, 124, 138, 143, 154, 159, 162, 182</i> Observation on submission |
| Ukraine | Observations on Conventions Nos 81, 95, 119, 122, 129, 138, 142, 182 <i>Direct requests on Conventions Nos 14, 29, 45, 47, 81, 103, 105, 106, 115, 120, 129, 131, 132, 140, 149, 173, 182</i> Observation on submission |
| United Arab Emirates | Observations on Conventions Nos 138, 182 <i>Direct requests on Conventions Nos 1, 100, 111, 138, 182</i> |
| United Kingdom | Observations on Conventions Nos 29, 81, 87, 115, 122 <i>Direct requests on Conventions Nos 29, 81, 100, 105, 111, 115, 120, 138, 140, 148, 151, 182</i> Observation on Convention No. 148 <i>Direct requests on Conventions Nos 8, 12, 14, 17, 19, 23, 26, 29, 42, 82, 85, 87, 94, 97, 98, 99, 101, 140</i> <i>Response received to a direct request on Convention No. 59</i> |
| Anguilla | Observations on Conventions Nos 17, 98 |
| Bermuda | General observation |
| British Virgin Islands | Observation on Convention No. 94 <i>Direct requests on Conventions Nos 26, 59, 82, 97</i> |
| Falkland Islands (Malvinas) | General observation <i>Direct requests on Conventions Nos 45, 59, 82</i> |
| Gibraltar | General observation Observation on Convention No. 100 <i>Direct requests on Conventions Nos 45, 59, 81, 82</i> <i>Direct requests on Conventions Nos 81, 115, 182</i> |
| Guernsey | Observation on Convention No. 151 <i>Direct requests on Conventions Nos 81, 101</i> <i>Response received to a direct request on Convention No. 178</i> |
| Isle of Man | <i>Direct requests on Conventions Nos 115, 140</i> <i>Response received to a direct request on Convention No. 81</i> |
| Jersey | General observation |
| Montserrat | Observation on Convention No. 8 <i>Direct requests on Conventions Nos 14, 26, 29, 95</i> |
| St Helena | General observation <i>Direct requests on Conventions Nos 17, 29, 108</i> |
| United States | Observations on Conventions Nos 105, 182 <i>Direct requests on Conventions Nos 105, 176</i> |

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| Uruguay | Observations on Conventions Nos 81, 100, 111, 122, 129, 139, 148, 151, 155, 167 <i>Direct requests on Conventions Nos 100, 110, 111, 115, 129, 136, 138, 148, 149, 159, 161, 162, 167, 172, 182</i> <i>Response received to a direct request on Convention No. 29</i> <i>Direct request on submission</i> |
| Uzbekistan | <i>General direct request</i> Observations on Conventions Nos 105, 182 <i>Direct requests on Conventions Nos 29, 47, 105, 135, 182</i> Observation on submission |
| Vanuatu | General observation <i>Direct request on submission</i> |
| Bolivarian Republic of Venezuela | Observations on Conventions Nos 26, 87, 111, 155, 158, 169 <i>Direct requests on Conventions Nos 13, 29, 88, 111, 117, 120, 122, 127, 139, 140, 149, 169</i> <i>Response received to direct requests on Conventions Nos. 27, 45</i> Observation on submission |
| Viet Nam | Observations on Conventions Nos 100, 111, 155 <i>Direct requests on Conventions Nos 14, 100, 120, 138, 155, 182</i> <i>Response received to a direct request on Convention No. 45</i> <i>Direct request on submission</i> |
| Yemen | Observations on Conventions Nos 81, 94, 111, 131 <i>Direct requests on Conventions Nos 14, 29, 100, 105, 111, 132, 135, 138, 182</i> <i>Direct request on submission</i> |
| Zambia | <i>General direct request</i> Observations on Conventions Nos 95, 138, 182 <i>Direct requests on Conventions Nos 136, 144, 148, 149, 158, 159, 173, 176, 182</i> Observation on submission |
| Zimbabwe | <i>General direct request</i> Observations on Conventions Nos 26, 99, 138, 155, 170 <i>Direct requests on Conventions Nos 29, 105, 155, 159, 161, 162, 174, 176, 182</i> |